



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.

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2013

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
5	Friday, August 16, 2013	September 4, 2013
6	Wednesday, August 28, 2013	September 18, 2013
7	Friday, September 13, 2013	October 2, 2013

PLEASE NOTE:

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

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

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

AUDITOR OF STATE[81]

Periodic examination fee, 21.2 IAB 7/24/13 ARC 0849C	Room 116 State Capitol Bldg. Des Moines, Iowa	August 13, 2013 10 a.m.
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Out-of-state applicants—provision of valid or expired license with application, 13.3, 13.17(1) IAB 7/24/13 ARC 0880C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 14, 2013 1 p.m.
Correction to all science endorsement title, 13.28(17) IAB 7/24/13 ARC 0879C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 14, 2013 1 p.m.
Substitute authorization—length of time licensee may serve in one classroom, 22.2 IAB 7/24/13 ARC 0878C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 14, 2013 1 p.m.
School administration manager authorization, 22.6 IAB 7/24/13 ARC 0877C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	August 14, 2013 1 p.m.

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Unethical or illegal conduct, 8.2(6)“a” IAB 8/7/13 ARC 0928C	Professional Licensing Bureau Offices 1920 SE Hulsizer Rd. Ankeny, Iowa	August 28, 2013 9 to 11 a.m.
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Underground storage tanks—leak detection at unstaffed facilities, 135.5(1) IAB 7/24/13 ARC 0836C [See ARC 0560C , IAB 1/9/13]	Conference Room 5W Wallace State Office Bldg. Des Moines, Iowa	August 13, 2013 1 p.m.
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INSPECTIONS AND APPEALS DEPARTMENT[481]

Assisted living programs— informal conference process; elder group homes and adult day services, 67.1, 67.10 to 67.18, 67.20 to 67.23 IAB 8/7/13 ARC 0941C	Room 319 Lucas State Office Bldg. Des Moines, Iowa	August 28, 2013 10 a.m.
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INSURANCE DIVISION[191]

Form and rate filing exemption— update of reference, 20.11(1) IAB 7/24/13 ARC 0892C	Division Offices, Two Ruan Center 601 Locust St. Des Moines, Iowa	August 20, 2013 10 a.m.
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IOWA FINANCE AUTHORITY[265]

Low-income housing tax credit program—qualified allocation plan, 12.1, 12.2 IAB 8/7/13 ARC 0929C	Authority Offices 2015 Grand Ave. Des Moines, Iowa	August 27, 2013 9 to 11 a.m.
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LABOR SERVICES DIVISION[875]

Federal occupational safety and health standards for digger derricks—adoption by reference, 26.1 IAB 8/7/13 ARC 0905C	Capitol View Room 1000 East Grand Ave. Des Moines, Iowa	September 4, 2013 9 a.m. (If requested)
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MEDICINE BOARD[653]

One-year term limit for board chairperson, 1.3(3) IAB 7/24/13 ARC 0889C	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	August 13, 2013 1 p.m.
Fees for licensure, amendments to chs 8 to 10 IAB 8/7/13 ARC 0943C	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	August 27, 2013 11 a.m.

Due to public interest, the location and time for the following hearing have been changed to:

Standards of practice—physicians who prescribe or administer abortion-inducing drugs, 13.10 IAB 7/24/13 ARC 0891C	Auditorium Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	August 28, 2013 1 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Podiatrists, orthotists, prosthetists, and pedorthists—licensure, discipline, continuing education, amend 5.15, ch 224; adopt chs 221, 225 IAB 8/7/13 ARC 0942C	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 27, 2013 9 to 9:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Plumbing and mechanical systems board—licensee practice, ch 23 IAB 8/7/13 ARC 0937C (ICN Network)	Public Library 529 Pierce St. Sioux City, Iowa	August 27, 2013 11:30 a.m. to 1 p.m.
	Crestwood High School 1000 4th Ave. East Cresco, Iowa	August 27, 2013 11:30 a.m. to 1 p.m.
	Meeting Room C, Public Library 415 Commercial St. Waterloo, Iowa	August 27, 2013 11:30 a.m. to 1 p.m.
	Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	August 27, 2013 11:30 a.m. to 1 p.m.
	Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	August 27, 2013 11:30 a.m. to 1 p.m.
	Kelinson Room Public Library Information Center 2950 Learning Campus Dr. Bettendorf, Iowa	August 27, 2013 11:30 a.m. to 1 p.m.
	Sixth Floor, Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa	August 27, 2013 11:30 a.m. to 1 p.m.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)**(ICN Network)**

	Iowa Western Community College - 2 923 E. Washington Clarinda, Iowa	August 27, 2013 11:30 a.m. to 1 p.m.
	Burlington High School 421 Terrace Dr. Burlington, Iowa	August 27, 2013 11:30 a.m. to 1 p.m.
Plumbing and mechanical systems board—mechanical, HVAC-refrigeration, and sheet metal licensees, 27.1, 27.2(1), 27.3(8)“e” IAB 8/7/13 ARC 0936C	See ARC 0937C above for public hearing ICN locations	August 27, 2013 11:30 a.m. to 1 p.m.
Plumbing and mechanical systems board—licensure fees, 28.1 IAB 8/7/13 ARC 0935C	See ARC 0937C above for public hearing ICN locations	August 27, 2013 11:30 a.m. to 1 p.m.
Plumbing and mechanical systems board—licensure and examination, 29.1, 29.2, 29.4(3), 29.5(4), 29.6 to 29.8 IAB 8/7/13 ARC 0934C	See ARC 0937C above for public hearing ICN locations	August 27, 2013 11:30 a.m. to 1 p.m.
Plumbing and mechanical systems board—continuing education, 30.1, 30.2, 30.5 IAB 8/7/13 ARC 0933C	See ARC 0937C above for public hearing ICN locations	August 27, 2013 11:30 a.m. to 1 p.m.
Plumbing and mechanical systems board—licensee discipline, 32.1, 32.2, 32.5, 32.6 IAB 8/7/13 ARC 0932C	See ARC 0937C above for public hearing ICN locations	August 27, 2013 11:30 a.m. to 1 p.m.
Plumbing and mechanical systems board—contested cases, 33.13(2) IAB 8/7/13 ARC 0931C	See ARC 0937C above for public hearing ICN locations	August 27, 2013 11:30 a.m. to 1 p.m.
Plumbing and mechanical systems board—reciprocity agreements for mechanical, HVAC-refrigeration, and sheet metal licensees, 35.2, 35.3(1)“b” IAB 8/7/13 ARC 0930C	See ARC 0937C above for public hearing ICN locations	August 27, 2013 11:30 a.m. to 1 p.m.
Vital records—time-limited fee increases, 95.6 IAB 8/7/13 ARC 0926C	Room 517-518 Lucas State Office Bldg. Des Moines, Iowa (To attend by conference call, dial 1-866-393-7315)	August 27, 2013 10 to 11:30 a.m.

TRANSPORTATION DEPARTMENT[761]

Electronic renewal of driver's
licenses and nonoperator's
ID cards—vision screen or
report, eligibility, 601.2, 604.10,
605.25, 630.2
IAB 8/7/13 **ARC 0894C**
[See also **ARC 0895C** herein]

Motor Vehicle Divisions Offices
6310 SE Convenience Blvd.
Ankeny, Iowa

August 29, 2013
10 a.m.
(If requested)

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Iowa Veterans Home,
amendments to ch 10
IAB 8/7/13 **ARC 0924C**

Ford Memorial Conference Room
Iowa Veterans Home
1301 Summit St.
Marshalltown, Iowa

August 28, 2013
8 a.m.
(If requested)

The following list will be updated as changes occur.

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

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

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

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ARC 0940C

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 116, “Tax Credits for Investments in Certified Innovation Funds,” Iowa Administrative Code.

The rules in Chapter 116 describe the Economic Development Authority’s administration of the Innovation Fund Tax Credit Program. These amendments update existing rules to reflect changes to the tax credit, including additional eligibility criteria for certification of innovation funds, new requirements for the administration of the certification process and maintenance of fund certification, a description of the circumstances under which a fund’s certification may be revoked, and an increase of the tax credit percentage that a taxpayer may claim, and changes to the way the tax credit may be claimed.

The Economic Development Authority Board approved these amendments at a Board meeting on July 19, 2013.

Interested persons may submit comments on or before August 27, 2013. Comments may be submitted to Kristin Hanks, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-0440; e-mail: kristin.hanks@iowa.gov.

There is no fiscal impact to the State of Iowa from these amendments.

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

These amendments are intended to implement Iowa Code section 15E.52 as amended by 2013 Iowa Acts, House File 615.

The following amendments are proposed.

ITEM 1. Strike “84GA,SF517” wherever it appears in rules **261—116.1(84GA,SF517)** to **261—116.8(84GA,SF517)** and insert “15E” in lieu thereof.

ITEM 2. Amend subrule 116.1(5) as follows:

116.1(5) Amount of credit. ~~The~~ For tax years beginning and investments made on or after January 1, 2011, and before January 1, 2013, the taxpayer may claim a tax credit in an amount equal to 20 percent of the taxpayer’s equity investment in a certified innovation fund. For tax years beginning and investments made on or after January 1, 2013, the taxpayer may claim a tax credit in an amount equal to 25 percent of the taxpayer’s equity investment in a certified innovation fund.

ITEM 3. Amend rule **261—116.2(15E)**, definitions of “Authority” and “Board,” as follows:

“Authority” means the economic development authority created in ~~2011 Iowa Acts, House File 590~~ Iowa Code section 15.105.

“Board” means the same as defined in Iowa Code section 15.102 ~~as amended by 2011 Iowa Acts, House File 590, section 3.~~

ITEM 4. Amend rule 261—116.3(15E), catchwords, as follows:

261—116.3(15E) Verification Certification of innovation funds.

ITEM 5. Amend subrule 116.3(2) as follows:

116.3(2) Application forms setting forth the information required to ~~verify~~ certify the eligibility of an innovation fund may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. The telephone number is (515)725-3000. Applications shall be submitted to the authority at the address identified above.

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ITEM 6. Amend subrule 116.3(3) as follows:

116.3(3) ~~The following information must be submitted to the authority in order for an eligible innovation fund to be verified~~ authority will not issue a tax credit certificate until the board has certified that a fund meets all of the following criteria:

a. ~~A~~ The innovation fund has submitted a copy of the innovation fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement certified by the chief executive officer of the innovation fund.

b. ~~A~~ The innovation fund has submitted a signed statement, from an officer, director, manager, member or general partner of the fund, stating the following:

(1) That the innovation fund will make investments in promising early-stage companies which have a principal place of business in the state. For purposes of rule 261—116.3(15E), "having a principal place of business in the state" means (1) that the business has at least 50 percent of all of its employees in the state, (2) that the business pays at least 50 percent of the business's total payroll to employees residing in the state, or (3) that the headquarters of the business (defined as the home office for a substantial amount of executive employees) is in the state.

(2) That the innovation fund proposes to make investments in innovative businesses which have a principal place of business in the state.

(3) That the innovation fund seeks to secure private funding sources for investment in such businesses.

(4) That the innovation fund proposes to provide multiple rounds of funding and early-stage private sector funding to innovative businesses with a high growth potential, and proposes to focus such funding on innovative businesses that show a potential to produce commercially viable products or services within a reasonable period of time. In order to establish that this criterion is met, the innovation fund shall provide a detailed description of the framework the innovation fund will use to evaluate a business's growth potential and its ability to produce commercially viable products or services within a reasonable period of time. The description shall list and discuss the criteria and the attendant process that the innovation fund will use to evaluate businesses. The authority will consider requests submitted under Iowa Code section 15.118 or 22.7 to treat the evaluation framework as confidential.

(5) That the innovation fund proposes to evaluate all prospective innovative businesses using a rigorous approach and proposes to collaborate and coordinate with the authority and other state and local entities in an effort to achieve policy consistency. In order to establish that this criterion is met, an innovation fund shall provide a detailed description of the methods by which each business will be evaluated. An innovation fund shall also submit a plan describing the actions it will take in order to collaborate and coordinate with other state and local entities and the ways in which the innovation fund intends to ensure consistency with the policy goals of this chapter. Such a plan shall propose to create relationships that can be substantiated in writing, which may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, or joint press releases from or with the entities that will be involved in the collaborative and coordinating efforts or through a list and summary description of the dates and locations for meetings held between the innovation fund and the other entities which allowed for collaboration and coordination between the innovation fund and those entities in an effort to achieve policy consistency.

(6) That the innovation fund proposes to collaborate with the regents institutions of this state and to leverage relationships with such institutions in order to potentially commercialize research developed at those institutions. In order to establish that this criterion is met, an innovation fund shall provide written confirmation of such relationships which may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, or joint press releases from or with the regents institutions of this state or a list and summary description of the dates and locations for meetings held between the innovation fund and the regents institutions, the names of representatives of regents institutions with whom the innovation fund has met, and a brief summary of the discussions at those meetings.

(7) That the innovation fund proposes to obtain at least \$15 million in binding investment commitments and to invest a minimum of \$15 million in companies that have a principal place of business in the state. In order to establish that this criterion is met, an innovation fund shall include

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provisions in the fund's governing documents that provide for the continued operations of the fund only if this minimum level of investment commitment is reached.

ITEM 7. Amend subrule 116.3(4) as follows:

116.3(4) Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the authority shall, within a reasonable period of time, determine whether ~~a certification will be issued for to certify~~ the innovation fund. If the authority certifies the innovation fund, the authority shall register the fund on a registry that shall be maintained by the authority. The authority shall use the registry to authorize the issuance of further investment tax credits to taxpayers who make equity investments in the innovation funds registered with the authority. The authority shall issue written notification to the innovation fund that the fund has been registered as an innovation fund with the authority for the purpose of issuing investment tax credits. This written notification shall contain the following statement:

The Authority shall not be liable either for an innovation fund's failure to maintain compliance with the certification requirements nor for an investor's loss of tax credit certificates resulting from either a failure to maintain compliance or from a revocation.

ITEM 8. Adopt the following new subrules 116.3(5) and 116.3(6):

116.3(5) On May 24, 2013, significant changes to the innovation fund tax credit program were enacted. (See 2013 Iowa Acts, House File 615.) The legislation includes changes to the criteria required for certification and also changes to the tax credits available to investors in certified funds. An innovation fund certified before May 24, 2013, that wishes to take advantage of the changes in 2013 Iowa Acts, House File 615, must resubmit an application to the board and demonstrate that the innovation fund meets all new requirements for certification as described in subrule 116.3(3).

116.3(6) The board will not certify an innovation fund after June 30, 2018.

ITEM 9. Renumber rules **261—116.4(15E)** and **261—116.5(15E)** as **261—116.5(15E)** and **261—116.6(15E)** and renumber rule **261—116.6(15E)** as **261—116.9(15E)**.

ITEM 10. Adopt the following new rule 261—116.4(15E):

261—116.4(15E) Maintenance, reporting, and revocation of certification.

116.4(1) In order to maintain certification, an innovation fund must demonstrate compliance with the eligibility criteria set forth in subrule 116.3(3) at all times during participation in the program. A failure to comply with the eligibility criteria on an ongoing basis may result in revocation of certification. The authority will notify an innovation fund if the authority finds that the fund is not in compliance and will allow the innovation fund a period of not more than 120 days in which to address such noncompliance. If after 120 days the innovation fund remains in noncompliance, the board may revoke the fund's certification. The authority will not issue tax credit certificates to investors in an innovation fund if such equity investments are made at any point after the innovation fund has been found to be in noncompliance or if the innovation fund's certification has been revoked.

116.4(2) On or before December 31 of each year, each certified innovation fund shall collect and provide to the board, in the manner and form prescribed by the authority, the following information:

a. The amount of equity investments made in the innovation fund, both on an annual and a cumulative basis.

b. For each investment by an innovation fund in a business:

(1) The amount and date of the investment.

(2) The name and industry of the business.

(3) The location or locations from which the business operates.

(4) The number of employees of the business located in Iowa and the number of employees of the business located outside Iowa on the date of the initial investment by the innovation fund in the business.

(5) The number of employees of the business located in Iowa and the number of employees of the business located outside Iowa at the close of the fiscal year which is the subject of the report.

c. In order to establish that an innovation fund has met the criterion found in subparagraph 116.3(3) "b"(5), the innovation fund shall provide documentation and information in the manner and

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form required by the authority. Such documentation and information may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, joint press releases, or a list and summary description of the dates and locations for meetings held between the innovation fund and the other entities which allowed for collaboration and coordination between the innovation fund and those entities in an effort to achieve policy consistency.

d. In order to establish that an innovation fund has met the criterion found in subparagraph 116.3(3)“b”(6), the innovation fund shall provide documentation and information in the manner and form required by the authority. Such documentation and information may include, without limitation, contracts, memoranda of understanding, letters of support, affidavits, joint press releases, or a list and summary description of the dates and locations for meetings held between the innovation fund and regents institutions, the names of representatives of regents institutions with whom the innovation fund has met, and a brief summary of the discussions at those meetings. The innovation fund shall also indicate if any business in which it has invested is commercializing research developed at one of the regents institutions.

116.4(3) Upon obtaining the required minimum threshold of \$15 million in binding investment commitments, an innovation fund shall submit a statement containing the names, addresses, equity interests issued and consideration paid for the interests of all limited partners or members who may initially qualify for the tax credits. An innovation fund shall submit an amended statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change. The authority will consider requests submitted under Iowa Code section 15.118 to treat investor names and amounts as confidential.

116.4(4) The board may revoke an innovation fund’s certification if any of the following events occur:

a. An innovation fund fails to secure the required \$15 million in initial binding investment commitments within one year of the date of certification by the board or fails at any point thereafter to secure investment from its investors of at least \$15 million. If an investor in an innovation fund fails to make a capital call by the innovation fund and that failure would cause the innovation fund to fail to secure the required minimum \$15 million in investment, then the authority will provide the innovation fund a period of not more than 120 days after receiving notice of the failed capital call to secure additional investment commitments sufficient to meet the required minimum investment.

b. An innovation fund fails to timely submit the report required in subrule 116.4(2).

c. An innovation fund fails to maintain the eligibility criteria as set forth in subrule 116.3(3).

The board may forbear revocation under this subrule for good cause shown or for demonstration of extenuating circumstances. Such forbearance shall be at the board’s discretion and for the period of time determined by the board to be in the best interest of the program and the state of Iowa.

116.4(5) If the board finds that a fund is in noncompliance or revokes an innovation fund’s certification, the board will not issue tax credit certificates to investors in the innovation fund until the innovation fund manager demonstrates to the board that the innovation fund again meets the eligibility criteria set forth in rule 261—116.3(15E). If an investor makes an equity investment prior to a notice of noncompliance and a revocation of an innovation fund’s certification, the board will issue the tax credit certificate as set forth in rule 261—116.6(15E). If an investor is issued a tax credit certificate prior to a revocation of certification, the investor shall have all the rights described in Iowa Code section 15E.52(5) as amended by 2013 Iowa Acts, House File 615.

ITEM 11. Amend renumbered rule 261—116.5(15E) as follows:

261—116.5(15E) Application for the investment tax credit certificate. Upon ~~verification~~ certification and registration by the authority of an innovation fund, a taxpayer ~~who desires to receive~~ may make equity investments in the fund and may apply for an investment tax credit certificate for an each equity investment made in an a certified innovation fund must submit by submitting an application to the authority for approval by the board and ~~provide~~ providing such other information and documentation as may be requested by the authority. Application forms for the investment tax credit certificate may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines,

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Iowa 50309. Applications shall be submitted to the authority at the address identified above. Each application shall be date- and time-stamped by the authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer's equity investment is made.

ITEM 12. Amend renumbered rule 261—116.6(15E) as follows:

261—116.6(15E) Approval, issuance and distribution of investment tax credits.

116.6(1) Approval and issuance. Upon ~~verification certification~~ and registration by the authority of an innovation fund, ~~the authority, upon and approval by the board of the taxpayer's application, shall issue the board will approve the issuance of a tax credit certificate to the applicant. The board shall not issue a certificate to a taxpayer for an equity investment in an innovation fund until such fund has been certified as an innovation fund pursuant to rule 261—116.3(15E).~~

116.6(2) Issuance. Applicants shall receive tax credit certificates on a first-come, first-served basis until the maximum aggregate amount of credits authorized for issuance has been reached for any fiscal year. The board shall not issue a tax credit certificate prior to September 1, 2014.

~~**116.6(2) 116.6(3) Carry-forward Waiting list.** If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum aggregate amount are received and approved, the applications will be carried forward and prioritized to receive tax credit certificates on a first-come, first-served basis in subsequent fiscal years~~ board will establish a waiting list for certificates. Applications that were approved but for which certificates were not issued shall be placed on the waiting list in the order the applications were received by the board. If applications were placed on the waiting list, the authority shall:

a. When carrying forward and prioritizing such applications, the authority shall (1) issue Issue tax credit certificates to the taxpayers for such ~~carryover~~ waitlisted tax credits before issuing any new tax credits to later applicants, and

b. (2) apply Apply the aggregate amount of the waitlisted credits ~~carried over~~ against the total amount of tax credits to be issued during the subsequent fiscal year before approving or issuing additional tax credits.

~~**116.6(3) 116.6(4) Preparation of the certificate.** The tax credit certificate shall be in a form approved by the authority and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the innovation fund, the year in which the ~~credit may be redeemed~~ investment was made and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:~~

Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this ~~enterprise fund~~.

~~**116.6(4) 116.6(5) Credit amount.** A tax credit for investment in an innovation fund is equal to ~~20~~ 25 percent of the taxpayer's equity investment in the fund.~~

~~**116.6(5) 116.6(6) Maximum aggregate limitation.** The maximum aggregate amount of tax credits issued pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119, subsection 2. For fiscal year 2012 and all subsequent fiscal years, that amount is \$8 million per year.~~

ITEM 13. Renumber rules **261—116.7(15E)** and **261—116.8(15E)** as **261—116.10(15E)** and **261—116.11(15E)**.

ITEM 14. Adopt the following new rule 261—116.7(15E):

261—116.7(15E) Transferability of the tax credit.

116.7(1) Transfer. Tax credit certificates issued pursuant to this rule may be transferred, in whole or in part, to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name,

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tax identification number, and address, the denomination that each replacement tax credit certificate is to carry, and any other information required by the department of revenue.

116.7(2) *Only one transfer allowed.* A tax credit certificate shall only be transferred once.

116.7(3) *Replacement certificate.* Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the Iowa department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate. A replacement tax credit certificate may designate a different tax than the tax designated on the original tax credit certificate.

116.7(4) *Claiming a transferred tax credit.* A tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.329, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa code chapter 422, divisions II, III, and V. For more information on claiming transferred tax credits, see department of revenue rule 701—42.22(15E,422).

ITEM 15. Adopt the following **new** rule 261—116.8(15E):

261—116.8(15E) Vested right in the tax credit. A certificate and related tax credit issued pursuant to Iowa Code section 15E.52 as amended by 2013 Iowa Acts, House File 615, shall be deemed a vested right of the original holder or any transferee thereof, and the state shall not cause either to be redeemed in such a way that amends or rescinds the certificate or that curtails, limits, or withdraws the related tax credit, except as otherwise provided in rules 261—116.6(15E) and 261—116.7(15E) or upon consent of the proper holder. A certificate issued pursuant to this rule cannot pledge the credit of the state, and any such certificate so pledged to secure the debt of the original holder or a transferee shall not constitute a contract binding the state. A taxpayer does not obtain a vested right in such a tax credit until a certificate has been issued by the authority.

ITEM 16. Amend renumbered rule 261—116.9(15E) as follows:

261—116.9(15E) Claiming the tax credits. To claim a tax credit under this chapter, a taxpayer must attach to that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. A tax credit may be claimed in the first year that a certificate is issued. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422).

ITEM 17. Amend **261—Chapter 116**, implementation sentence, as follows:

These rules are intended to implement ~~2011 Iowa Acts, Senate File 517~~ 2013 Iowa Code section 15E.52 and 2013 Iowa Acts, House File 615.

ARC 0928C**ENGINEERING AND LAND SURVEYING
EXAMINING BOARD[193C]****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 542B.6, the Engineering and Land Surveying Examining Board proposes to amend Chapter 8, “Professional Conduct of Licensees,” Iowa Administrative Code.

The proposed amendment to Chapter 8 clarifies the rules pertaining to unethical or illegal conduct.

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before August 28, 2013. Comments should be directed to Robert Lampe, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; by telephone at (515)281-7360; or by e-mail to robert.lampe@iowa.gov.

A public hearing will be held on Wednesday, August 28, 2013, from 9 to 11 a.m. at the offices of the Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

Any person who plans to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the Board to discuss specific needs.

This amendment is subject to waiver or variance pursuant to 193—Chapter 5.

This amendment was approved by the Board on May 9, 2013.

After analysis and review of this rule making, no adverse impact on jobs has been found. Although there should be no impact on jobs, the Board will continue to work with stakeholders to minimize any negative impact and maximize any positive impact toward jobs.

This amendment is intended to implement Iowa Code section 542B.21.

The following amendment is proposed.

Amend subparagraph **8.2(6)“a”(7)** as follows:

(7) When a licensee’s organization or a principal, officer, other member, or employee of the licensee’s organization has review authority over the engineering or land surveying projects performed by private contractors within the jurisdiction of a governmental body, the licensee shall not solicit or accept a private engineering or land surveying contract that falls under the review services performed for that governmental body. The purpose of this paragraph is to avoid a circumstance in which a licensee may be called upon to review on behalf of a governmental body the engineering or land surveying services performed by the licensee’s own organization.

However, if the licensee exercising review authority does so as a member of a multimedembred body with review authority, the conflict of interest may be addressed by the disqualification or recusal of the licensee when engineering or land surveying services of the licensee’s organization are under review. In that circumstance, the solicitation or acceptance of a private engineering or land surveying contract by the licensee’s organization would not be in violation of this rule.

ARC 0897C**HISTORICAL DIVISION[223]****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 303.1A, the Director of the Department of Cultural Affairs hereby gives Notice of Intended Action to amend Chapter 48, “Historic Preservation and Cultural and Entertainment District Tax Credits,” Iowa Administrative Code.

The amendments to Chapter 48 clarify definitions of commercial and noncommercial properties; change the threshold for commercial projects; change the cap for small projects; and allow for a 12-month extension for a project that reaches 60 months and is not complete but has already expended at least 50 percent of the project’s qualified rehabilitation expenses in accordance with 2013 Iowa Acts, Senate File 436.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 27, 2013. Interested persons may submit written or oral comments by contacting Kristen Vander Molen, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)281-6975; e-mail kristen.vandermolen@iowa.gov. Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515)281-4228.

The rule making will have no fiscal impact.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 0896C**. The content of that submission 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 303 and chapter 404A as amended by 2013 Iowa Acts, Senate File 436.

ARC 0921C**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 218.4, the Department of Human Services proposes to amend Chapter 28, “Policies for All Institutions,” Chapter 29, “Mental Health Institutes,” and Chapter 30, “State Resource Centers,” Iowa Administrative Code.

These proposed amendments will implement the regional administrator system of service management for mental health and disability services. The amendments will also shift a county’s financial liability for payment for services from a person’s county of legal settlement to the person’s county of residence in accordance with 2012 Iowa Acts, Senate File 2315. Finally, these amendments will update language to reflect current terms and usage, as well as clarify that the Clarinda gero-psychiatric treatment program provides services statewide.

Any interested person may make written comments on the proposed amendments on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination,

HUMAN SERVICES DEPARTMENT[441](cont'd)

Department of Human Services, Hoover State Office Building, 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 except for requests for exception to policy sent to the established catchment areas for the facilities and for visitation. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). However, Iowa law places authority and responsibility with county government to accept, process, and approve applications, and the rights of individuals served to confidentiality and privacy are also defined by law. The Department has no authority to waive those requirements. Individuals are given the right to make their own decisions about maintaining confidentiality and privacy.

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

These amendments are intended to implement Iowa Code chapters 218 and 222.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 28**, title, as follows:

POLICIES FOR ALL INSTITUTIONS MENTAL HEALTH
INSTITUTES AND RESOURCE CENTERS

ITEM 2. Amend rule 441—28.1(218) as follows:

441—28.1(218) Definitions. The definitions in this rule apply to 441—Chapters 28, 29, and 30.

“Admission” means the acceptance of an individual ~~for full residence~~ for receipt of services at a state mental health institute or resource center on either a voluntary or involuntary basis.

“Adult” means an individual who is 18 years of age or older.

“Board of supervisors” means the elected governing body of a county as defined in Iowa Code section 331.101.

“Catchment area” means the group of counties, designated by the ~~deputy director~~ division administrator, that each mental health institute or state resource center is assigned to serve.

“Central point of coordination process” means the process defined in Iowa Code section 331.440(1)“a.”

“Child” means an individual who is under the age of 18.

“County of residence” means the same as defined in ~~rule 441—25.11(331)~~ Iowa Code section 331.394.

“Deputy director” ~~means the deputy director for field operations within the Iowa department of human services.~~

“Division administrator” means the administrator of the division of mental health and disability services.

“Facility” means a mental health institute or state resource center referenced in Iowa Code section 218.1.

“Family contact,” for an adult individual, means:

1. The family member the individual has designated in writing to receive information concerning the individual's services; or

2. A person, often referred to as a substitute decision maker, who has been legally authorized to make care decisions for the individual if the individual loses decision-making capacity.

“Grievance” means a written or oral complaint by or on behalf of an individual involving:

1. A rights violation or unfairness to the individual, or

2. Any aspect of the individual's life with which the individual does not agree.

“Guardian” means the person other than a parent of a ~~child~~ minor who has been appointed by the court to have custody of the person of the individual as provided under Iowa Code section 232.2(21) or 633.3(20).

“Individual” means any person seeking or receiving services from a state mental health institute or a state resource center.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“Informed consent” means an agreement by an individual or by the individual’s parent, guardian, or legal representative to participate in an activity based upon an understanding of all of the following:

1. A full explanation of the procedures to be followed, including an identification of those that are experimental.
2. A description of the attendant discomforts and risks.
3. A description of the benefits to be expected.
4. A disclosure of appropriate alternative procedures that would be advantageous for the individual.
5. Assurance that consent is given freely and voluntarily without fear of retribution or withdrawal of services.

“Legal representative” means a person, including an attorney, who is authorized by law to act on behalf of an individual.

~~*“Legal settlement”* means the determination made under Iowa Code sections 252.16 and 252.17 to identify whether one of the 99 Iowa counties has a legal obligation to provide financial support for an individual.~~

“Minor” means an individual under the age of 18.

“Non-Medicaid payment-eligible” means that an individual is not eligible for Medicaid funding for the services provided by a mental health institute or state resource center.

“Official designated agent” means a person or agency designated, by a record vote of the county board of supervisors, to act on behalf of the county board of supervisors.

“Parent” means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

“Regional administrator” means the same as defined in Iowa Code section 331.388.

“Rights” means the human, civil, and constitutional liberties an individual possesses through federal and state constitutions and laws.

~~*“State case”* means the determination made under Iowa Code section 252.16 331.394 that identifies an individual as does not having legal settlement have a county of residence in an Iowa county and places funding responsibility with the state.~~

“Superintendent” means the superintendent of any of the four mental health institutes and the two state resource centers.

This rule is intended to implement Iowa Code section 218.4.

ITEM 3. Amend rule 441—28.2(218,222) as follows:

441—28.2(218,222) Selection of facility.

28.2(1) Application for voluntary admission to a state mental health institute or resource center shall be made to the facility in the catchment area, as defined in rule 441—29.1(218) or 441—30.1(218,222), within which the individual for whom admission is sought is has a resident as defined in: county of residence.

~~a. Rule 441—29.1(218) for the state mental health institutes; or~~

~~b. Rule 441—30.1(218,222) for the state resource centers.~~

28.2(2) Court commitment of an individual shall be made:

a. To the facility in the catchment area, as defined in rule 441—29.1(218) or 441—30.1(218,222), within which the individual who is being committed is a resident as defined in rule 441—29.1(218) or 441—30.1(218,222) has a county of residence; or

b. As designated by the ~~deputy director~~ division administrator.

28.2(3) The ~~deputy director~~ division administrator shall consider granting exceptions to the established catchment areas when requested by the individual seeking a voluntary admission or by the committing court. The ~~deputy director’s~~ division administrator’s decision shall be made within 48 hours of receipt of the request. The decision shall be based on:

a. The clinical needs of the individual;

b. The availability of appropriate program services;

c. Available bed space within the program at the requested facility; and

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d. The consent of the superintendents of both facilities involved.

This rule is intended to implement Iowa Code sections 218.19, 218.20, and 222.6.

ITEM 4. Rescind and reserve rule **441—28.3(222,230)**.

ITEM 5. Amend rule 441—28.5(217,218) as follows:

441—28.5(217,218) Photographing and recording of individuals and use of cameras.

28.5(1) Use of still or video cameras or voice recorders by anyone other than an authorized employee, individual, parent, guardian, or legal representative to photograph or record an individual shall be allowed only with the prior authorization of the superintendent or the superintendent's designee. Permission to photograph and record shall be granted for one specific use, and the authorization shall not extend to any other use.

28.5(2) Photographs, videos, and recordings of an adult individual shall be taken for publication only with a signed informed consent from the individual or the individual's guardian or legal representative.

28.5(3) Photographs, videos, and recordings of a minor individual shall be taken for publication only with a signed informed consent from the parent, guardian, or legal representative.

28.5(4) Every effort shall be made to preserve the inherent dignity of the individual and to preclude exploitation or embarrassment of the individual or the family of the individual.

28.5(5) ~~Pictures~~ Photographs, videos, and recordings of individuals are not to be altered to prevent identification in any manner that would tend to perpetuate the stigma attached to the public image of individuals with mental illness or ~~mental retardation~~ an intellectual disability.

This rule is intended to implement Iowa Code sections 217.30 and 218.4.

ITEM 6. Amend paragraph **28.6(2)“a”** as follows:

a. When a request without known prior consent is received, the superintendent or designee shall not acknowledge the presence or nonpresence of an individual at the ~~institution~~ facility.

ITEM 7. Amend rule 441—28.7(218) as follows:

441—28.7(218) Use of grounds, facilities, or equipment.

28.7(1) The superintendent or designee may grant permission for temporary use of assembly halls, auditoriums, meeting rooms, or ~~institutional facility~~ facility grounds to an organization or group of citizens when the ~~facility is~~ space or grounds are available and is are not needed for regular scheduled departmental services.

28.7(2) Members of outside organizations permitted to use a facility ~~facility's space or grounds~~ shall observe the same rules as visitors to the ~~institution~~ facility.

ITEM 8. Amend rule 441—28.8(218) as follows:

441—28.8(218) Tours of ~~institution~~ facility. Groups or persons shall be permitted to tour the ~~institution~~ facility only with approval of the superintendent or designee.

This rule is intended to implement Iowa Code section 218.4.

ITEM 9. Amend rule 441—28.9(218) as follows:

441—28.9(218) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the superintendent or designee. The superintendent or designee shall evaluate the donation in terms of the nature of the contribution to the ~~hospital~~ facility's program. The superintendent or designee shall be responsible for accepting the donation and reporting the gift to the ~~deputy director~~ division administrator. All monetary gifts shall be acknowledged in writing to the donor.

This rule is intended to implement Iowa Code chapter 218.

ITEM 10. Amend rule 441—28.12(217) as follows:

441—28.12(217) Release of confidential information.

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~~28.12(1)~~ Information defined by statute as confidential concerning ~~current or former patients or residents of individuals who currently receive or formerly received services from the mental health institutes or hospital-schools~~ resource centers shall not be released to a person, agency or organization that is not authorized by law to have access to the information unless the ~~patient or resident individual, parent, guardian, or legal representative~~ authorizes the release. Authorization shall be given by using Form 470-3951, Authorization to Obtain or Release Health Care Information.

~~28.12(2)~~ Persons admitted or committed to a mental health institute or a hospital-school and who are not able to pay their own way in full shall authorize the department to obtain information necessary to establish whether they have legal settlement in Iowa or in another state. Authorization shall be given using Form MH-2203-0, Authorization to Release Information for Settlement.

This rule is intended to implement Iowa Code section 217.30.

ITEM 11. Adopt the following new subrule 29.1(7):

29.1(7) Gero-psychiatric services. For the purposes of an adult individual seeking gero-psychiatric services, the Clarinda catchment area shall include the entire state.

ITEM 12. Amend rule 441—29.2(218,229) as follows:

441—29.2(218,229) Voluntary admissions.

29.2(1) No change.

29.2(2) Children Minors. A parent, guardian, or legal representative of a minor individual may make application for the individual's voluntary admission directly to the mental health institute using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute. When a minor objects to the admission and the chief medical officer of the mental health institute determines that the admission is appropriate, the parent, guardian, or custodian must petition the juvenile court for approval of admission before the minor ~~is actually~~ shall be admitted.

29.2(3) County approval. When an adult individual ~~applying or a person responsible for the individual wishes to apply for voluntary admission or those responsible for the individual are and is unable to pay costs the cost of care,~~ application for admission shall be made to and authorized through the central point of coordination ~~of or regional administrator for~~ the individual's county of residence before application for admission ~~is shall be~~ made to the mental health institute. Authorization for admission shall be provided by the signature of one or more ~~official~~ officially designated agents ~~designated by of~~ the county board of supervisors using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute, before the form is forwarded to the mental health institute.

ITEM 13. Amend rule 441—29.3(229,230) as follows:

441—29.3(229,230) Certification of settlement county of residence.

29.3(1) Certification data. By the end of the next working day following ~~an a non-Medicaid payment-eligible adult individual's admission,~~ the facility shall send a copy of Form 470-4161, DHS Institution MHI Admission Core Data, by facsimile to the central point of coordination ~~of or the regional administrator for~~ the county of admission. ~~If the facility is aware that the county of legal settlement may be other than the admitting county, the facility shall alert the admitting county.~~

29.3(2) County response. For voluntary adult cases where the admitting county has accepted legal settlement using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute ~~does not dispute the individual's county of residence, no further response is needed. For all other cases, within four working days after receiving Form 470-4161, DHS Institution Admission Core Data, the admitting county shall return to the facility page 3 of the form, the response sheet for determining legal settlement.~~ If the admitting county disputes the applicant's affirmation of county of residence, the county or its officially designated agent shall be responsible for resolving the dispute using the dispute resolution process in Iowa Code section 331.394. If the state disputes the individual's affirmation of county of residence, the state shall be responsible for initiating the dispute resolution process.

a. ~~If the central point of coordination for the admitting county accepts legal settlement, the admitting county shall mark the response sheet accordingly. No supporting evidence is necessary.~~

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~~b.—If the central point of coordination for another county notified by the admitting county accepts legal settlement, that county shall provide written notice to the facility of that county's acceptance.~~

~~c.—If the central point of coordination for the admitting county finds the individual's legal settlement to be in another Iowa county, the admitting county shall mark the response sheet accordingly and shall send certification as described in Iowa Code section 230.4 to the county auditor of the other county. A copy of the evidence supporting the determination as prescribed in rule 441—28.3(222,230) shall accompany the certification. If the other county disputes the certification, that county may file a notice of dispute under rule 441—15.2(225C).~~

~~d.—If the central point of coordination for the admitting county of residence finds that the person has not acquired legal settlement in an Iowa county, the admitting county shall mark the response sheet accordingly. The admitting county shall send certification as described in Iowa Code section 230.5 to the Administrator, DHS Division of Fiscal Management, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. A copy of the evidence supporting the determination as prescribed in rule 441—28.3(222,230) shall accompany the certification.~~

ITEM 14. Amend rule 441—29.4(218,230) as follows:

441—29.4(218,230) Charges for care. The rates for cost of hospitalization are established by the ~~deputy director~~ division administrator and shall be available by contacting the business manager of the mental health institute that serves the catchment area in which the individual's county of residence is located.

29.4(1) Individuals requesting voluntary admission without going through the central point of coordination or regional administrator process shall be required to pay the cost of hospitalization in advance. This cost shall be computed at 30 times the last per diem rate and shall be collected weekly in advance upon admission. The weekly amount due shall be determined by dividing the monthly rate by 4.3.

29.4(2) The ~~department~~ facility shall bill each county for services provided to individuals chargeable to the county during the preceding calendar quarter as required in Iowa Code section 230.20. In determining the charges for services, direct medical services shall include:

a. to l. No change.

29.4(3) No change.

ITEM 15. Amend subrule 29.7(1) as follows:

29.7(1) Visiting hours on Monday through Friday are from 12 noon to 8 p.m. and are from 10 a.m. to 8 p.m. on Saturday, Sunday, and holidays. Visiting hours shall be posted in each ~~institution~~ facility.

The physician may designate exceptions for special hours on an individual or ward basis. Therapy for the individual shall take precedence over visiting. Visiting shall not interfere with the individual's treatment program or meals.

ITEM 16. Amend rule 441—30.2(218,222) as follows:

441—30.2(218,222) Admission. Express written consent of the individual or the individual's parent, guardian, or legal representative shall be secured before admission.

30.2(1) Application for an adult. Applications for the care, treatment, or evaluation of an adult individual by a resource center shall be made through the central point of coordination or the regional administrator for the board of supervisors of the individual's county of residence. Authorization for the submission of the application shall be provided by the signature of one or more officially designated agents for the county board of supervisors.

a. The application shall be made using Form 470-4402, Application for Admission to a State Resource Center, and shall be accompanied by:

- (1) Completed Form 470-4403, Resource Center Agreement and Consent for Services, and
- (2) Other information specifically requested in writing by the resource center.

b. The application shall be submitted through the ~~deputy director~~ division administrator or the ~~deputy director's~~ division administrator's designee.

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30.2(2) Application for a minor. Application for a minor individual shall be made through the ~~deputy director~~ division administrator or the ~~deputy director's~~ division administrator's designee using Form 470-4402, Application for Admission to a State Resource Center. The application shall be accompanied by:

- a. Completed Form 470-4403, Resource Center Agreement and Consent for Services, and
- b. Other information specifically requested in writing by the ~~deputy director~~ division administrator or the ~~deputy director's~~ division administrator's designee.

30.2(3) and 30.2(4) No change.

30.2(5) Eligibility for admission. Eligibility for admission shall be determined by:

- a. A preadmission diagnostic evaluation,
- b. An established diagnosis of ~~mental retardation~~ intellectual disability,
- c. The availability of an appropriate program, and
- d. The availability of space at the facility.

This rule is intended to implement Iowa Code sections 222.13 and 222.13A.

ITEM 17. Rescind rule 441—30.3(222) and adopt the following **new** rule in lieu thereof:

441—30.3(222) Non-Medicaid payment-eligible individuals. The cost for the care, as determined in Iowa Code sections 222.73, 222.74, and 222.75, for an individual who is not Medicaid payment eligible shall be the responsibility of the individual's county of residence. All disputes regarding the county of residence of an individual shall be resolved using the dispute resolution process in Iowa Code section 331.394.

ITEM 18. Rescind rule 441—30.6(218) and adopt the following **new** rule in lieu thereof:

441—30.6(218) Visiting.

30.6(1) Individuals are encouraged and shall be able to receive visits from persons of the individual's choice and at times desired by the individual. At the individual's choice, the individual's parents, guardian, or legal representative or other members of the individual's family may visit without prior notice given to the facility.

30.6(2) Visits determined by the individual's treatment to be inappropriate or disruptive to the individual's treatment plan or the health and safety of other individuals may be denied or terminated.

30.6(3) An individual or other person denied visitation may file a grievance through the facility's grievance process.

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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 239B.4 and 239B.8, the Department of Human Services proposes to amend Chapter 41, “Granting Assistance,” and Chapter 93, “PROMISE JOBS Program,” Iowa Administrative Code.

These amendments provide program clarifications and add consistency for monthly reporting of time and attendance for participants within two programs that utilize the Temporary Assistance for Needy Families (TANF) federal block grant, specifically: the Family Investment Program (FIP) and the Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) Program.

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Any interested person may make written comments on the proposed amendments on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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 sections 239B.4 and 239B.8.

The following amendments are proposed.

ITEM 1. Amend rule 441—41.24(239B) as follows:

441—41.24(239B) Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) program. ~~An application for assistance constitutes a registration for the program for all members of the family investment program (FIP) case. Persons who are not exempt from referral to PROMISE JOBS~~ All persons in a family investment program (FIP) household shall be referred to the PROMISE JOBS program and shall enter into a family investment agreement (FIA) as a condition of receiving FIP, unless exempt from referral, except as described at subrule 41.24(8) 41.24(2).

41.24(1) Referral to PROMISE JOBS FIA-responsible persons. ~~The following persons are FIA-responsible unless the department determines the person is exempt:~~

~~a. All persons whose needs are included in a grant under the FIP program shall be referred to PROMISE JOBS as FIA-responsible persons unless the department determines the persons are exempt.~~

~~b. Any parent living in the home of a child receiving a grant shall also be referred to PROMISE JOBS as an FIA-responsible person unless the department determines the person is exempt.~~

~~c. All FIP applicants shall be referred to PROMISE JOBS as FIA-responsible persons unless the department determines that the person applicant is exempt or does not meet other FIP eligibility requirements.~~

~~d. Applicants who have chosen and are in a an active limited benefit plan that began on or after June 1, 1999, (LBP). FIA-responsible applicants in an active limited benefit plan shall complete significant contact with or action in regard to PROMISE JOBS as described at paragraphs 41.24(8)“a”“d” and “d”“e” for FIP eligibility to be considered. For two-parent households, both parents must participate as previously stated except when one parent meets the exemption criteria described at subrule 41.24(2) is exempt. Exceptions:~~

~~(1) The applicant has become exempt from PROMISE JOBS.~~

~~(2) The applicant is in a subsequent limited benefit plan and it is prior to the last day of the six-month period of ineligibility.~~

41.24(2) and 41.24(3) No change.

41.24(4) Method of referral. The department shall refer each FIA-responsible person as defined at subrule 41.24(1) to PROMISE JOBS to sign a family investment agreement.

~~a. FIA-responsible applicants. While the eligibility decision is pending, applicants in a limited benefit plan that began on or after June 1, 1999, shall receive a letter which contains information about the need to complete significant contact with or action in regard to the PROMISE JOBS program to be eligible for FIP assistance and the procedure for being referred to the PROMISE JOBS program. During the application interview, the department shall notify the applicant of the requirement to sign a family investment agreement as a condition of FIP eligibility. The department shall refer the applicant by scheduling the applicant for an appointment with the PROMISE JOBS provider agency to develop the family investment agreement.~~

(1) The appointment shall be on the earliest available date but no later than ten calendar days from the date of referral unless the applicant requests an appointment on a day that is beyond ten calendar days. The PROMISE JOBS provider agency shall make sufficient appointment times available to allow the applicant to be scheduled within this time frame.

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(2) The applicant shall be notified verbally and in writing of the scheduled appointment. If the notice of a scheduled appointment is mailed to the applicant, the department shall allow at least five working days from the date the notice is mailed for the applicant to appear for the scheduled appointment. The department may allow less than five working days if the applicant is verbally notified and agrees to the appointment.

(3) If a parent fails to appear for an appointment without rescheduling or fails to sign a family investment agreement, the department shall deny FIP assistance for the entire family.

(4) If a minor parent fails to appear for an appointment without rescheduling or fails to sign a family investment agreement, the department shall deny FIP assistance for the minor parent and any child of the minor parent.

(5) If a referred person who is not a parent fails to appear for an appointment without rescheduling or fails to sign a family investment agreement, the department shall deny FIP assistance only for that person.

b. *Hardship applicants.* While the eligibility decision is pending, the department shall refer applicants who must qualify for a hardship exemption before approval of FIP to PROMISE JOBS to sign a family investment agreement as described in paragraph 41.24(4) "a" and shall be treated treat applicants in accordance with subrule 41.30(3).

c. *Applicants in a limited benefit plan.* Each person required to be referred to PROMISE JOBS as described at subrule 41.24(1) must meet with PROMISE JOBS staff and sign an FIA. The department shall refer FIA-responsible applicants to PROMISE JOBS as described in paragraph 41.24(4) "a" and inform the applicant of the actions needed to reconsider and end the limited benefit plan as described at subrule 41.24(8). Failure to appear for the appointment without rescheduling or failure to sign a family investment agreement results in denial of the FIP application.

~~(1) For an applicant filing an application on or after September 1, 2004, the FIA must be signed before FIP approval, as a condition of eligibility. If a parent fails to sign an FIA, the entire family is ineligible for FIP. If a referred person who is not a parent fails to sign an FIA, only that person is ineligible.~~

~~(2) When a FIP participant loses exempt status, the FIP participant shall receive a letter which contains information about participant responsibility under PROMISE JOBS and the FIA and instructs the FIP participant to contact PROMISE JOBS within ten calendar days to schedule the PROMISE JOBS orientation.~~

d. *FIP participants who become FIA-responsible.* When a person receiving FIP is no longer exempt, the department shall send the FIP participant a notice. The notice shall contain information about the requirement to sign a family investment agreement and shall instruct the FIP participant to contact PROMISE JOBS within ten calendar days to schedule an appointment with PROMISE JOBS to develop a family investment agreement. If the participant fails to schedule or attend the appointment or fails to sign a family investment agreement, PROMISE JOBS will send a clear written reminder. After one written reminder as described at 441—paragraph 93.3(3) "b," the participant shall enter into a limited benefit plan as described at paragraph 41.24(8) "c."

41.24(5) *Changes in status and redetermination of exempt status.* Any exempt person shall report any change affecting the exempt status to the department within ten days of the change. The department shall reevaluate exempt persons when changes in status occur and at the time of six-month or annual review. The recipient participant and the PROMISE JOBS unit shall be notified of any change in a recipient's participant's exempt status.

41.24(6) and 41.24(7) No change.

41.24(8) *The limited benefit plan (LBP).* When a participant responsible for signing and meeting the terms of a family investment agreement as described at rule 441—93.4(239B) chooses not to sign or fulfill the terms of the agreement, the FIP assistance unit or the individual participant shall enter into a limited benefit plan. A limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to the participant as defined at 441—subrule 7.7(1). Once the limited benefit plan is imposed, FIP eligibility no longer exists as of the first of the month after the month in which timely and adequate notice is given to the participant. Upon the issuance of the notice to impose a

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limited benefit plan, the person who chose the limited benefit plan can reconsider and end the limited benefit plan, but only as described at ~~paragraph~~ paragraphs 41.24(8) “d.” and “e.” ~~A participant who is exempt from PROMISE JOBS is not subject to the limited benefit plan.~~

a. A limited benefit plan shall either be a first limited benefit plan or a subsequent limited benefit plan. From the effective date of ~~the a first~~ a first limited benefit plan, ~~for a first limited benefit plan,~~ the FIP ~~household eligible group or individual participant~~ shall not be eligible until the participant who chose the limited benefit plan completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph 41.24(8) “d.” If a subsequent limited benefit plan is chosen by the same participant, a six-month period of ineligibility applies to the FIP eligible group or individual participant and ineligibility continues after the six-month period is over until the participant who chose the ~~LBP~~ limited benefit plan completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph 41.24(8) ~~“d.”~~ “e.” A limited benefit plan imposed in error as described in paragraph 41.24(8) ~~“f.”~~ “g” shall not be considered a limited benefit plan and shall not count when determining whether a household is subject to a subsequent limited benefit plan. ~~A limited benefit plan is considered imposed when timely and adequate notice is issued establishing the limited benefit plan.~~

b. The limited benefit plan shall be applied to participants responsible for the family investment agreement and other members of the participant’s family as follows:

(1) to (3) No change.

(4) When the FIP eligible group includes children who are ~~mandatory PROMISE JOBS participants~~ FIA-responsible, the children shall not have a separate family investment agreement but shall be asked to sign the eligible group’s family investment agreement and to carry out the responsibilities of that family investment agreement. A limited benefit plan shall be applied as follows:

1. When the parent or needy specified relative responsible for a family investment agreement meets those responsibilities but a child who is ~~a mandatory PROMISE JOBS participant~~ FIA-responsible chooses an individual limited benefit plan, the limited benefit plan shall apply only to the individual child choosing the plan.

2. When the child who chooses a limited benefit plan under numbered paragraph 41.24(8) “b”(4) “1” ~~above~~ is the only child in the eligible group, the parents’ or needy specified relative’s eligibility ceases in accordance with subrule 41.28(1). The parents or needy specified relative shall become ineligible beginning with the effective date of the child’s limited benefit plan.

(5) When the FIP eligible group includes parents or needy specified relatives who are exempt from PROMISE JOBS participation and children who are ~~mandatory PROMISE JOBS participants~~ FIA-responsible, the children are responsible for completing a family investment agreement. If a child who is ~~a mandatory PROMISE JOBS participant~~ FIA-responsible chooses the limited benefit plan, the limited benefit plan shall be applied in the manner described in subparagraph 41.24(8) “b”(4).

(6) No change.

c. A participant shall be considered to have chosen a limited benefit plan under any of the following circumstances:

(1) A participant who loses exempt status and is referred to PROMISE JOBS as described at paragraph 41.24(4) “d” and who does not establish schedule or attend an orientation appointment for orientation and development of a family investment agreement with the PROMISE JOBS program as described at 441—paragraph 93.3(3) “b” or who fails to keep or reschedule an orientation appointment shall receive after PROMISE JOBS sends one clear written reminder letter as described at 441—paragraph 93.3(3) “b” shall enter into the limited benefit plan ~~which informs the participant that those who do not attend orientation have elected to choose the limited benefit plan.~~ A participant who does not establish an orientation appointment within ten calendar days from the mailing date of the reminder letter or who fails to keep or reschedule an orientation appointment shall receive notice establishing the limited benefit plan. Timely and adequate notice provisions as in 441—subrule 7.7(1) apply.

(2) A participant who chooses not to sign the family investment agreement ~~after attending a PROMISE JOBS program orientation~~ shall enter into the limited benefit plan ~~as described in subparagraph (1).~~ For an applicant, signing a family investment agreement is a FIP eligibility

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requirement. If an applicant chooses not to sign the agreement, the limited benefit plan process is not applicable.

(3) A participant who signs a family investment agreement but does not carry out the family investment agreement responsibilities shall ~~be deemed to have chosen a limited benefit plan as described in subparagraph (1),~~ enter into a limited benefit plan whether the person signed the agreement as a FIP applicant or as a FIP participant. This includes a participant who fails to respond to the PROMISE JOBS worker's request to renegotiate the family investment agreement when the participant has not attained self-sufficiency by the date established in the family investment agreement. A limited benefit plan shall be imposed regardless of whether the request to renegotiate is made before or after expiration of the family investment agreement.

d. to f. No change.

g. Limited benefit plan imposed in error. A limited benefit plan imposed in error shall not be considered a limited benefit plan. This includes any instance when participation in PROMISE JOBS should not have been required as described in the administrative rules. Examples of instances when an error has occurred are:

(1) No change.

(2) It is verified that the person considered to have chosen the limited benefit plan moved out of state or requested cancellation of FIP prior to the date that PROMISE JOBS determined the limited benefit plan was chosen.

(3) to (5) No change.

h. No change.

41.24(9) No change.

41.24(10) *Notification of services.*

a. to d. No change.

e. The department shall explain the LBP and the process by which FIA-responsible persons ~~and mandatory PROMISE JOBS participants~~ can choose the LBP ~~or individual LBP.~~

f. and g. No change.

~~**41.24(11)** *Implementation.* A limited benefit plan imposed effective on or after June 1, 1999, shall be imposed according to the revised rules becoming effective on that date. A limited benefit plan imposed effective on or before May 1, 1999, shall be imposed subject to the previous rules for the limited benefit plan. For a person who is in a limited benefit plan on May 1, 1999, the terms of the person's existing limited benefit plan shall continue until that limited benefit plan either ends or is lifted in accordance with previous limited benefit plan rules. A participant who chose a limited benefit plan under the previous policy and who then chooses a limited benefit plan that becomes effective on or after June 1, 1999, shall be subject to a subsequent limited benefit plan under the provisions of the revised rules.~~

ITEM 2. Amend subrule 93.3(2) as follows:

93.3(2) *Referral.* The department of human services shall refer all FIA-responsible persons from FIP applicant and ~~recipient~~ participant households to PROMISE JOBS pursuant to 441—subrule 41.24(1) 41.24(4).

ITEM 3. Amend subrule 93.3(3) as follows:

93.3(3) *Initial appointment.*

a. FIP applicants. FIP applicants, including those who are in a limited benefit plan, shall be offered an appointment with the PROMISE JOBS provider agency for assessment and FIA development at the earliest available time. The provider agency shall make sufficient appointment ~~shall be times available to allow the applicant to be scheduled~~ no later than ten calendar days after the date of the notice that FIA responsibility has begun, as required by rule 441—93.4(239B) and 441—paragraphs 41.24(1) “c,” 41.24(1) “d,” and 41.24(10) “g.”

(1) ~~At the time of referral, applicants shall be notified verbally and hand-issued the notice of a scheduled appointment for FIA development.~~

(2) ~~If the notice of appointment cannot be hand-issued, at least five working days shall be allowed from the date notice is mailed for an applicant to appear for the scheduled appointment for orientation~~

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and FIA development unless the applicant agrees to an appointment that is scheduled to take place in less than five working days.

b. Exempt status change. Persons from FIP participant households who are referred to PROMISE JOBS become FIA-responsible while receiving FIP shall initiate PROMISE JOBS assessment orientation and FIA development by contacting the appropriate PROMISE JOBS office to schedule an appointment within ten calendar days of the mailing date of the notice letter explaining that exempt status has been lost and FIA responsibility has begun, as required by 441—subrule 41.24(5). If the person fails to schedule an appointment or fails to appear for an appointment, PROMISE JOBS shall send one written reminder that informs the person that those who do not develop a family investment agreement shall enter into a limited benefit plan. If the person fails to schedule an appointment within ten calendar days of the reminder letter or fails to appear for an appointment scheduled after the reminder is sent, the person shall enter into a limited benefit plan as described at 441—paragraph 41.24(8)“c.”

ITEM 4. Amend paragraph **93.4(6)“a”** as follows:

a. FIP applicants. An applicant’s failure to develop or sign an FIA shall result in denial of the family’s application for FIP assistance, as described at 441—paragraph 41.24(4)“c.” 441—paragraphs 41.24(4)“a,” “b” and “c.”

ITEM 5. Amend subrule 93.6(2) as follows:

93.6(2) Individual job search. Individual job search shall be available to all participants for whom job club is not appropriate or not available, such as, but not limited to, participants particularly those who have completed training or have recent ties with the workforce, have successfully removed or reduced barriers to work, or have completed job club or training and are now ready to work. The total period for each episode of individual job search shall not exceed 12 weeks or three calendar months. If after three calendar months the participant still has not found employment, the worker shall review the participant’s situation for possible barriers to employment or possible need for training to increase the participant’s employability. Job search may continue if appropriate, but linking with other activities should be considered.

a. Job search plan. In consultation with the PROMISE JOBS worker, the participant shall design and provide a written plan of the individual job search activities on Form 470-4481, Job Search Plan Agreement. The plan shall:

(1) Contain a designated period for job search not to exceed five weeks ending on a Friday within the same calendar month and the specific methods for finding job openings.

(2) to (4) No change.

b. to d. No change.

ITEM 6. Amend paragraph **93.9(2)“b”** as follows:

b. Acceptance Inclusion of family development services by participants as a family investment agreement activity is voluntary except for unmarried parents aged 17 and younger who do not live with a parent or legal guardian as described at subparagraph 93.4(4)“c”(4).

ITEM 7. Amend paragraph **93.10(2)“c”** as follows:

c. Documentation of job search. The participant shall complete and provide documentation of any job search activities that cannot be ~~documented~~ verified by the PROMISE JOBS worker. The participant shall provide Form 470-3099, Job Search Record, within ~~five working~~ ten calendar days ~~after the last working day of any week~~ following the end of each month during which the participant has made a job search. The PROMISE JOBS worker shall consider the Job Search Record complete if the form includes:

(1) to (4) No change.

ITEM 8. Amend subrule 93.13(2) as follows:

93.13(2) Participation issues. Actions that may cause participants to be considered as having chosen the limited benefit plan when the participant does not have a problem or barrier to participation as defined at paragraph 93.4(5)“a” or rule 441—93.14(239B) are:

a. to h. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

i. Employment and other work activity issues. Participants who do not follow up on job referrals, who refuse offers of employment or other work activity, who reduce hours of employment or other work activity, who terminate employment or other work activity, or who are discharged from employment or other work activity due to misconduct.

(1) and (2) No change.

j. to n. No change.

ITEM 9. Amend subrule 93.14(1) as follows:

93.14(1) Problems leading to less than full participation. Problems affecting participation shall be considered to be of a temporary or incidental nature when the participation can easily be resumed. The following problems may provide good cause for participation of less than the full number of hours identified in the FIA. PROMISE JOBS may require the participant to provide verification of the problem or barrier as described at subrule 93.10(3):

a. to j. No change.

ITEM 10. Amend subrule 93.14(2) as follows:

93.14(2) Problems leading to refusing or quitting a job or limiting or reducing hours. The following problems may provide good cause for participation issues of refusing or quitting a job or limiting or reducing hours. PROMISE JOBS may require the participant to provide verification of the problem or barrier as described at subrule 93.10(3):

a. to n. No change.

ARC 0913C

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 239B.4, the Department of Human Services proposes to amend Chapter 47, “Diversion Initiatives,” Iowa Administrative Code.

These amendments update language to match current practice. These amendments clarify:

- The designation of the Bureau of Refugee Services (BRS) as a distinct area, similar to that of an Iowa Workforce Development (IWD) area. This area designation will make family self-sufficiency grant (FSSG) payments more accessible for refugee clients served by BRS. BRS serves approximately 2 percent of the total population of PROMISE JOBS individuals.
- When overpayments for FSSG are allowable.
- The issuance of family self-sufficiency grant payments.
- The evaluation of family self-sufficiency grants.

Any interested person may make written comments on the proposed amendments on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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 239B.4.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend **441—Chapter 47, Division II preamble**, as follows:

DIVISION II
FAMILY SELF-SUFFICIENCY GRANTS PROGRAM

PREAMBLE

These rules define and structure the family self-sufficiency grants (FSSG) program provided through the PROMISE JOBS ~~service delivery regions~~ programs. The purpose of the FSSG program is to provide immediate and short-term assistance to PROMISE JOBS participant families which will remove barriers related to obtaining or retaining employment. Removing the barriers to self-sufficiency might reduce the length of time a family is dependent on the family investment program (FIP). Family self-sufficiency grants shall be available for payment to families or on behalf of specific families.

ITEM 2. Amend rule 441—47.21(239B) as follows:

441—47.21(239B) Definitions.

“Appropriate responsible administrator” means:

1. For the bureau of refugee services (BRS), the administrator of the department service area with the oversight for the bureau of refugee services, or the administrator’s designee.

2. For Iowa workforce development (IWD), the administrator of the department of workforce development’s division of workforce development center administration, or the administrator’s designee.

“Bureau of refugee services” or *“BRS”* means a unit of the department of human services that provides PROMISE JOBS services to refugees.

“Candidate” means anyone expressing an interest in the family self-sufficiency grants program.

“Department” means the Iowa department of human services.

“Department division administrator” means the administrator of the department of human services division of ~~financial, health and work supports~~ adult, children and family services, or the administrator’s designee.

~~*“Department of workforce development”* means the agency that develops and administers employment, placement and training services in Iowa, often referred to as Iowa workforce development, or IWD.~~

“Family” means “assistance unit” as defined at rule 441—40.21(239B).

“Family investment program” or *“FIP”* means the cash grant program provided by 441—Chapters 40 and 41, designed to sustain Iowa families.

“Family self-sufficiency grants” means the payments made to specific PROMISE JOBS participants, to vendors on behalf of specific PROMISE JOBS participants, or for services to specific PROMISE JOBS participants.

“Immediate, short-term assistance” means that assistance provided under this division shall be authorized upon determination of need and that it shall not occur on a regular basis.

~~*“Iowa workforce development (IWD) division administrator”* means the administrator of the department of workforce development’s division of workforce development center administration, or the administrator’s designee.~~

“Iowa workforce development (IWD)” means the agency that develops and administers employment, placement and training services in Iowa and is contracted by the department to administer PROMISE JOBS services statewide.

“Local plan for family self-sufficiency grants” means the written policies and procedures for administering the grants for families as set forth in the plan developed by the PROMISE JOBS IWD service delivery region area or BRS as described in rule 441—47.26(239B). ~~The local plan shall be approved by the Iowa workforce development division administrator.~~

“Participant” means anyone receiving assistance under this division.

“PROMISE JOBS agreement” means the agreement between the division of adult, children and family services and the division of field support regarding delivery of PROMISE JOBS services to refugees.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*PROMISE JOBS contract*” means the agreement between the department and Iowa workforce development regarding delivery of PROMISE JOBS services.

“*PROMISE JOBS participant*” means any person receiving services through PROMISE JOBS. A PROMISE JOBS participant must be a member of an eligible FIP household.

“*PROMISE JOBS IWD service delivery regions area*” means ~~the PROMISE JOBS service delivery entities which correspond to the 15 Iowa workforce development regions~~ service delivery areas designated to provide PROMISE JOBS services.

“*Promoting independence and self-sufficiency through employment, job opportunities, and basic skills (PROMISE JOBS) program*” means the department’s work and training program as described in 441—Chapter 93.

ITEM 3. Amend rule 441—47.22(239B) as follows:

441—47.22(239B) Availability of the family self-sufficiency grants program. ~~The family self-sufficiency grants program shall be available statewide in each of the 15 PROMISE JOBS service delivery regions. Under the PROMISE JOBS contract, Iowa workforce development (IWD) shall allocate the funds available for authorization to each of the service delivery regions based on the allocation standards used for PROMISE JOBS service delivery purposes. The department actually retains the funds which are released through the PROMISE JOBS expense allowance authorization system.~~

47.22(1) The program shall be available for use by the IWD service delivery areas. Under the PROMISE JOBS contract, Iowa workforce development (IWD) shall allocate the funds available for authorization to each of the service delivery areas based on the allocation standards used for PROMISE JOBS service delivery purposes.

47.22(2) The program shall be available for use by the bureau of refugee services (BRS) for PROMISE JOBS participants who are refugees as delineated in the PROMISE JOBS agreement.

47.22(3) The division of funds between IWD and BRS will be negotiated based on the number of PROMISE JOBS families receiving services from each agency and history of use.

47.22(4) The department retains the funds which are released through the PROMISE JOBS expense allowance authorization system.

ITEM 4. Amend subrule 47.24(2) as follows:

~~47.24(2) *Types of assistance.* Family self-sufficiency grants are PROMISE JOBS benefits and shall be authorized through the PROMISE JOBS expense allowance system. The PROMISE JOBS service delivery region~~ The department, in conjunction with IWD and BRS, shall have discretion to determine those barriers to self-sufficiency which can be considered for family self-sufficiency grants such as, but not limited to, auto maintenance or repair, licensing fees, child care, and referral to other resources, including those necessary to address questions of domestic violence. Warrants may be issued to the participants, to a vendor, or for support services provided to the family. The PROMISE JOBS service delivery region shall have discretion in determining method of payment in each case, based on circumstances and needs of the family. The IWD service delivery areas and BRS shall have the opportunity to adjust the list of approvable barriers to self-sufficiency based on local resources and circumstances. These adjustments shall be approved by the division administrator and the appropriate responsible administrator prior to implementation.

ITEM 5. Adopt the following **new** subrule 47.24(7):

47.24(7) *Issuing payments.* Family self-sufficiency grants are PROMISE JOBS benefits and shall be authorized through the PROMISE JOBS expense allowance system. Warrants may be issued to the participants or to a vendor for support services provided to the family. The division administrator in conjunction with the appropriate responsible administrator shall have discretion in determining method of payment. The IWD service delivery area or BRS shall have the opportunity to adjust these payment options in an individual case based on circumstances and needs of the family with the approval of the division administrator and the appropriate responsible administrator prior to implementation.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend subrule 47.25(1) as follows:

47.25(1) Application elements. Each ~~PROMISE JOBS IWD~~ service delivery ~~region~~ area shall ~~establish an~~ use the established application form to be completed by the PROMISE JOBS participant and the PROMISE JOBS worker when the participant asks to be a candidate for a family self-sufficiency grant. The application form shall contain the following elements:

- a. An explanation of family self-sufficiency grants and the expectations of the program.
- b. Identification of the family and the person representing the family.
- c. A clear description of the barrier to self-sufficiency to be considered.
- d. Demonstration of how removing the barrier is related to retaining or obtaining employment, meeting the criteria from rule 441—47.24(239B).
- e. Demonstration of why the other department, PROMISE JOBS, or community resources cannot deal with the barrier to self-sufficiency.
- f. Anticipated cost of removing the barrier to self-sufficiency.

ITEM 7. Amend rule 441—47.26(239B) as follows:

441—47.26(239B) Approved local plans for family self-sufficiency grants. Each ~~PROMISE JOBS IWD~~ service delivery ~~region~~ area shall create and provide to IWD ~~their~~ the written policies and procedures for administering family self-sufficiency grants. BRS shall create and provide to the department the written policy and procedures for administering family self-sufficiency grants. The plan shall be reviewed for required elements and quality of service to ensure that it meets the purpose of the program and approved by the department division administrator and the IWD division administrator. The written policies and procedures shall be available to the public at county offices, PROMISE JOBS offices, and at IWD. At a minimum, these policies and procedures shall contain or address the following:

47.26(1) A plan overview. The plan overview shall contain a general description detailing:

- a. Any types of services or assistance which will be excluded from consideration for family self-sufficiency grants ~~in by the PROMISE JOBS IWD~~ service delivery ~~region~~ area or BRS.
- b. How determinations will be made that the service or assistance requested meets the program's objective of helping the family retain employment or obtain employment.
- c. How determinations will be made that the proposed family self-sufficiency grant is not supplanting as required at subrule 47.24(5).
- d. Services established and any maximum (and minimum, if any) values of payments of the services established by the ~~PROMISE JOBS IWD~~ service delivery ~~region~~ area or BRS.
- e. Verification procedures or standards for documenting barriers, using written notification policies found at 441—subrule 93.10(1).
- ~~f. The design of the application form.~~
- ~~g. f.~~ Verification procedures or standards for documenting employment attempts if not already tracked by PROMISE JOBS procedures, using policies found at rule 441—93.10(239B).
- ~~h. g.~~ How applications will be processed timely to address barriers to obtaining or retaining employment.
- ~~i. h.~~ Follow-up procedures on participant effort.
- ~~j. i.~~ Procedures for tracking of family self-sufficiency grant authorizations in order to stay within ~~service delivery region allocation~~ the amount allocated.
- ~~k. j.~~ How staff will be trained to administer the program.

47.26(2) Intake and eligibility determination. The policies and procedures shall describe:

- a. How families most likely to benefit from self-sufficiency grant assistance are identified.
- b. How families can apply for self-sufficiency grant assistance.
- c. How families will be informed of the availability of self-sufficiency grant assistance, its voluntary nature, and how the program works.
- ~~d. How county offices and PROMISE JOBS offices will maintain, provide to pilot participants, and otherwise make available, written policies and procedures describing the project.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~e. Which PROMISE JOBS staff shall make decisions regarding identification of barriers and candidate eligibility for payment and what sign-off or approval is required before a payment is authorized.~~

~~47.26(3) A plan for evaluation of family self-sufficiency grants. The evaluation plan shall:~~

- ~~a. Describe tracking procedures.~~
- ~~b. Describe the plan for evaluation (e.g., what elements will be used to create significant data regarding outcomes).~~
- ~~c. Describe how measurable results will be determined.~~
- ~~d. Identify any support needed to conduct an evaluation (e.g., what assistance is needed from department and IWD).~~
- ~~e. Describe which aspects of the project were successful and which were not.~~

ITEM 8. Adopt the following new rule 441—47.27(239B):

441—47.27(239B) Evaluation of family self-sufficiency grants. The department, in conjunction with IWD and BRS, shall develop an evaluation plan. The evaluation plan shall:

1. Describe tracking procedures.
2. Describe the plan for evaluation (e.g., what elements will be used to create significant data regarding outcomes).
3. Describe how measurable results will be determined.
4. Identify any support needed to conduct an evaluation (e.g., what assistance is needed from the department and IWD).
5. Describe which aspects of the project were successful and which were not.

ITEM 9. Adopt the following new rule 441—47.28(239B):

441—47.28(239B) Recovery of FSSG overpayments. An overpayment exists when an item(s) for which the funds were awarded was not purchased, a duplicate payment was issued or when, according to receipts, the item(s) purchased costs less than the funds received. For purposes of overpayment and recovery, an FSSG payment is considered a PROMISE JOBS expense payment and is subject to rule 441—93.12(239B), recovery of PROMISE JOBS expense payments.

ARC 0916C

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 234.6(4), the Department of Human Services proposes to amend Chapter 65, “Food Assistance Program Administration,” Iowa Administrative Code.

These amendments reflect approval of an extension of a demonstration project by the Food and Nutrition Service (FNS) to allow for a standard medical expense deduction to Food Assistance households eligible to claim medical expenses as a deduction. To attain cost neutrality as necessary, the calculation of the standard utility allowances for both households with heating or air-conditioning expenses and households with only other utility expenses is amended. Originally, a \$4 decrease to each standard utility allowance (SUA) was necessary. With more households choosing the standard utility allowance, Iowa must account for greater savings. Decreasing the SUAs by an additional dollar is a condition of approval for the extension.

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These amendments ensure that the Department is compliant with the terms of the extension approval. With increasing numbers of households using the standard medical deduction, the additional savings resulting from lower SUA amounts is necessary to achieve the required cost neutrality.

Any interested person may make written comments on the proposed amendments on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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 234.12.

The following amendments are proposed.

ITEM 1. Amend paragraph **65.8(1)“b”** as follows:

b. Effective October 1, ~~2007~~ 2013, ~~two~~ five dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction. ~~Effective October 1, 2008, an additional two dollars, for a total of four dollars, will be subtracted from this amount to achieve continued cost neutrality.~~

ITEM 2. Amend paragraph **65.8(5)“b”** as follows:

b. Effective October 1, ~~2007~~ 2013, ~~two~~ five dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction. ~~Effective October 1, 2008, an additional two dollars, for a total of four dollars, will be subtracted from this amount to achieve continued cost neutrality.~~

ARC 0908C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to rescind Chapter 76, “Application and Investigation,” Iowa Administrative Code, and to adopt a new Chapter 76, “Enrollment and Reenrollment,” in lieu thereof.

This proposed amendment rescinds existing Chapter 76 and adopts a new Chapter 76 because Chapter 76 as written required a complete revision due to medical assistance changes required by the Affordable Care Act.

The Affordable Care Act implemented significantly changed policy about medical assistance application, enrollment and reenrollment requirements. These changes are effective October 1, 2013, for determining eligibility effective January 1, 2014.

The new Eligibility Integrated Application Solution (ELIAS), which will be implemented at the same time that the Affordable Care Act changes are implemented, also required modification of Chapter 76.

This amendment is required by the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) and 42 CFR Part 435, as amended.

This amendment is proposed simultaneously with an amendment published herein under Notice of Intended Action as **ARC 0909C** to adopt new rule 441—80.7(249A) whose content is identical to that in existing rule 441—76.13(249A), which is being rescinded as part of the rescission of Chapter 76.

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Any interested person may make written comments on this proposed amendment on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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 rules do not provide for waivers in specified situations because there are no waivers applicable to these provisions of the Affordable Care Act. However, 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 rules are intended to implement Iowa Code section 249A.4.

The following amendment is proposed.

Rescind 441—Chapter 76 and adopt the following **new** chapter in lieu thereof:

CHAPTER 76
ENROLLMENT AND REENROLLMENT

PREAMBLE

This chapter specifies the process for enrolling and reenrolling in the Iowa Medical Assistance or “Medicaid” program and addresses related matters.

Eligible individuals must be enrolled for the date on which services are provided in order for payment to be made for the services received.

Initial enrollment must be based on an application submitted to the department, a referral from a health insurance marketplace, an express lane eligibility determination, a Social Security Income eligibility determination, a transmittal from the federal Social Security Administration for Medicare savings programs, or a presumptive eligibility determination, as described in rules 441—76.2(249A) through 441—76.7(249A).

Reenrollment is based on a review, as described in rule 441—76.14(249A), of all eligibility factors under 441—Chapter 75.

Applicants and members are required to report changes pursuant to rule 441—76.15(249A).

Department action on information received will occur as described in rules 441—76.15(249A) and 441—76.16(249A).

Automatic redeterminations of eligibility will occur as described in rule 441—76.17(249A).

This chapter shall be construed to comply with all requirements for federal funding under Title XIX of the Social Security Act or under the terms of any applicable waiver of Title XIX requirements granted by the Secretary of the U.S. Department of Health and Human Services. To the extent this chapter is inconsistent with any applicable federal funding requirement under Title XIX or the terms of any applicable waiver, the requirements of Title XIX or the terms of the waiver shall prevail.

441—76.1(249A) Definitions.

“*Authorized representative*” means an individual or organization authorized by a competent applicant or member, authorized by a responsible person acting for an incompetent applicant or member pursuant to subrule 76.9(2), or with other legal authority to represent the applicant or member in the application process, renewal of eligibility and other ongoing communications with the department.

“*Electronic account*” means a Web-based account established by the department for an applicant or member for communication between the department and the applicant or member.

“*Electronic case record*” means an electronic file that includes all information collected and generated by the department regarding each individual’s Medicaid eligibility and enrollment.

“*Health insurance marketplace*” means an American health benefit exchange established pursuant to 42 U.S.C. § 18031.

“*Medicare savings program*” refers to the limited Medicaid coverage groups that provide payment of Medicare premiums, coinsurance, and deductibles for low-income elderly or disabled

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individuals. Those groups are qualified disabled and working people (QDWP) pursuant to 42 U.S.C. § 1396a(a)(10)(E)(ii), qualified Medicare beneficiaries (QMB) pursuant to 42 U.S.C. § 1396a(a)(10)(E)(i), specified low-income Medicare beneficiaries (SLMB) pursuant to 42 U.S.C. § 1396a(a)(10)(E)(iii), and expanded specified low-income Medicare beneficiaries (ESLMB) pursuant to 42 U.S.C. § 1396a(a)(10)(E)(iv).

“*Member*” means an individual who has been determined eligible for medical assistance pursuant to 441—Chapter 75 and has been enrolled to receive assistance. For the medically needy program, “member” shall mean an individual who has been determined eligible for medical assistance under the medically needy program, has been enrolled, and has countable income at or below the medically needy income level (MNIL) or has reduced countable income to the MNIL during the certification period through spenddown.

“*Modified adjusted gross income*” means the methodology to determine income eligibility prescribed by 1902(e)(14) of the Social Security Act (42 U.S.C. § 1396a(e)(14)).

“*Presumptive eligibility*” means that a person is presumed to be eligible on a temporary basis based on information provided.

“*Qualified entity*” is an entity that is described in Paragraphs (1) through (10) of 42 CFR 435.1101 relating to coverage groups for children, 42 CFR 435.1110b relating to hospitals determining eligibility, U.S.C. § 1396r-1 relating to coverage groups for pregnant women, or 42 U.S.C. § 1396r-1b relating to the breast and cervical cancer coverage group, that has been determined by the department to be capable of making presumptive Medicaid eligibility determinations, and that has signed an agreement with the department as a qualified entity.

“*Responsible person*” means an individual recognized by the department pursuant to subrule 76.9(1) as acting for an applicant or member who is unable to act on the applicant’s or member’s own behalf because the applicant or member is a minor or is incompetent, incapacitated, or deceased.

“*Supplemental security income*” or “*SSI*” is a federally administered program established by Title XVI of the Social Security Act to provide supplemental income to individuals who have attained the age of 65 or are blind or disabled.

“*WIC*” is the Special Supplemental Nutrition Program for Women, Infants, and Children established by 42 U.S.C. § 1786.

441—76.2(249A) Application with the department. This rule describes the process of applying for medical assistance directly with the department of human services.

76.2(1) Application for eligibility effective prior to January 1, 2014. Application for the Medicaid or HAWK-I program to be initially effective prior to January 1, 2014, must be made as provided in this subrule.

a. Forms.

(1) An application for family medical assistance-related Medicaid programs shall be submitted on Health and Financial Support Application, Form 470-0462 or Form 470-0462(S); Health Services Application, Form 470-2927 or Form 470-2927(S); HAWK-I Application, Comm. 156; or HAWK-I Electronic Application Summary and Signature Page, Form 470-4016.

(2) An application for SSI-related Medicaid shall be submitted on Health Services Application, Form 470-2927 or Form 470-2927(S), or Health and Financial Support Application, Form 470-0462 or Form 470-0462(S).

(3) An application for Medicaid for persons in foster care shall be submitted on Health Services Application, Form 470-2927 or Form 470-2927(S).

b. Who can file. An application may be filed by the applicant, an adult in the applicant’s household or family, an authorized representative recognized pursuant to subrule 76.9(2), or a responsible person recognized pursuant to subrule 76.9(1).

c. How and where to file.

(1) An application may be filed over the Internet at www.dhs.iowa.gov, by submission to any local office of the department, or by submission to a department outstation at a disproportionate share hospital,

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federally qualified health center or other facility where outstationing activities are provided. Applications may be submitted in person, by mail, by fax or by e-mail.

(2) Health Services Application, Form 470-2927 or Form 470-2927(S), may also be filed at the office of a qualified entity for presumptive Medicaid eligibility determinations, a WIC office, a maternal health clinic, or a well child clinic.

(3) Individuals applying for medical assistance for family planning services under 441—subrule 75.1(41) or 441—Chapter 87 may also apply at any family planning agency as defined in rule 441—87.1(82GA, ch1187).

(4) An application for HAWK-I may be filed with the third-party administrator as provided at 441—subrule 86.3(3).

d. Minimum application requirements. A valid application is an application containing a legible name, a legible address, and a signature. An authorized representative or responsible person recognized pursuant to rule 441—76.9(249A) may sign on an applicant's behalf. Electronic and handwritten signatures transmitted via electronic transmissions are acceptable. An application that does not include a legible name, a legible address, and a signature will be rejected without a determination of eligibility.

e. Interviews.

(1) The department may require a face-to-face or telephone interview with adult applicants, authorized representatives, or responsible persons.

(2) The department shall notify the applicant, authorized representative, or responsible person of the date, time and method of an interview. This notice shall be provided to the applicant, authorized representative, or responsible person personally, by telephone, by e-mail, by mail or by fax.

(3) Failure of the applicant, authorized representative, or responsible person to attend a scheduled interview shall be a basis for denial of an application or cancellation of assistance for adults. Failure to attend an interview shall not serve as a basis for denial of an application or cancellation of assistance for children.

f. Additional information or verification needed to determine eligibility. The department shall notify the applicant, authorized representative, or responsible person in writing that additional information or verification is required to establish eligibility. This notice shall be provided to the applicant, authorized representative, or responsible person personally or by mail or fax.

(1) The department shall allow the applicant, authorized representative, or responsible person ten calendar days to supply the information or verification requested.

(2) The department may extend the deadline for a reasonable period of time when the applicant, authorized representative, or responsible person is making every effort but is unable to secure the required information or verification.

(3) The application shall be denied if the department does not receive one of the following by the due date:

1. The information or verification,
2. An authorization for the department to obtain the information or verification, or
3. A request for an extension of the due date.

(4) If benefits are denied for failure to provide information or verification and the information or verification is provided within 14 calendar days of the effective date of the denial, the department shall complete the eligibility determination as though the information or verification were received timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant, authorized representative, or responsible person shall have until the next business day to provide the information.

76.2(2) Application for eligibility effective on or after January 1, 2014. Application for the Medicaid or HAWK-I program to be initially effective on or after January 1, 2014, must be made as provided in this subrule.

a. Form. Application for the Medicaid or HAWK-I program shall be submitted on Application for Health Coverage and Help Paying Costs, Form 470-5170 or 470-5170(S).

b. Who can file. An application may be filed by the applicant, an adult in the applicant's household or family, an authorized representative recognized pursuant to subrule 76.9(2), or a responsible person recognized pursuant to subrule 76.9(1).

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c. How and where to file.

(1) An application may be filed over the Internet at www.dhs.iowa.gov or at www.dhsservices.iowa.gov or at the health insurance marketplace Web site at www.healthcare.gov, by submission to any local office of the department, or by submission to a department outstation at a disproportionate share hospital, federally qualified health center, or other facility where outstationing activities are provided. Applications may be submitted in person, by mail, by telephone at [telephone number], or by e-mail or fax. Addresses, e-mail addresses and fax numbers of local offices of the department are available at www.dhs.state.ia.us/Consumers/Find_Help/MapLocations.html.

(2) An application may also be filed at the office of a qualified entity for presumptive Medicaid eligibility determinations, a WIC office, a maternal health clinic, or a well child clinic.

(3) Individuals applying for medical assistance for family planning services under 441—subrule 75.1(41) or 441—Chapter 87 may also apply at any family planning agency as defined in rule 441—87.1(82GA,ch1187).

d. Minimum application requirements. Initial applications must be signed under penalty of perjury. An authorized representative or responsible person recognized pursuant to rule 441—76.9(249A) may sign on an applicant's behalf. Electronic, including telephonically recorded, signatures and handwritten signatures transmitted via any electronic transmission are acceptable. An application that does not include a signature under penalty of perjury will be rejected without a determination of eligibility.

e. Additional information or verification needed to determine eligibility. The applicant must provide additional information or verification as requested by the department, including information or verification necessary to determine SSI-related Medicaid eligibility, as requested on SSI Medicaid Information, Form 470-0364, 470-0364(S), 470-0364(M), or 470-0364(MS).

f. Interviews. The applicant, authorized representative, or responsible person may be required to attend a face-to-face or telephone interview to clarify information or to resolve conflicting information. Failure to attend a required interview will result in denial of the application.

76.2(3) Date of filing.

a. An application is considered filed on the date a valid application is received in any place of filing specified in paragraph 76.2(1)“c” or 76.2(2)“c.” When an application is delivered after business hours, it will be considered received on the next business day.

b. A valid application for Medicaid which is filed at a WIC office, a well child clinic, a maternal health clinic, an outstationed office, or the office of a qualified entity for presumptive Medicaid eligibility determinations shall be considered filed on the date it is received and date-stamped in one of those offices. When the application is received while the office is closed, it will be considered received on the next business day.

441—76.3(249A) Referrals from a health insurance marketplace. Upon receipt of a referral from a health insurance marketplace indicating that an application filed with the health insurance marketplace has been screened and that the applicant has been found to be potentially eligible for Medicaid or HAWK-I, the department will treat the referral as an application for medical assistance and will process the application as if received directly by the department. The applicant is required to cooperate as described in this chapter for applications received directly by the department.

441—76.4(249A) Express lane eligibility. For purposes of the initial enrollment of a child in medical assistance, the department will use express lane procedures as allowed by 42 U.S.C. § 1396a(e)(13) and as described in this rule.

76.4(1) For purposes of initial enrollment, the department shall rely on a determination of the child's eligibility for food assistance pursuant to 441—Chapter 65 as establishing that a child under the age of 19 meets all eligibility requirements established in 441—subrule 75.1(28) except for citizenship or alienage requirements, unless:

a. The child's household already includes other persons receiving Medicaid based on the use of the modified adjusted gross income methodology, or

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b. The child was previously granted express lane eligibility and the household has not had at least a two-month break in food assistance eligibility since that time, or

c. The household's income as calculated by the food assistance program exceeds the income limit for the mothers and children coverage group found at 441—subparagraph 75.1(28)“a”(1).

76.4(2) To obtain express lane enrollment for a child, the child's household must request medical assistance for the child on Express Lane Medicaid for Children, Form 470-4851 or Form 470-4851(S). The department shall send Form 470-4851 or Form 470-4851(S) to the household when a child eligible for express lane enrollment is approved for food assistance pursuant to 441—Chapter 65. An adult member of the child's household or a child receiving food assistance as head of household must sign Form 470-4851 or Form 470-4851(S) and return it to the department within 30 calendar days of issuance.

76.4(3) As a condition of express lane enrollment, the child must meet the citizenship or alienage requirements of rule 441—75.11(249A).

76.4(4) The month of application for express lane enrollment is the month of the child's food assistance effective date. Express lane eligibility begins on the first day of the month of the child's food assistance effective date.

76.4(5) Retroactive enrollment is available for any of the three months before the month of the child's food assistance effective date when the child:

a. Has medical bills for covered services that were received in that period, and

b. Would have been eligible for medical assistance benefits in the month services were received if the application for medical assistance had been made in that month and the eligibility determination was made without regard to food assistance eligibility.

76.4(6) After the initial express lane enrollment, all redeterminations of medical assistance eligibility shall be made without reliance on any food assistance eligibility determination.

441—76.5(249A) Enrollment through SSI. Upon receipt of a referral from the Social Security Administration indicating that an individual has been approved for SSI, the department will treat the referral as an application for medical assistance and will process the application as if received directly by the department. The SSI recipient shall be required to complete SSI Medicaid Information, Form 470-0364, 470-0364(S), 470-0364(M), or 470-0364(MS), when additional information is necessary to determine Medicaid eligibility. The SSI recipient may be required to attend an interview to clarify information on this form.

441—76.6(249A) Referral for Medicare savings program. Referrals received from the federal Social Security Administration pursuant to 42 U.S.C. 1320b-14(c)(3) when the individual has indicated that the individual wants to apply for the Medicare savings program will be treated by the department as an application for the Medicare savings program and will be processed as if the application were received directly by the department. The date on which the referral is transmitted by the Social Security Administration shall be treated as the date of application. When requested to do so, the applicant must complete Medicare Savings Programs Additional Information Request, Form 470-4846, to provide additional information needed to determine Medicare savings program eligibility.

441—76.7(249A) Presumptive eligibility. Individuals may be temporarily enrolled in Medicaid based on a presumptive eligibility determination by a qualified entity pursuant to this rule.

76.7(1) *For eligibility effective prior to January 1, 2014.*

a. Applicants for presumptive eligibility for children will complete Application: Presumptive Health Care Coverage for Children, Form 470-4855 or 470-4855(S).

b. Applicants for presumptive eligibility for pregnant women or for presumptive eligibility for breast and cervical cancer coverage group shall complete Health Services Application, Form 470-2927 or Form 470-2927(S).

76.7(2) *For eligibility effective on or after January 1, 2014.* Applicants for presumptive eligibility will complete Health Services Application, Form 470-2927 or 470-2927(S).

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76.7(3) *How and where to file.* Applications for presumptive eligibility are filed at the office of a qualified entity for presumptive Medicaid eligibility determinations.

76.7(4) *Enrollment.* An individual is enrolled on the date that presumptive eligibility is determined by the qualified entity.

76.7(5) *Notice and appeal rights.* Timely and adequate notice requirements and appeal rights of the Medicaid program shall not apply to presumptive eligibility decisions made by a qualified entity.

76.7(6) *Full medical assistance eligibility determination.* All presumptive eligibility applications shall receive a full determination of eligibility for Medicaid or HAWK-I except for breast and cervical cancer and pregnant women coverage groups.

441—76.8(249A) Applicant responsibilities.

76.8(1) *Accurate information.* Applicants are responsible to give complete and accurate information needed to establish eligibility.

76.8(2) *Time frames for providing information or verification.* Applicants shall have ten calendar days to supply the information or verification requested by the department.

76.8(3) *Extensions.* The applicant may request an extension of a reasonable period of time when the applicant is making every effort but is unable to secure the required information or verification.

76.8(4) *Failure to comply.* An application shall be denied if the applicant does not attend a required interview, if applicable under subrule 76.2(1) or 76.2(2), or if the department does not receive one of the following by the due date:

- a. The information or verification,
- b. An authorization to obtain the information or verification, or
- c. A request for an extension of the due date.

76.8(5) *Grace period.* If benefits are denied for failure to provide information or verification and the information or verification is provided within 14 calendar days of the effective date of the denial, the department shall complete the eligibility determination as though the information were received timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant shall have until the next business day to provide the information.

76.8(6) *Referrals to the Social Security Administration.* When an applicant or member may be eligible for benefits from the Social Security Administration and is directed by the department to apply for such benefits, the applicant or member must make application for such benefits as described in rule 441—75.3(249A).

441—76.9(249A) Responsible persons and authorized representatives.

76.9(1) *Responsible person.* If an applicant or member is unable to act on the applicant's or member's own behalf because the applicant or member is a minor or is incompetent, incapacitated, or deceased, a responsible person may act for the applicant or member. Except as provided in paragraph 76.9(1) "a" below, the responsible person shall be a family member, friend or other person who has knowledge of the applicant's or member's financial affairs and circumstances and has a personal interest in the applicant's or member's welfare. The responsible person shall assume the applicant's or member's position and responsibilities during the application process or for ongoing eligibility. The responsible person may designate an authorized representative as provided for in subrule 76.9(2) to represent the applicant or member. However, the designation of an authorized representative does not relieve the responsible person from assuming the applicant's or member's position and responsibilities during the application process or for ongoing eligibility.

a. When there is no person as described above to act on behalf of the minor, incompetent, incapacitated, or deceased applicant or member, any individual or organization may be allowed to act as the responsible person if the individual or organization conducts a diligent search and completes Inability to Find a Responsible Person, Form 470-3356, attesting to the individual's or organization's inability to find a responsible person to act on behalf of the minor, incompetent, incapacitated, or deceased applicant or member.

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b. The department may require verification of the applicant's or member's incompetence or death and of the responsible person's relationship to the applicant or member.

c. Copies of all departmental correspondence with the applicant or member shall be provided to the recognized responsible person.

76.9(2) *Authorized representative.* An individual or organization designated by a competent applicant or member, designated by a responsible person recognized pursuant to subrule 76.9(1), or with other legal authority to do so may act on behalf of the applicant or member in the application process, renewal of eligibility, or for ongoing eligibility.

a. The designation of an authorized representative by an applicant, member, or responsible person must be in writing and must be signed and dated by the applicant or member or the responsible person. The applicant, member, or responsible person may authorize the representative to complete and sign an application on the applicant's behalf, complete and submit a renewal form, receive copies of the applicant's or member's notices and other communications from the department, and act on behalf of the applicant or member in all other matters with the department.

b. Legal documentation of authority to act on behalf of the applicant or member under state law, such as a court order establishing legal guardianship or a power of attorney, shall serve in place of a written authorization by the applicant or member.

c. Designations of authorized representatives, legal documentation of authority to act on behalf of the applicant or member, and modifications or terminations of designations or legal authority may be submitted via the Internet Web site, www.dhsservices.iowa.gov, by mail, by e-mail, by fax, or in person.

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

e. If the authorization indicates the time period or dates the authorization is to cover, the stated period or dates shall be honored and may include subsequent applications, if necessary, that relate to the time period or dates indicated on the authorization. If the authorization does not indicate the time period or dates it is to cover, the authorization shall be valid for any applications filed within 120 days from the date the authorization was signed and for all subsequent actions pertaining to the applications filed within the 120-day period.

f. The power to act as an authorized representative based on a designation by an applicant, member, or responsible person is valid until the applicant, member, or responsible person modifies the authorization or notifies the department that the representative is no longer authorized to act on behalf of the applicant or member or until the authorized representative informs the department that the representative no longer is acting in such capacity. Such notice must be in writing and should include the applicant's, member's, responsible person's, or authorized representative's signature as appropriate.

g. Copies of all departmental correspondence shall be provided to the applicant or member and the authorized representative.

76.9(3) *Additional requirements applicable to all authorized representatives and responsible persons.*

a. An authorized representative or responsible person must agree to maintain, or be legally bound to maintain, the confidentiality of any information regarding an applicant or member provided by the department.

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

c. The authorized representative or responsible person is responsible for fulfilling all responsibilities encompassed within the scope of the authorized representation to the same extent as the individual the authorized representative or responsible person represents.

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441—76.10(249A) Right to withdraw the application. The applicant may withdraw the application at any time before the eligibility determination has been made. The applicant may request that the application be withdrawn entirely or request withdrawal for any month covered by the application process except as provided in the medically needy program in accordance with the provisions of 441—subrule 75.1(35).

441—76.11(249A) Choice of electronic notifications. The applicant is responsible to indicate if notices and other communications are to be provided by the department in an electronic format through the individual's electronic account, rather than by regular mail. The applicant may change the selection at any time. Notices and other communications provided through the individual's electronic account are deemed to be received upon the sending of an e-mail to the individual notifying the individual of the notice or other communication.

441—76.12(249A) Application not required.

76.12(1) Adding a new person.

a. Adding an eligible person. For members whose eligibility is based on the modified adjusted gross income methodology, a new application is not required when an eligible person is added to an existing Medicaid-eligible group. Such a person is considered to be included in the application that established the existing eligible group. However, in these instances, the date of application to add a person is the date the change is reported. When it is reported that a person is anticipated to enter the home, the date of application to add the person shall be no earlier than the date of entry or the date of report, whichever is later.

b. Adding a person previously ineligible due to a failure to cooperate. In those instances where a person previously ineligible for Medicaid for failure to cooperate in obtaining medical support or establishing paternity as described at 441—subrule 75.14(2) is to be granted Medicaid benefits, the person shall be granted Medicaid benefits effective the first of the month in which the person becomes eligible by cooperating in obtaining medical support or establishing paternity.

c. Adding a person previously ineligible due to failure to provide a social security number. In those instances where a person previously ineligible for Medicaid for failure to provide a social security number or proof of application for a social security number as described at rule 441—75.7(249A) is to be granted Medicaid benefits, the person shall be granted Medicaid benefits effective the first of the month in which the person becomes eligible by providing a social security number.

d. Adding a person who was voluntarily excluded. In those instances where a person who has been voluntarily excluded from the eligible group in accordance with the provisions of rule 441—75.59(249A) is being added to the eligible group, the person shall be added effective the first of the month after the month in which the household requests that the person no longer be excluded.

76.12(2) Reinstatement after cancellation. Eligibility for medical assistance may be reinstated without a new application when all information necessary to establish eligibility, including verification of any changes, is provided within 14 calendar days of the effective date of the cancellation. If the fourteenth calendar day falls on a weekend or state holiday, the member shall have until the next business day to provide the information.

76.12(3) Loss of HAWK-I eligibility. In those instances where a child loses HAWK-I eligibility and has been determined eligible for Medicaid, with no break in coverage, an application for Medicaid is not required.

441—76.13(249A) Initial enrollment.

76.13(1) Enrollment date. Applicants who have been determined to be eligible shall be enrolled by the department in the Medicaid program.

a. First day of the month. The effective date of enrollment is the first day of the first month for which eligibility has been determined, with the following exceptions:

(1) Presumptive eligibility is effective on the date that presumptive eligibility was determined by a qualified entity for presumptive Medicaid eligibility determinations.

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(2) Eligibility under the qualified Medicare beneficiary coverage group begins on the first day of the month after the month of decision.

(3) Eligibility for individuals approved for supplemental security income, programs related to supplemental security income, state supplementary assistance, or medical assistance benefits shall be effective on the first day of the month when the individual was resource-eligible as of the first moment of the first day of the month and met all other eligibility criteria at any time during the month.

(4) When a request is made to add a new person to the eligible group, medical assistance shall not be effective before the first of the month in which the request was made.

(5) When a request is made prior to January 1, 2014, to add to the eligible group a person who previously was excluded, in accordance with the provisions of rule 441—75.59(249A), medical assistance for the person shall be effective no earlier than the first day of the month following the month in which the request was made.

b. Care or services prior to enrollment. No payment shall be made for medical care or services received prior to the effective date of enrollment.

76.13(2) Retroactive enrollment.

a. Except as provided in paragraphs 76.13(2)“*e*” and “*f*,” medical assistance shall be available for all or any of the three months preceding the month in which an application is filed to persons who:

(1) Have medical bills for covered care or services received during the three-month retroactive period; and

(2) Would have been eligible for medical assistance in the month services were received if application for medical assistance had been made in that month.

b. The applicant need not be eligible in the month of application to be eligible in any of the three months prior to the month of application.

c. Retroactive medical assistance shall be made available when an application has been made on behalf of a deceased person if the conditions in paragraph 76.13(2)“*a*” are met.

d. Persons enrolled in Medicaid based on receipt of supplemental security income benefits who wish to make application for Medicaid benefits for three months preceding the month of application shall complete SSI Medicaid Information, Form 470-0364, 470-0364(S), 470-0364(M), or 470-0364(MS).

e. Exceptions to retroactive enrollment. This subrule does not apply to the following individuals:

(1) Individuals whose citizenship or alien status has not been verified even though they are eligible during a 90-day reasonable opportunity period.

(2) Individuals determined eligible only under presumptive Medicaid benefits.

(3) Individuals eligible for Medicaid only under the qualified Medicare beneficiary program.

(4) Individuals eligible only under the home- and community-based waiver services program.

f. Exceptions to length of retroactive enrollment. Individuals eligible for Medicaid only on the basis of eligibility for a state supplementary assistance program are only eligible for retroactive enrollment for the 30 days prior to the date of application. All other provisions of this subrule apply.

76.13(3) Certification for services. The department shall issue a Medical Assistance Eligibility Card, Form 470-1911, to persons who have been determined to be eligible for the benefits provided under the Medicaid program, with the following exceptions:

a. Presumptive eligibility. A person who has been determined only presumptively eligible will be issued a Presumptive Medicaid Eligibility Notice of Action, Form 470-2580 or 470-2580(S), that will include certification information.

b. Emergency Medicaid for aliens. An individual who is eligible only for limited emergency Medicaid for aliens pursuant to 441—subrule 75.11(4) will be issued a Notice of Action, Form 470-0485 or Form 470-0485(S), that will include certification information.

441—76.14(249A) Reenrollment. Reviews of all conditions of eligibility will occur for the purposes of determining continued enrollment in Medicaid.

76.14(1) Reenrollment frequency.

a. Eligibility reviews for eligibility prior to January 1, 2014.

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(1) Eligibility reviews shall be made as often as circumstances indicate, but in no instance shall the period of time between reviews exceed 12 months.

(2) Eligibility reviews will be conducted using information contained in and verification supplied with the review form specified in 441—subrule 75.52(3).

(3) When the review form is issued in the department's regular end-of-month mailing, the member shall return the completed form to the department by the fifth calendar day of the following month.

(4) When the review form is not issued in the department's regular end-of-month mailing, the member shall return the completed form to the department by the seventh day after the date the form is mailed by the department.

b. Eligibility reviews for eligibility effective on or after January 1, 2014.

(1) Eligibility reviews for members whose eligibility is based on the modified adjusted gross income methodology, who are eligible for Medicaid related to reciprocity for a subsidized adoption, who are eligible for Medicaid programs that are solely state-funded, who are Medicaid-eligible based upon the receipt of Medicaid related to foster care at the time they aged out of foster care, and who are eligible based on breast or cervical cancer treatment shall be conducted once every 12 months and no more frequently.

(2) Eligibility reviews for other members shall be made as often as circumstances indicate, but in no instance shall the period of time between eligibility reviews exceed 12 months.

76.14(2) Reenrollment process.

a. Reenrollment process prior to January 1, 2014.

(1) Within ten working days from the date a written request is issued, the member shall supply, insofar as the member is able, additional information needed to establish continued eligibility.

1. The member shall give written permission for the release of information when the member is unable to furnish information needed to reestablish eligibility.

2. Failure to supply the information or verification requested or refusal to request assistance and authorize the department to secure the requested information from other sources shall serve as a basis for cancellation of Medicaid. Signing a general authorization for release of information to the department does not meet this responsibility.

(2) Information for the eligibility review shall be submitted on Review/Recertification Eligibility Document (RRED), Form 470-2881, 470-2881(M), 470-2881(S), or 470-2881(MS), with the following exceptions:

1. Persons whose eligibility for Medicaid is related to the family medical assistance program shall complete Medicaid Review, Form 470-3118 or 470-3118(S).

2. Persons whose eligibility for Medicaid is related to supplemental security income and who are receiving state supplementary assistance shall complete Medicaid Review, Form 470-3118 or 470-3118(S).

3. Persons whose eligibility for Medicaid is based on foster care, subsidized adoption or subsidized guardianship shall have continued eligibility determined by submission of Foster Care, Adoption and Guardianship Medicaid Review, Form 470-2914 or Form 470-2914(S).

4. Individuals whose eligibility is for the medically needy coverage group shall complete Medicaid Review, Form 470-3118 or 470-3118(S).

5. Members eligible for family planning services only shall complete Family Planning Medicaid Review, Form 470-4071. The member must submit the completed review form before the end of the eligibility period to any location specified in subparagraph 76.2(2)“c”(3).

(3) For SSI-related Medicaid for adults, the department may request a face-to-face or telephone interview. Failure of the member to attend a scheduled interview shall serve as a basis for cancellation of assistance for adults. Failure of the member to attend an interview shall not serve as a basis for cancellation of assistance for children.

(4) If the department does not receive a completed form, assistance shall be canceled. A completed form is one that has all questions answered and is signed, dated and accompanied by verification as required in 441—paragraphs 75.57(1)“f” and 75.57(2)“l.”

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(5) Reinstatement. When medical assistance has been canceled for failure to return a completed review form, assistance may be reinstated without a new application if the department receives the completed form within 14 calendar days of the effective date of cancellation. If the fourteenth calendar day falls on a weekend or state holiday, the member shall have until the next business day to provide the information. EXCEPTION: Members eligible for family planning services only who fail to submit Family Planning Medicaid Review, Form 470-4071, before the end of the eligibility period must reapply as directed in rule 441—76.2(249A).

b. Reenrollment process effective on or after January 1, 2014.

(1) Reenrollment shall be based on information contained in the member's electronic case record or other more current information available through electronic data matches. The member will be notified of the determination of continued eligibility and the basis of the determination on Notice of Action, Form 470-0485 or Form 470-0485(S). If any information contained in Form 470-0485 or Form 470-0485(S) is inaccurate, the member must sign and return the notice with accurate information within 30 days of the date on the notice.

(2) When eligibility cannot be determined based on information in the electronic case record and data matches, the member will be provided with a prepopulated renewal form, MAGI Medicaid Renewal, Form 470-5168 or Form 470-5168(S), and will have 30 days from the date of the renewal form to sign and return the form with necessary information, with the following exceptions:

1. Members eligible for family planning services only shall complete Family Planning Medicaid Review, Form 470-4071.

2. Members whose eligibility for Medicaid is not based on the modified adjusted gross income methodology shall complete and return Medicaid Review, Form 470-3118 or 470-3118(S), when requested to do so by the department. Members whose eligibility has been determined on the basis of age, blindness or disability must sign and return the notice within 30 days of the date on the notice and provide verification of income and resources before a determination of continued eligibility can be made.

(3) Enrollment will end when information or documentation necessary to complete the determination of continued eligibility is not returned within 30 days, with the exception that members eligible for family planning services only who fail to submit the completed Family Planning Medicaid Review, Form 470-4071, before the end of the eligibility period must reapply as directed in rule 441—76.2(249A). The department shall notify the member on Notice of Action, Form 470-0485 or Form 470-0485(S).

(4) Reconsideration period. When medical assistance has been canceled for failure to return a completed prepopulated renewal form or other information necessary to determine continued eligibility, enrollment may be reinstated without a new application if the department receives the completed form within the three calendar months following the effective date of cancellation. Enrollment for up to three months of retroactive benefits is available when the conditions of subrule 76.13(2) are met.

(5) An individual whose eligibility is not based on the modified adjusted gross income methodology must attend a face-to-face or telephone interview if requested to do so by the department.

441—76.15(249A) Report of changes. As a condition of enrollment and continued enrollment for medical assistance, applicants and members shall report changes in circumstances as required in this rule.

76.15(1) Report of changes for eligibility prior to January 1, 2014.

a. In coverage groups for which Medicaid eligibility is determined using the family medical assistance program (FMAP) income and resource policies, members shall report changes as follows:

(1) At the annual review or upon the addition of an individual to the eligible group, members shall report any change in the following:

1. Income from all sources, including any change in care expenses.
2. Resources.
3. Members of the household.
4. School attendance.

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5. A stepparent's recovery from an incapacity.
6. Mailing or living address.
7. Payment of child support.
8. Receipt of a social security number.
9. Payment for child support, alimony, or dependents as defined in 441—paragraph 75.57(8) "b."
10. Health insurance premiums or coverage.

(2) Applicants and members shall report any change in the following within ten calendar days of the change:

1. Members of the household.
2. Mailing or living address.
3. Sources of income.
4. Health insurance premiums or coverage.

(3) Members described at 441—subrule 75.1(35) shall also report any change in income from any source and any change in care expenses within ten calendar days of the change.

b. In coverage groups for which Medicaid eligibility is determined using income and resource policies related to the supplemental security income (SSI) program, members shall report any change in the following to the department within ten calendar days of the change. EXCEPTION: Persons actually receiving SSI benefits are exempted from these reporting requirements unless the persons have a trust or are applying for or are receiving home- and community-based waiver services.

- (1) Income from all sources.
- (2) Resources.
- (3) Members of the household.
- (4) Recovery from disability.
- (5) Mailing or living address.
- (6) Health insurance premiums or coverage.
- (7) Medicare premiums or coverage.
- (8) Receipt of social security number.
- (9) Gross income of the community spouse or of the dependent children, parents or siblings of the institutionalized or community spouse living with a community spouse when a diversion is made to the community spouse or family. (See definitions in rule 441—75.25(249A).)

(10) Income and resources of parents and spouses when income and resources are used in determining Medicaid eligibility, client participation or spenddown.

(11) Residence in a medical institution for other than respite care for more than 15 days for home- and community-based waiver services recipients.

c. Individuals in the breast and cervical cancer coverage group are required to report when health insurance coverage begins, or when their living or mailing address changes, within ten calendar days.

76.15(2) *Report of changes for eligibility on or after January 1, 2014.* A change in circumstance that may affect the eligibility of applicants and members must be reported within ten days of the date the change occurred. Changes required to be reported are described in this subrule.

a. In coverage groups for which Medicaid eligibility is determined using the modified adjusted gross income methodology, any change in the following must be reported:

- (1) Income from all sources.
- (2) Members of the household.
- (3) School attendance.
- (4) Mailing or living address.
- (5) Receipt of a social security number.
- (6) Health insurance premiums or coverage.
- (7) Alien or citizenship status.

b. In coverage groups for which Medicaid eligibility is not determined using the modified adjusted gross income methodology, any change in the following must be reported. EXCEPTION: Persons actually receiving SSI benefits are exempted from these reporting requirements unless the persons have a trust or are applying for or are receiving home- and community-based waiver services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (1) Income from all sources.
- (2) Resources.
- (3) Members of the household.
- (4) Recovery from disability.
- (5) Mailing or living address.
- (6) Health insurance premiums or coverage.
- (7) Medicare premiums or coverage.
- (8) Receipt of social security number.
- (9) Gross income of the community spouse or of the dependent children, parents, or siblings of the institutionalized or community spouse who are living with a community spouse when a diversion is made to the community spouse or family. (See definitions in rule 441—75.25(249A).)
- (10) Income and resources of parents and spouses when income and resources are used in determining Medicaid eligibility, client participation or spenddown.
- (11) Residence in a medical institution for other than respite care for more than 15 days for home- and community-based waiver services recipients.

c. Individuals in the breast and cervical cancer coverage group are required to report changes in their health insurance coverage and changes in their living or mailing address.

d. Individuals receiving Medicaid based on the receipt of Title IV-E-funded foster care or based on an adoption assistance agreement are required to report changes in health insurance coverage, when their living or mailing address changes, receipt of a social security number, and termination of the adoption assistance agreement.

e. Individuals receiving state-only funded Medicaid are required to report any change in the following:

- (1) Income from all sources.
- (2) Mailing or living address.
- (3) Receipt of a social security number.
- (4) Health insurance coverage.
- (5) Alien or citizenship status.

76.15(3) Failure to report. When a change is not reported as required by this rule, any Medicaid expenditures for care or services provided when the member was not eligible shall be considered an overpayment and subject to recovery from the member.

441—76.16(249A) Action on information received. When a change in circumstance is reported, or when a change in a member's circumstances otherwise comes to the attention of the department, its effect on eligibility shall be evaluated and eligibility shall be redetermined regardless of whether the report of change was required by rule 441—76.15(249A). When the department has information about an anticipated change in a member's circumstances that may affect eligibility, eligibility will be redetermined at the appropriate time based on such change.

76.16(1) After assistance has been approved, except as provided in subrule 76.13(1), action based on a change reported during a month shall be effective the first day of the next calendar month unless timely notice of adverse action is required as specified in 441—subrule 7.7(1).

76.16(2) When a request is made to add a new person to the eligible group, and that person meets the eligibility requirements, assistance shall be effective the first day of the month in which the request was made unless otherwise specified at rule 441—76.12(249A).

76.16(3) When the change creates ineligibility, eligibility under the current coverage group shall be canceled and an automatic redetermination of eligibility shall be completed in accordance with rule 441—76.17(249A).

441—76.17(249A) Automatic redetermination of eligibility. Whenever a Medicaid member no longer meets the eligibility requirements of the current coverage group, an automatic redetermination of eligibility for other Medicaid coverage groups shall be made. If the reason for ineligibility under the initial coverage group pertained to a condition of eligibility which applies to all coverage groups,

HUMAN SERVICES DEPARTMENT[441](cont'd)

such as failure to cooperate, no further redetermination shall be required. When the redetermination is completed, the member shall be notified of the decision in writing. The redetermination process shall be completed as follows:

76.17(1) Information received by the tenth of the month. If information that creates ineligibility under the current coverage group is received in the department by the tenth of the month, the redetermination process shall be completed by the end of that month unless the provisions of rule 441—76.14(249A) apply. The effective date of cancellation for the current coverage group shall be the first day of the month following the month in which the information is received.

76.17(2) Information received after the tenth of the month. If information that creates ineligibility under the current coverage group is received in the department after the tenth of the month, the redetermination process shall be completed by the end of the following month unless the provisions of rule 441—76.14(249A) apply. The effective date of cancellation for the current coverage group shall be the first day of the second month following the month in which the information is received.

76.17(3) Change in federal law. If a change in federal law affects the eligibility of large numbers of Medicaid members and the Secretary of Health and Human Services has extended the redetermination time limits, in accordance with 42 CFR § 435.1003 as amended to January 13, 1997, the redetermination process shall be completed within the extended time limit and the effective date of cancellation for the current coverage group shall be no later than the first day of the month following the month in which the extended time limit expires.

These rules are intended to implement Iowa Code sections 249.3, 249.4, 249A.3, and 249A.4.

ARC 0911C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments will delete child care licensure from the list of Medicaid provider qualifications for enrollment.

The Department currently allows various qualifications for enrollment of providers of respite and interim medical monitoring and treatment (IMMT) in Medicaid. One of the qualifications for providers of respite or IMMT services was an optional requirement for licensure as a child care provider. Most providers of respite and IMMT that use this qualification for enrollment in the Medicaid program are not actively providing child care, making the licensure inconsistent with its use as a requirement. These amendments clarify respite and IMMT provider qualifications so that licensure for respite and IMMT is consistent with the type of services provided. These amendments allow for a revision of the type of licensure, certification, and accreditation required for providers of respite and IMMT that more closely aligns with the type of services provided.

Any interested person may make written comments on the proposed amendments on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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.

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 249A.4.

The following amendments are proposed.

ITEM 1. Amend paragraph **77.30(5)“a”** as follows:

a. The following agencies may provide respite services:

(1) to (8) No change.

~~(9) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(10) (9)~~ Assisted living programs certified by the department of inspections and appeals.

ITEM 2. Amend paragraph **77.30(8)“a”** as follows:

a. The following providers may provide interim medical monitoring and treatment services:

~~(1) Child care facilities, which are defined as child care centers licensed pursuant to 441—Chapter 109, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(2) Rescinded IAB 9/1/04, effective 11/1/04.~~

~~(3) Rescinded IAB 9/1/04, effective 11/1/04.~~

~~(4) (1)~~ Home health agencies certified to participate in the Medicare program.

~~(5) (2)~~ Supported community living providers certified according to subrule 77.37(14) or 77.39(13).

ITEM 3. Amend paragraph **77.34(5)“a”** as follows:

a. The following agencies may provide respite services:

(1) to (7) No change.

~~(8) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(9) (8)~~ Assisted living programs certified by the department of inspections and appeals.

ITEM 4. Amend paragraph **77.37(15)“a”** as follows:

a. The following agencies may provide respite services:

(1) to (8) No change.

~~(9) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(10) (9)~~ Assisted living programs certified by the department of inspections and appeals.

ITEM 5. Amend paragraph **77.37(22)“a”** as follows:

a. The following providers may provide interim medical monitoring and treatment services:

~~(1) Child care facilities, which are defined as child care centers licensed pursuant to 441—Chapter 109, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(2) Rescinded IAB 9/1/04, effective 11/1/04.~~

~~(3) Rescinded IAB 9/1/04, effective 11/1/04.~~

~~(4) (1)~~ Home health agencies certified to participate in the Medicare program.

~~(5) (2)~~ Supported community living providers certified according to subrule 77.37(14) or 77.39(13).

ITEM 6. Amend paragraph **77.39(14)“a”** as follows:

a. The following agencies may provide respite services:

(1) to (9) No change.

~~(10) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(11) (10)~~ Assisted living programs certified by the department of inspections and appeals.

ITEM 7. Amend paragraph **77.39(25)“a”** as follows:

a. The following providers may provide interim medical monitoring and treatment services:

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(1) Child care facilities, which are defined as child care centers licensed pursuant to 441—Chapter 109, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(2) Rescinded IAB 9/1/04, effective 11/1/04.~~

~~(3) Rescinded IAB 9/1/04, effective 11/1/04.~~

(4) (1) Home health agencies certified to participate in the Medicare program.

(5) (2) Supported community living providers certified according to subrule 77.37(14) or 77.39(13).

ITEM 8. Amend paragraph 77.46(5)“a” as follows:

a. *Qualified providers.* The following agencies may provide respite services under the children’s mental health waiver:

(1) and (2) No change.

~~(3) Child care centers licensed in good standing by the department according to 441—Chapter 109 and child development homes registered according to 441—Chapter 110.~~

(4) (3) Camps certified in good standing by the American Camping Association.

~~(5) (4) Home health agencies that are certified in good standing to participate in the Medicare program.~~

~~(6) (5) Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.~~

(7) (6) Adult day care providers that are certified in good standing by the department of inspections and appeals as being in compliance with the standards for adult day services programs at 481—Chapter 70.

~~(8) (7) Assisted living programs certified in good standing by the department of inspections and appeals.~~

(9) (8) Residential care facilities for persons with mental retardation licensed in good standing by the department of inspections and appeals.

~~(10) (9) Nursing facilities, intermediate care facilities for the mentally retarded, and hospitals enrolled as providers in the Iowa Medicaid program.~~

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration, and Scope of Medical and Remedial Services” and Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments allow, with prior authorization, direct, separate payment for customized wheelchairs needed by members who are residents of nursing facilities.

The Department received a formal petition for adoption of a rule, pursuant to Iowa Code section 17A.19, from a Medicaid member who resides in a nursing facility and had been denied a prescribed wheelchair by his facility and whose request to the Department for an exception to policy had also been denied. The petition requested adoption of a rule allowing for direct, separate payment for customized wheelchairs needed by members who are residents of nursing facilities.

Under current policy, nursing facilities are required to provide any wheelchair, customized or not, needed by a Medicaid resident, regardless of cost, which can be \$12,000 to more than \$15,000 in the

HUMAN SERVICES DEPARTMENT[441](cont'd)

case of customized wheelchairs. The cost is to be included as an expense on the facility's cost report, and the facility's reported costs are considered in setting future Medicaid reimbursement rates for the facility. However, the cost of a wheelchair is not immediately reflected in the facility's Medicaid reimbursement rate and may never be fully reflected in a facility's rate due to the caps on the cost-based nursing facility rates. Therefore, providing a customized wheelchair can be a financial hardship for a facility.

Because the cost of some customized wheelchairs is a financial hardship for some facilities, the Department has granted exceptions to policy in order to provide for direct, separate payment for customized wheelchairs in such cases. The petition for rule making indicated that 57 percent of requests for such exceptions had been granted from June 2003 until April 2012, based on a sample. For calendar year 2012, the Department's records show 15 such requests, 8 of which (or 53 percent) were granted. The exception to policy process is administratively inefficient for the Department, may not be known by or pursued by all nursing facility residents who need customized wheelchairs, and is inequitable both to the nursing facilities that do incur the cost of customized wheelchairs and to the nursing facility residents denied exceptions because the Department concludes that their nursing facilities can afford a customized wheelchair.

Any interested person may make written comments on the proposed amendments on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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 contain waiver provisions because the amendments confer a benefit by allowing direct, separate payment for customized wheelchairs needed by Medicaid members who are residents of nursing homes. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule 78.10(2) as follows:

78.10(2) Durable medical equipment. DME is equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, and is appropriate for use in the home.

a. Durable medical equipment provided in a hospital, nursing facility, or intermediate care facility for persons with an intellectual disability is not separately payable.

EXCEPTIONS:

(1) to (3) No change.

(4) Medicaid will provide separate payment for customized wheelchairs for members who are residents of nursing facilities, subject to the following:

1. The member's condition must necessitate regular use of a wheelchair on a long-term basis to enable independent mobility within the facility.

2. The member must require a customized wheelchair that is designed, assembled, modified, or constructed for the specific individual, in whole or in part, based on the individual's condition, measurements, and needs.

3. Prior authorization pursuant to rule 441—79.8(249A) is required.

b. and *c.* No change.

ITEM 2. Adopt the following **new** paragraph **78.10(5)“o”**:

o. Customized wheelchairs for members who are residents of nursing facilities, subject to the requirements of 78.10(2)“a”(4).

ITEM 3. Adopt the following **new** paragraph **78.28(1)“r”**:

r. Customized wheelchairs for members who are residents of nursing facilities, subject to the requirements of 78.10(2)“a”(4).

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Amend subrule 81.10(5) as follows:

81.10(5) Supplementation. Only the amount of client participation may be billed to the resident for the cost of care, and the facility must accept the combination of client participation and payment made through the Iowa Medicaid program as payment in full for the care of a resident. No additional charges shall be made to residents or family members for any supplies or services required in the facility-developed plan of care for the resident.

Residents may choose to spend their personal funds on items of personal care such as professional beauty or barber services, but the facility shall not require this expenditure and shall not routinely obligate residents to any use of their personal funds.

a. Supplies or services ~~which~~ that the facility shall provide:

(1) Nursing services, social work services, activity programs, individual and group therapy, rehabilitation or habilitation programs provided by facility staff in order to carry out the plan of care for the resident.

(2) Services related to the nutrition, comfort, cleanliness and grooming of a resident as required under state licensure and Medicaid survey regulations.

(3) Medical equipment and supplies including wheelchairs except for customized wheelchairs for which separate payment may be made pursuant to 441—subparagraph 78.10(2)“a”(4), medical supplies except for those listed in 441—paragraph 78.10(4)“b,” oxygen except under circumstances specified in 441—paragraph 78.10(2)“a,” and other items required in the facility-developed plan of care.

(4) Nonprescription drugs ordered by the physician except for those specified in 441—paragraph 78.1(2)“f.”

(5) Fees charged by medical professionals for services requested by the facility ~~which~~ that do not meet criteria for direct Medicaid payment.

b. No change.

c. The Medicaid program will provide direct payment to relieve the facility of payment responsibility for certain medical equipment and services ~~which~~ that meet the Medicare definition of medical necessity and are provided by vendors enrolled in the Medicaid programs including:

(1) Physician services.

(2) Ambulance services.

(3) Hospital services.

(4) Hearing aids, braces and prosthetic devices.

(5) Therapy services.

(6) Customized wheelchairs for which separate payment may be made pursuant to 441—subparagraph 78.10(2)“a”(4).

d. Other supplies or services for which direct Medicaid payment may be available include:

(1) Drugs covered pursuant to 441—subrule 78.1(2).

(2) Dental services.

(3) Optician and optometrist services.

(4) Repair of medical equipment and appliances ~~which~~ that belong to the resident.

(5) Transportation to receive medical services beyond 30 miles from the facility (one way), through the broker designated by the department pursuant to a contract between the department and the broker.

(6) Other medical services specified in 441—Chapter 78.

e. No change.

f. Any medical equipment, supplies, appliances, or devices, personal care items, drugs, or other items of personal property that are paid for directly by the Medicaid program or are paid for by the resident or the resident’s family, on a nonrental basis, are the personal property of the resident.

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HUMAN SERVICES DEPARTMENT[441]**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment provides additional disproportionate share (DSH) payments to qualifying hospitals. The amendment at issue involves payment of additional DSH payments to rural prospective payment (PPS) hospitals that are not designated as critical access hospitals (CAHs) and that otherwise qualify to receive DSH payments. The source of the funds for the required nonfederal share payments must be generated from tax levy collections of a city and/or county in which the hospital is located and otherwise subject to applicable federal law and regulations regarding DSH payments.

Any interested person may make written comments on the proposed amendment on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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.

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 249A.4.

The following amendment is proposed.

Adopt the following **new** paragraph **79.1(5)“ac”**:

ac. Rural hospital disproportionate share payment. In addition to payments from the graduate medical education and disproportionate share fund made pursuant to paragraph 79.1(5)“y,” payment shall be made to qualifying Iowa hospitals that elect to participate in rural hospital disproportionate share payments. Interim monthly payments will be made based on the amount of state share that is transferred to the department.

(1) Qualifying criteria. A hospital that qualifies for disproportionate share payments pursuant to paragraph 79.1(5)“y” and that is a rural prospective payment hospital not designated as a critical access hospital qualifies for rural hospital disproportionate share payments.

(2) Source of nonfederal share. The required nonfederal share shall be funds generated from tax levy collections of the county or city in which the hospital is located, and is subject to the conditions specified in this subparagraph and applicable federal law and regulations.

1. The nonfederal share funds shall be distributed to the department prior to the issuance of any disproportionate share payment to a qualifying hospital.

2. The city or county providing the nonfederal share funds shall annually document and certify that the funds provided as the nonfederal share were generated from tax proceeds, and not from any other source including federal grants or another federal funding source.

3. The applicable federal matching rate for the fiscal year shall apply.

(3) Amount of payment. The total amount of disproportionate share payments made pursuant to paragraph 79.1(5)“y” and the rural hospital disproportionate share payments shall not exceed the amount of the state’s allotment under Public Law 102-234. In addition, the total amount of all disproportionate

HUMAN SERVICES DEPARTMENT[441](cont'd)

share payments shall not exceed the hospital-specific disproportionate share limits under Public Law 103-666.

(4) Final disproportionate share adjustment. Qualifying hospitals shall annually provide a disproportionate share hospital survey within the time frames specified by the department, for the purpose of calculating the hospital-specific disproportionate share limits under Public Law 103-666.

ARC 0910C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 129, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

The Legislature rescinded the requirement that the Department adjust payments for physician services rendered in facility settings, consistent with similar policy/methodology used under the federal Medicare program. The Department understands that the intent was to eliminate the adjustments applied to any physician services rendered in facility settings pursuant to paragraph 79.1(7)“b” adopted in 2011. Therefore, that paragraph is being rescinded.

Pursuant to the legislative intent to remove the site-of-service (SoS) payment adjustments beginning with state fiscal year 2014 (i.e., beginning July 1, 2013), the Iowa Medicaid Enterprise (IME) will submit a state plan amendment (SPA) with an effective date of July 1, 2013, to remove the SoS payment adjustments. Once approval from the Centers for Medicare and Medicaid Services (CMS) has been received, the IME will reprocess claims for dates of service on or after July 1, 2013, to remove the SoS adjustments that were made for that time period.

Any interested person may make written comments on the proposed amendment on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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.

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 249A.4.

The following amendment is proposed.

Amend subrule 79.1(7) as follows:

79.1(7) Physicians.

a. No change.

b. ~~Payment reduction for services rendered in facility settings. The fee schedule amount paid to physicians based on paragraph 79.1(7)“a” shall be reduced by an adjustment factor as determined by the department. For the purpose of this provision, a “facility” place of service (POS) is defined as any of the following:~~

- ~~(1) Hospital inpatient unit (POS 21).~~
- ~~(2) Hospital outpatient unit (POS 22).~~
- ~~(3) Hospital emergency room (POS 23).~~
- ~~(4) Ambulatory surgical center (POS 24).~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

- ~~(5) Skilled nursing facility (POS 31).~~
- ~~(6) Inpatient psychiatric facility (POS 51).~~
- ~~(7) Community mental health center (POS 53).~~
- ~~(8) Comprehensive inpatient rehabilitation (POS 61).~~
- c. No change.

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

Provisions regarding additional payment for Medicare crossover claims were originally adopted in anticipation of approval by the Centers for Medicare and Medicaid Services (CMS). The provisions are rescinded in this proposed amendment because CMS did not approve the state plan amendment (SPA), and as a result, the provisions were never implemented. In light of this, paragraphs “c” and “d” of subrule 79.1(22) must be rescinded, as they are not applicable without federal SPA approval.

Any interested person may make written comments on the proposed amendment on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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.

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 249A.4.

The following amendment is proposed.

Amend subrule 79.1(22) as follows:

79.1(22) Medicare crossover claims for inpatient and outpatient hospital services. Subject to approval of a state plan amendment by the federal Centers for Medicare and Medicaid Services, payment for crossover claims shall be made as follows.

a. and b. No change.

~~c.—Additional Medicaid payment for crossover claims uncollectible from Medicare. Medicaid shall reimburse hospitals for the portion of crossover claims not covered by Medicaid reimbursement pursuant to paragraph “b” and not reimbursable by Medicare as an allowable bad debt pursuant to 42 CFR 413.80, as amended June 13, 2001, up to a limit of 30 percent of the amount not paid by Medicaid pursuant to paragraph “b.” The department shall calculate these amounts for each provider on a calendar-year basis and make payment for these amounts by March 31 of each year for the preceding calendar year.~~

~~d.—Application of savings. Savings in Medicaid reimbursements attributable to the limits on inpatient and outpatient crossover claims established by this subrule shall be used to pay costs associated with development and implementation of this subrule before reversion to Medicaid.~~

ARC 0912C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

These proposed amendments clarify the Department’s policies regarding sanctions in the Medicaid program and add detailed descriptions of actions that will cause sanctions to be imposed. The amendments also implement 2013 Iowa Acts, Senate File 357. These amendments are intended to clarify that certain Medicaid debts are nondischargeable in bankruptcy proceedings, in accordance with 11 U.S.C. § 523(a)(4). Finally, these amendments clarify the Department’s timely filing policies for claims under Chapter 80.

The Department’s sanction rules are outdated and do not contain the specificity and detail to allow the Department to fully address the current climate of Medicaid provider fraud, waste, and abuse activities. The landscape of Medicaid fraud, waste and abuse has changed and continues to evolve. These amendments clarify current policy regarding certain bad debts and handling of claims at the Iowa Medicaid Enterprise (IME).

Any interested person may make written comments on the proposed amendments on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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 all Medicaid providers are subject to the same requirements. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend rule 441—79.2(249A) as follows:

441—79.2(249A) Sanctions against provider of care. ~~The department reserves the right to impose sanctions against any practitioner or provider of care who has violated the requirements for participation in the medical assistance program.~~

79.2(1) Definitions.

“*Affiliates*” means persons having an overt or covert relationship such that any one of them directly or indirectly controls or influences or has the power to control or influence another.

“*Iowa Medicaid enterprise*” means the entity comprised of department staff and contractors responsible for the management and reimbursement of Medicaid services for the benefit of Medicaid members.

“*Person*” means any ~~natural person,~~ individual human being or any company, firm, association, corporation, institution, or other legal entity. “*Person*” includes but is not limited to a provider and any affiliate of a provider.

“*Probation*” means a specified period of conditional participation in the medical assistance program.

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“Provider” means an individual human being, firm, corporation, association, or institution, or other legal entity, which is providing or has been approved to provide medical assistance to a recipient member pursuant to the state medical assistance program.

“Suspension from participation” means an exclusion from participation for a specified period of time.

“Suspension of payments” means the withholding temporary cessation of all payments due a provider person until the resolution of the matter in dispute between the provider person and the department.

“Termination from participation” means a permanent exclusion from participation in the medical assistance program.

“Withholding of payments” means a reduction or adjustment of the amounts paid to a provider person on pending and subsequently submitted bills for purposes of offsetting overpayments previously made to the provider a person.

79.2(2) Grounds for sanctioning providers sanctions. Sanctions may be imposed by the department against a provider for any one or more of the following reasons: The department may impose sanctions against any person when appropriate. Appropriate grounds for the department to impose sanctions include, but are not limited to, the following:

a. Presenting or causing to be presented for payment any false, misleading, or fraudulent claim for services or merchandise.

b. Submitting or causing to be submitted false, misleading, or fraudulent information for the purpose of obtaining greater compensation than that to which the provider person is legally entitled, including charges in excess of usual and customary charges.

c. Submitting or causing to be submitted false, misleading, or fraudulent information for the purpose of meeting prior authorization or level of care requirements.

d. Failure Failing to disclose or make available to the department, the department’s or its authorized agent, any law enforcement or peace officer, any agent of the department of inspections and appeals’ Medicaid fraud control unit, any agent of the auditor of state, the Iowa department of justice, any false claims investigator, or any other duly authorized federal or state agent or agency records of services provided to medical assistance recipients and members or records of payments made for those services.

e. Failure Failing to provide and or maintain the high-quality of services, or a requisite assurance of a framework of high-quality services, to medical assistance recipients within accepted medical community standards as adjudged by professional peers members.

f. Engaging in a course of conduct or performing an act which is in violation of state or federal regulations of the medical assistance program, or continuing that conduct following notification that it should cease any federal, state, or local statute, rule, regulation, or ordinance, or an applicable contractual provision, that relates to, or arises out of, any publicly or privately funded health care program, including but not limited to any state medical assistance program.

g. Failure to comply with the terms of the provider certification on each medical assistance check endorsement. Submitting a false, misleading, or fraudulent certification or statement, whether the certification or statement is explicit or implied, to the department or the department’s representative or to any other publicly or privately funded health care program.

h. Overutilization of the medical assistance program by inducing, furnishing or otherwise causing the recipient a member to receive services or merchandise not required or requested by the recipient.

i. Rebating or accepting a fee or portion of a fee or a charge for medical assistance or patient referral or charging a Medicaid member for any covered service.

j. Violating any provision of Iowa Code chapter 249A, or any rule promulgated pursuant thereto, or violating any federal or state false claims Act, including but not limited to Iowa Code chapter 685.

k. Submission of a Submitting or causing to be submitted false, misleading, or fraudulent information in an application for provider status under the medical assistance program or any quality review or other submission required to maintain good standing in the program.

l. Violations of any laws, regulations Violating any law, regulation, or code of ethics governing the conduct of occupations or professions or regulated industries an occupation, profession, or other

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regulated business activity, when the violation relates to, or arises out of, the delivery of services under the state medical assistance program.

~~*m.* Conviction of a criminal offense relating to performance of a provider agreement with the state or for negligent practice resulting in death or injury to patients. Breaching a term of any contract or other agreement with the department, including but not limited to a provider agreement or a settlement agreement.~~

~~*n.* Failure Failing to meet standards required by state or federal law for participation, for example, including but not limited to licensure.~~

~~*o.* Exclusion from Medicare because of fraudulent or abusive practices or any other state or federally funded medical assistance program.~~

~~*p.* Documented practice of Except as authorized by law, charging recipients a person for covered services over and above that paid for by the department, except as authorized by law or soliciting, offering, or receiving a kickback, bribe, or rebate.~~

~~*q.* Failure Failing to correct deficiencies a deficiency in provider operations after receiving notice of these deficiencies the deficiency from the department or other federal or state agency.~~

~~*r.* Formal reprimand or censure by an association of the provider's peers for unethical practices or similar entity.~~

~~*s.* Suspension or termination from participation in another governmental medical program such as workers' compensation, crippled children's services, rehabilitation services or Medicare, including but not limited to workers' compensation or any publicly or privately funded health care program.~~

~~*t.* Indictment or other institution of charges for fraudulent billing practices, or plea of guilty or nolo contendere to, or conviction of, any crime punishable by a term of imprisonment greater than one year, any crime of violence, any controlled substance offense, or any crime involving an allegation of dishonesty or negligent practice resulting in death or injury to the a provider's patients patient.~~

~~*u.* Violation of a condition of probation, suspension of payments, or other sanction.~~

~~*v.* Loss, restriction, or lack of hospital privileges.~~

~~*w.* Endangering the health, welfare, or safety of a person.~~

~~*x.* Billing for services provided by an excluded, nonenrolled, sanctioned, or otherwise ineligible provider or person.~~

~~*y.* Failing to submit a self-assessment, corrective action plan, or other requirement for continued participation in the medical assistance program, or failing to repay an overpayment of medical assistance funds, in a timely manner.~~

~~*z.* Attempting, aiding or abetting, conspiring, or knowingly advising or encouraging another person in the commission of one or more of the grounds specified herein.~~

~~**79.2(3) Sanctions.** The following sanctions may be imposed on providers based on the grounds specified in 79.2(2).~~

~~*a.* The department may impose any of the following sanctions on any person:~~

~~*a-* (1) A term of probation for participation in the medical assistance program.~~

~~*b-* (2) Termination from participation in the medical assistance program.~~

~~*c-* (3) Suspension from participation in the medical assistance program. This includes when the department is notified by the Centers for Medicare and Medicaid Services, Department of Health and Human Services, that a practitioner has been suspended from participation under the Medicare program. These practitioners shall be suspended from participation in the medical assistance program effective on the date established by the Centers for Medicare and Medicaid Services and at least for the period of time of the Medicare suspension.~~

~~*d-* (4) Suspension Suspending or withholding all or some of the payments to provider.~~

~~*e-* Referral to peer review.~~

~~*f-* (5) Prior authorization of services.~~

~~*g-* (6) One hundred percent review Review of the provider's claims prior to payment.~~

~~*h-* Referral to the state licensing board for investigation.~~

~~*i-* Referral to appropriate federal or state legal authorities for investigation and prosecution under applicable federal or state laws.~~

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~~j. Providers with a total Medicaid credit balance of more than \$500 for more than 60 consecutive days without repaying or reaching written agreement to repay the balance shall be charged interest at 10 percent per year on each overpayment. The interest shall begin to accrue retroactively to the first full month that the provider had a credit balance over \$500.~~

~~Nursing facilities shall make repayment or reach agreement with the division of medical services. All other providers shall make repayment or reach agreement with the Iowa Medicaid enterprise.~~

~~b. The withholding of payments or a recoupment of medical assistance funds is not, in itself, a sanction. Overpayments and interest charged may be withheld from future payments to the provider without imposing a sanction.~~

~~c. Mandatory suspensions and terminations.~~

~~(1) Suspension or termination from participation in the medical assistance program is mandatory when a person is suspended or terminated from participation in the Medicare program, another state's medical assistance program, or by any licensing body. The suspension or termination from participation in the medical assistance program shall be retroactive to the date established by the Centers for Medicare and Medicaid Services or other state or body and, in the case of a suspension, must continue until at least such time as the Medicare or other state's or body's suspension ends.~~

~~(2) Termination is mandatory when a person pleads guilty or nolo contendere to, or is convicted of, any crime punishable by a term of imprisonment greater than five years, any crime of violence, any controlled substance offense, or any crime involving an allegation of dishonesty. The termination shall be retroactive to the date the crime was committed, and any medical assistance payments made between the commission of the offense and the date of conviction constitutes an overpayment that the department shall recoup.~~

~~(3) Suspension from participation is mandatory whenever a person, or an affiliate of the person, has an outstanding overpayment of medical assistance funds.~~

~~d. Notwithstanding any previous successful enrollment in the medical assistance program, the person's passing of any background check by the department or any other entity, or similar prior approval for participation as a provider in the medical assistance program, in whole or in part, termination from the medical assistance program is mandatory when, in the case of a natural person, the person has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry or, in the case of a corporation or similar entity, 5 percent or more of the corporation or similar entity is owned by a person who has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry.~~

~~79.2(4) Imposition and extent of sanction.~~

~~a. The decision on the sanction to be imposed shall be the commissioner's or designated representative's except in the case of a provider terminated from the Medicare program.~~

~~b. a. The following factors shall be considered department shall consider the totality of the circumstances in determining the sanction or sanctions to be imposed. The factors the department may consider include, but are not limited to:~~

- ~~(1) Seriousness of the offense.~~
- ~~(2) Extent of violations.~~
- ~~(3) History of prior violations.~~
- ~~(4) Prior imposition of sanctions.~~
- ~~(5) Prior provision of provider education (technical assistance).~~
- ~~(6) Provider willingness to obey program rules.~~
- ~~(7) Whether a lesser sanction will be sufficient to remedy the problem.~~
- ~~(8) Actions taken or recommended by peer review groups or licensing boards.~~

~~b. A ground for sanction may precede enrollment in the medical assistance program, the person's passing of a background check, or similar prior approval for participation as a provider in the medical assistance program. The mere fact of an enrollment, a person's passing of a background check, or another approval is not relevant to the sanction decision.~~

~~c. Upon certification from the U.S. Department of Justice or the Iowa department of justice that a provider has failed to respond in a timely manner to a civil investigative demand, the department~~

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shall immediately suspend the provider from participation for one year and suspend all payments to the provider until all program concerns are resolved.

79.2(5) Scope of sanction.

~~a.~~ The sanction may be applied to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the violator is affiliated where the conduct was accomplished in the course of official duty or was effectuated with the knowledge or approval of that person.

~~b. a.~~ Suspension or termination from participation shall preclude the provider person from submitting claims for payment, whether personally or through claims submitted by any clinic, group, corporation, or other association other person or affiliate, for any services or supplies except for those services provided before the suspension or termination.

~~e. b.~~ No clinic, group, corporation, or other association which is the provider of services shall person may submit claims for payment for any services or supplies provided by a person within the organization or affiliate who has been suspended or terminated from participation in the medical assistance program except for those services provided before the suspension or termination.

~~d. c.~~ When the provisions of paragraph 79.2(5) "e" this subrule are violated by a provider of services which is a clinic, group, corporation, or other association, the department may shall suspend or terminate the organization, or any other individual person within the organization who is any person responsible for the violation.

79.2(6) Notice of sanction to third parties. When a provider has been sanctioned a sanction is imposed, the department shall may notify as appropriate the third parties of the findings made and the sanction imposed, including but not limited to applicable professional society, board societies or boards of registration or licensure, law enforcement or peace officers, and federal or state agencies of the findings made and the sanctions imposed. The imposition of a sanction is not required before the department may notify third parties of a person's conduct.

79.2(7) Notice of violation. Should the department have information that indicates that a provider may have submitted bills or has been practicing in a manner inconsistent with the program requirements, or may have received payment for which the provider may not be properly entitled, the department shall notify the provider of the discrepancies noted. Notification shall set forth:

~~a.~~ The nature of the discrepancies or violations; Any order of sanction shall be in writing and include the name of the person subject to sanction, identify the ground for the sanction and its effective date, and be sent to the person's last-known address. If the department sanctions a provider, the order of sanction shall also include the national provider identification number of the provider and be sent to the provider's last address on file within the medical assistance program.

~~b.~~ The known dollar value of the discrepancies or violations; In the case of a currently enrolled provider otherwise in good standing with all program requirements, the provider shall have 15 days subsequent to the date of the notice prior to the department action to show cause why the action should not be taken. If the provider fails to do so, the sanction shall remain effective pending any subsequent appeal under 441—Chapter 7. If the provider attempts to show cause but the department determines the sanction should remain effective pending any subsequent appeal under 441—Chapter 7, the provider may seek a temporary stay of the department's action from the director or the director's designee by filing an application for stay with the appeals section. The director or the director's designee shall consider the factors listed in Iowa Code section 17A.19(5) "c."

~~c.~~ The method of computing the dollar value,

~~d.~~ Notification of further actions to be taken or sanctions to be imposed by the department, and

~~e.~~ Notification of any actions required of the provider. The provider shall have 15 days subsequent to the date of the notice prior to the department action to show cause why the action should not be taken.

79.2(8) Suspension or withholding of payments pending a final determination. Where the department has notified a provider of a violation pursuant to 79.2(7) or an overpayment any sanction, overpayment, civil monetary penalty, or other adverse action, the department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the

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amounts in question or may suspend payment pending a final determination. Where the department intends to withhold or suspend payments it shall notify the provider in writing.

79.2(9) Civil monetary penalties and interest. Civil monetary penalties and interest assessed in accordance with 2013 Iowa Acts, Senate File 357, section 5 or section 11, are not allowable costs for any aspect of determining payment to a person within the medical assistance program. Under no circumstance shall the department reimburse a person for such civil monetary penalties or interest.

79.2(10) Report and return of identified overpayment.

a. If a person has identified an overpayment, the person must report and return the overpayment in the form and manner set forth in this subrule.

b. A person has identified an overpayment if the person has actual knowledge of the existence of the overpayment or acts in reckless disregard or deliberate ignorance of the existence of the overpayment.

c. An overpayment required to be reported under 2013 Iowa Acts, Senate File 357, section 3, must be made in writing, addressed to the Program Integrity Unit of the Iowa Medicaid Enterprise, and contain all of the following:

- (1) Person's name.
- (2) Person's tax identification number.
- (3) How the error was discovered.
- (4) The reason for the overpayment.
- (5) Claim number(s), as appropriate.
- (6) Date(s) of service.
- (7) Member identification number(s).
- (8) National provider identification (NPI) number.
- (9) Description of the corrective action plan to ensure the error does not occur again.
- (10) Whether the person has a corporate integrity agreement with the Office of the Inspector General (OIG) or is under the OIG Self-Disclosure Protocol or is presently under sanction by the department.
- (11) The time frame and the total amount of refund for the period during which the problem existed that caused the refund.
- (12) If a statistical sample was used to determine the overpayment amount, a description of the statistically valid methodology used to determine the overpayment.
- (13) A refund in the amount of the overpayment.

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

ITEM 2. Amend subrule 79.4(2) as follows:

79.4(2) Audit or review of clinical and fiscal records by the department. Any Medicaid provider may be audited or reviewed at any time at the discretion of the department.

a. Authorized representatives of the department shall have the right, upon proper identification, to audit or review the clinical and fiscal records of the provider to determine whether:

- (1) The department has correctly paid claims for goods or services.
- (2) The provider has furnished the services to Medicaid members.
- (3) The provider has retained clinical and fiscal records that substantiate claims submitted for payment.
- (4) The goods or services provided were in accordance with Iowa Medicaid policy.

b. Requests for provider records by the Iowa Medicaid enterprise ~~surveillance and utilization review services~~ program integrity unit shall include Form 470-4479, Documentation Checklist, which is available at www.ime.state.ia.us/Providers/Forms.html, listing the specific records that must be provided for the audit or review pursuant to paragraph 79.3(2) "d" to document the basis for services or activities provided, ~~in the following format:~~

Iowa Department of Human Services
Iowa Medicaid Enterprise Surveillance and Utilization Review Services

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Documentation Checklist

Date of Request: _____
 Reviewer Name & Phone Number: _____
 Provider Name: _____
 Provider Number: _____
 Provider Type: _____

Please sign this form and return it with the information requested.
 Follow the checklist to ensure that all documents requested for each patient have been copied and enclosed with this request. The documentation must support the validity of the claim that was paid by the Medicaid program.

Please send copies. Do not send original records.

If you have any questions about this request or checklist, please contact the reviewer listed above.

	{specific documentation required}
	[Note: number of specific documents required varies by provider type]
	Any additional documentation that demonstrates the medical necessity of the service provided or otherwise required for Medicaid payment. List additional documentation below if needed.

The person signing this form is certifying that all documentation that supports the Medicaid billed rates, units, and services is enclosed.

Signature	Title	Telephone Number
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c. Records generated and maintained by the department may be used by auditors or reviewers and in all proceedings of the department.

ITEM 3. Adopt the following **new** subrule 79.9(6):

79.9(6) The acceptance of Medicaid funds by means of a prospective or interim rate creates an express trust. The Medicaid funds received constitute the trust res. The trust terminates when the rate is retrospectively adjusted or otherwise finalized and, if applicable, any Medicaid funds determined to be owed are repaid in full to the department.

ITEM 4. Adopt the following **new** subrule 79.9(7):

79.9(7) Medical assistance funds are incorrectly paid whenever a person who provided the service to the member for which the department paid was at the time service was provided the parent of a minor child, spouse, or legal representative of the member. Further, medical assistance funds are incorrectly paid whenever 5 percent or more of the corporation or similar entity which the department paid was owned by a person who was the mother, father, son, daughter, brother, sister, spouse, or legal representative of the member to whom services were provided.

ITEM 5. Adopt the following **new** subrule 79.9(8):

79.9(8) The rules of the medical assistance program shall not be construed to require payment of medical assistance funds, in whole or in part, directly or indirectly, overtly or covertly, for the provision of non-Medicaid services. The rules of the medical assistance program shall be interpreted in such a manner to minimize any risk that medical assistance funds might be used to subsidize services to persons other than members of the medical assistance program.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend rule 441—80.4(249A) as follows:

441—80.4(249A) Time limit for submission of claims and claim adjustments.

80.4(1) *Submission of claims.* Payment will not be made on any claim ~~where~~ when the amount of time that has elapsed between the date the service was rendered and the date the initial claim is received by the Iowa Medicaid enterprise exceeds 365 days. The department shall consider claims submitted beyond the 365-day limit for payment only if retroactive eligibility on newly approved cases is made that exceeds 365 days or if attempts to collect from a third-party payer delay the submission of a claim. In the case of retroactive eligibility, the claim must be received within 365 days of the first notice of eligibility by the department.

80.4(2) *Claim adjustments and resubmissions.* A provider's request for an adjustment to a paid claim or resubmission of a denied claim must be received by the Iowa Medicaid enterprise within ~~one year~~ 365 days from the date the claim was ~~paid~~ last adjudicated in order to have the adjustment or resubmission considered. In no case will a claim be paid if the claim is received beyond two years from the date of service.

80.4(3) *Definition.* For purposes of this rule, a claim is "received" when entered into the department's payment system with an action of pay, deny, or suspend. Any claim returned to the provider without such action is not "received."

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.12.

ARC 0917C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments bring the Iowa Medicaid Enterprise (IME) into compliance with Section 6401 of the Patient Protection and Affordable Care Act (PPACA), which requires state Medicaid agencies to collect application fees from enrolling and reenrolling providers unless they are otherwise exempt.

Any interested person may make written comments on the proposed amendments on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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 these amendments implement a federal requirement. However, requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule 79.14(2) as follows:

79.14(2) Submittal of application. The provider shall submit the appropriate application forms, including the application fee, if required, to the Iowa Medicaid enterprise provider services unit by

HUMAN SERVICES DEPARTMENT[441](cont'd)

personal delivery, by e-mail, via online enrollment systems, or by mail to P.O. Box 36450, Des Moines, Iowa 50315.

a. to c. No change.

d. Application fees.

(1) Providers who are enrolling or reenrolling in the Iowa Medicaid program shall submit an application fee with their application unless they are exempt as set forth in this paragraph.

(2) Fee amount. The application fee shall be in the amount prescribed by the Secretary of the U.S. Department of Health and Human Services (the Secretary) for the calendar year in which the application is submitted and in accordance with 42 U.S.C. 1395cc(j)(2)(C).

(3) Nonrefundable. The application fee is nonrefundable, except if submitted with one of the following:

1. A hardship exception request that is subsequently approved by the Secretary.

2. An application that is subsequently denied as a result of a temporary moratorium under 2013 Iowa Acts, Senate File 357, section 12.

3. An application or other transaction in which the application fee is not required.

(4) The process for enrolling or reenrolling a provider will not begin until the application fee has been received by the department or a hardship exception request has been approved by the Secretary.

(5) Exempt providers. The following providers shall not be required to submit an application fee:

1. Individual physicians or nonphysician practitioners.

2. Providers that are enrolled in Medicare, another state's Medicaid program or another state's children's health insurance program.

3. Providers that have paid the applicable application fee within 12 months of the date of application submission to a Medicare contractor or another state.

(6) All application fees collected shall be used for the costs associated with the screening procedures as described in subrule 79.14(4). Any unused portion of the application fees collected shall be returned to the federal government in accordance with 42 CFR § 455.460.

ITEM 2. Amend subrule 79.14(15) as follows:

79.14(15) Temporary moratoria. The Iowa Medicaid enterprise must impose any temporary moratorium as identified in 42 CFR §455.470 pursuant to 2013 Iowa Acts, Senate File 357, section 12.

ARC 0909C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

This amendment, which proposes to adopt new rule 441—80.7(249A), is a technical change that in effect relocates the content of rule 441—76.13(249A), health care data match program, to the more applicable Chapter 80.

This amendment is proposed simultaneously with an amendment published herein under Notice of Intended Action as **ARC 0908C** to rescind Chapter 76, “Application and Investigation,” including rule 441—76.13(249A), and to adopt a new Chapter 76 in lieu thereof.

Any interested person may make written comments on this proposed amendment on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des

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Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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 249A.4.

The following amendment is proposed.

Adopt the following **new** rule 441—80.7(249A):

441—80.7(249A) Health care data match program. As a condition of doing business in Iowa, health insurers shall provide, upon the request of the state, information with respect to individuals who are eligible for or are provided medical assistance under the state's medical assistance state plan to determine (1) during what period the member or the member's spouse or dependents may be or may have been covered by a health insurer and (2) the nature of the coverage that is or was provided by the health insurer. This requirement applies to self-insured plans, group health plans as defined in the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406), service benefit plans, managed care organizations, pharmacy benefits managers, and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

80.7(1) Agreement required. The parties shall sign a data use agreement for the purposes of this rule. The agreement shall prescribe the manner in which information shall be provided to the department of human services and the acceptable uses of the information provided.

a. The initial provision of data shall include the data necessary to enable the department to match covered persons and identify third-party payers for the two-year period before the initial provision of the data. The data shall include the name, address, and identifying number of the plan.

b. Ongoing monthly matches may be limited to changes in the data previously provided, including additional covered persons, with the effective dates of the changes.

80.7(2) Agreement form.

a. An agreement with the department shall be in substantially the same form as Form 470-4415, Agreement for Use of Data.

b. An agreement with the department's designee shall be in a form approved by the designee, which shall include privacy protections equivalent to those provided in Form 470-4415, Agreement for Use of Data.

80.7(3) Confidentiality of data. The exchange of information carried out under this rule shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to:

a. The federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and

b. Regulations promulgated in accordance with that Act and published in 45 CFR Parts 160 through 164.

ARC 0915C

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 235.3 and 2013 Iowa Acts, House File 590, the Department of Human Services proposes to amend Chapter 172, “Family-Centered Child Welfare Services,” Chapter 175, “Abuse of Children,” and Chapter 186, “Community Care,” Iowa Administrative Code.

These amendments establish a new assessment process (a Differential Response System) for reports that constitute child abuse allegations. The amendments require a current determination of abuse to be founded if a previous incident of abuse was confirmed within the past five years. The amendments also provide for the removal of a person’s name from the central abuse registry after five years if the report and disposition data determined the person committed physical abuse, failure to provide critical care, or the presence of an illegal drug in a child’s body so long as the abuse did not result in the child’s death or serious injury and there was not further confirmed abuse within that five-year time period. Finally, the amendments define and structure community care services and family-centered child welfare services as they relate to differential response.

The amendments bring the Department into compliance with legislative requirements found in 2013 Iowa Acts, House File 590, and the CAPTA Reauthorization Act of 2010.

Any interested person may make written comments on the proposed amendments on or before August 27, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 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 is a potential impact on private sector jobs. More individuals across the state will have the ability to work in additional fields of employment and have access to additional educational opportunities if their names are removed from the registry in five years versus ten years.

These amendments are intended to implement Iowa Code chapter 235 and 2013 Iowa Acts, House File 590.

The following amendments are proposed.

ITEM 1. Amend rule **441—172.1(234)**, definition of “Conditionally safe,” as follows:

“*Conditionally safe*” means that one or more signs of present or impending danger to a child that are identified on Form 470-4132 or 470-4132(S), on the Safety Assessment form, which are not offset by the child’s degree of vulnerability or the caretaker’s protective capacity. A safety plan is required.

ITEM 2. Amend rule 441—172.3(234) as follows:

441—172.3(234) Authorization. When the agency has approved provision of family-centered child welfare services for a child and family, the agency worker shall notify the contractor by issuing Form 470-3055, the Referral and Authorization for Child Welfare Services form. ~~The This~~ This referral form shall indicate:

1. The specific service category authorized (safety plan; family safety, risk, and permanency; ~~drug testing; family team meeting facilitation; or legal services for permanency~~); and

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2. The duration of the authorization.

ITEM 3. Amend paragraph **172.13(2)“d”** as follows:

d. Make daily face-to-face contact with the alleged child victim or child subject and the child's parents as identified in ~~Form 470-4661 or 470-4661(S)~~, the Safety Plan, ~~form~~ and ~~Form 470-5011~~, the Safety Plan Services Referral Face Sheet. The frequency of contact with siblings and others involved in the case shall be as identified on ~~Form 470-5011~~ the Safety Plan Service Referral Face Sheet.

ITEM 4. Amend paragraph **172.22(1)“c”** as follows:

c. Evaluation of the ~~child's age~~, the findings of a child abuse assessment report, and the family's risk assessment score.

ITEM 5. Amend rule 441—175.21(232,235A) as follows:

441—175.21(232,235A) Definitions.

“Adequate food, shelter, clothing, medical or mental health treatment, supervision or other care” means that food, shelter, clothing, medical or mental health treatment, supervision or other care which, if not provided, would constitute a denial of critical care.

“Allegation” means a statement setting forth a condition or circumstance yet to be proven.

“Assessment” means the process by which the department ~~carries out its legal mandate to ascertain if child abuse has occurred, to record findings, to develop conclusions based upon evidence, to address the safety of the~~ responds to all accepted reports of alleged child abuse. An “assessment” addresses child and safety, family functioning, engage culturally competent practice, and identifies the family strengths and needs, and engages the family in services if needed, enhance family strengths and address needs in a culturally sensitive manner. The department's assessment process occurs either through a child abuse assessment or a family assessment.

“Assessment intake” means the process by which the department receives and records ~~reports a~~ report of suspected child abuse.

“Caretaker” means a person responsible for the care of a child as defined in Iowa Code section 232.68.

“Case” means a report of suspected child abuse that has been accepted for assessment services.

“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); or which allege child abuse as defined in Iowa Code section 232.68(2)“a”(4) that also allege imminent danger, 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.

“Community care,” as provided in rule 441—186.1(234), means child- and family-focused services and supports provided to families referred from the department. Services shall be geared toward keeping the children in the family safe from abuse and neglect; keeping the family intact; preventing the need for further intervention by the department, including removal of the child from the home; and building ongoing linkages to community-based resources that improve the safety, health, stability, and well-being of families served.

“Denial of critical care” means the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision or other care necessary for the child's health and welfare when financially able to do so, or when offered financial or other reasonable means to do so, and shall mean any of the following:

1. Failure to provide adequate food and nutrition to the extent that there is danger of the child suffering injury or death.

2. Failure to provide adequate shelter to the extent that there is danger of the child suffering injury or death.

3. Failure to provide adequate clothing to the extent that there is danger of the child suffering injury or death.

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4. Failure to provide adequate health care to the extent that there is danger of the child suffering injury or death. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child and shall not be placed on the child abuse registry. However, a court may order that medical service be provided where the child's health requires it.

5. Failure to provide the mental health care necessary to adequately treat an observable and substantial impairment in the child's ability to function.

6. Gross failure to meet the emotional needs of the child necessary for normal development.

7. Failure to provide for the adequate supervision of the child that a reasonable and prudent person would provide under similar facts and circumstances when the failure results in direct harm or creates a risk of harm to the child.

8. Failure to respond to the infant's life-threatening conditions (also known as withholding medically indicated treatment) by providing treatment (including appropriate nutrition, hydration and medication) which in the treating physician's reasonable medical judgment will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's reasonable medical judgment any of the following circumstances apply: the infant is chronically and irreversibly comatose; the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane.

"Department" means the department of human services.

"Differential response" means an assessment system in which there are two discrete pathways to respond to accepted reports of child abuse, a child abuse assessment and a family assessment. The child abuse assessment pathway shall require a determination of abuse and a determination of whether criteria for placement on the central abuse registry are met.

"Facility providing care to a child" means any public or private facility, including an institution, hospital, health care facility, intermediate care facility for ~~mentally retarded~~ persons with an intellectual disability, residential care facility for ~~mentally retarded~~ persons with an intellectual disability, or skilled nursing facility, group home, mental health facility, residential treatment facility, shelter care facility, detention facility, or child care facility which includes licensed day care centers, all registered family and group day care homes and licensed family foster homes. A public or private school is not a facility providing care to a child, unless it provides overnight care. Public facilities which are operated by the department of human services are assessed by the department of inspections and appeals.

"Family 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"(4), but do not allege imminent danger, death, or injury to a child. A "family assessment" does not include a determination of whether a case meets the definition of child abuse and does not include a determination of whether criteria for placement on the central abuse registry are met.

"Illegal drug" means cocaine, heroin, amphetamine, methamphetamine or other illegal drugs, including marijuana, or combinations or derivatives of illegal drugs which were not prescribed by a health practitioner.

"Immediate threat" or "imminent danger" means conditions which, if no response were made, would be more likely than not to result in sexual abuse, injury or death to a child.

"Infant," as used in the definition of "denial of critical care," numbered paragraph "8," means an infant less than one year of age or an infant older than one year of age who has been hospitalized continuously since birth, who was born extremely prematurely, or who has a long-term disability.

"Nonaccidental physical injury" means an injury which was the natural and probable result of a caretaker's actions which the caretaker could have reasonably foreseen, or which a reasonable person could have foreseen in similar circumstances, or which resulted from an act administered for the specific purpose of causing an injury.

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“*Physical injury*” means damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition or damage to any bodily tissue which results in the death of the person who has sustained the damage.

“*Preponderance of evidence*” means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

“*Proper supervision*” means that supervision which a reasonable and prudent person would exercise under similar facts and circumstances, but in no event shall the person place a child in a situation that may endanger the child’s life or health, or cruelly or unduly confine the child. Dangerous operation of a motor vehicle is a failure to provide proper supervision when the person responsible for the care of a child is driving recklessly, or driving while intoxicated with the child in the motor vehicle. The failure to restrain a child in a motor vehicle does not, by itself, constitute a cause to assess a child abuse report.

“*Rejected intake*” means a report of suspected child abuse that has not been accepted for assessment.

“*Reporter*” means the person making a verbal or written statement to the department, alleging child abuse.

“*Report of suspected child abuse*” means a verbal or written statement made to the department by a person who suspects that child abuse has occurred.

“*Subject of a report of child abuse*” means any of the following:

1. A child named in a report as having been abused, or the child’s attorney or guardian ad litem.
2. A parent or the attorney for the parent of a child named in a child abuse assessment summary as having been abused.
3. A guardian or legal custodian, or that person’s attorney, of a child named in a child abuse assessment summary as having been abused.
4. A person or the attorney for the person named in a child abuse assessment summary as having abused a child.

“*Unduly*” shall mean improper or unjust, or excessive.

ITEM 6. Amend rule 441—175.22(232) as follows:

441—175.22(232) Receipt of a report of suspected child abuse. Reports of suspected child abuse shall be received by local department offices, the central abuse registry, or the Child Abuse Hotline.

175.22(1) No change.

175.22(2) Reports of suspected child abuse which do not meet the legal definition of child abuse shall become rejected intakes.

a. If a report of suspected child abuse does not meet the legal definition of child abuse or is accepted as a family assessment, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency.

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

ITEM 7. Amend rule 441—175.23(232) as follows:

441—175.23(232) Sources of report of suspected child abuse.

175.23(1) Mandatory reporters. Any person meeting the criteria of a mandatory reporter is required to make an oral report of the suspected child abuse to the department within 24 hours of becoming aware of the abusive incident and make a written report to the department within 48 hours following the oral report. If the person making the report has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

175.23(2) Others required to report. In addition to mandatory reporters which are so designated by the Iowa Code, there are other classifications of persons who are required, either by administrative rule or department policy, to report suspected child abuse when this is a duty identified through the person’s employment. Others required to report include:

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- a. Income maintenance workers.
- b. Certified adoption investigators.

175.23(3) No change.

ITEM 8. Amend rule 441—175.24(232) as follows:

441—175.24(232) ~~Child abuse assessment~~ **Assessment intake process.** The primary purpose of intake is to obtain available and pertinent information regarding an allegation of child abuse and determine whether a report of suspected child abuse becomes ~~a case accepted~~ for assessment or a rejected intake.

175.24(1) To result in ~~a case an assessment~~, the report of suspected child abuse must include some information to indicate all of the following.

- a. The alleged victim of child abuse is a child.
- b. The alleged perpetrator of child abuse is a caretaker.
- c. The alleged incident falls within the definition of child abuse.

175.24(2) If the report constitutes a child abuse allegation, a determination is made as to whether the assessment will be assigned as a child abuse assessment, to be commenced within 24 hours of receiving the report, or a family assessment, to be commenced within 72 hours of receiving the report.

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 (10); or which allege child abuse as defined in Iowa Code section 232.68(4) 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) The alleged abuse type includes a category other than denial of critical care.
- (2) The allegation requires a one-hour response or alleges imminent danger, death, or injury to a child.
- (3) The child has been taken into protective custody as a result of the allegation.
- (4) There is an open service case on the alleged child victim or any sibling or any other child who resides in the home or in the home of the noncustodial parent if the noncustodial parent is the alleged person responsible.
- (5) The alleged person responsible is not a birth or adoptive parent, a legal guardian, or a member of the child's household.
- (6) The child does not live in the home with a birth or adoptive parent or legal guardian.
- (7) There has been a termination of parental rights in juvenile court on the alleged person responsible or on any caretaker who resides in the home.
- (8) There has been prior confirmed or founded abuse within the past six months which lists any caretaker who resides in the home as the person responsible.
- (9) It is alleged that a caretaker is selling illegal drugs from the family home.
- (10) The allegation is failure to thrive or that the caretaker has failed to respond to an infant's life-threatening condition.
- (11) The allegation involves an incident for which the caretaker has been charged with a felony under Iowa Code chapter 726.
- (12) The report of suspected abuse was originally assigned as a family assessment, and imminent danger, death, or injury to a child is identified through the course of the family assessment.

b. A family assessment is required for all accepted reports which allege child abuse as defined in Iowa Code section 232.68(2) "a"(4) but do not allege imminent danger, death, or injury to a child. If all of the following factors are met, a family assessment shall be required:

- (1) The alleged abuse type is denial of critical care only.
- (2) The allegation does not require a one-hour response or allege imminent danger, death, or injury to a child.
- (3) The child has not been taken into protective custody as a result of the allegation.
- (4) There is no current open service case on the alleged child victim or any sibling or any other child who resides in the home or in the home of the noncustodial parent if the noncustodial parent is the alleged person responsible.

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(5) The alleged person responsible is a birth or adoptive parent, a legal guardian, or a member of the child's household.

(6) The child lives in the home with a birth or adoptive parent or legal guardian.

(7) There has not been a termination of parental rights in juvenile court on the alleged person responsible or on any caretaker who resides in the home.

(8) There has been no prior confirmed or founded abuse within the past six months which lists any caretaker who resides in the home as the person responsible.

(9) It is not alleged that a caretaker is selling illegal drugs from the family home.

(10) The allegation is not failure to thrive or that the caretaker has failed to respond to an infant's life-threatening condition.

(11) The allegation does not involve an incident for which the caretaker has been charged with a felony under Iowa Code chapter 726.

(12) The report of suspected abuse is originally assigned as a family assessment, and imminent danger, death, or injury to a child is not identified through the course of the family assessment.

~~175.24(2)~~ **175.24(3)** Only ~~mandatory reporters~~ or the person making the a report of suspected abuse may be contacted during the intake process to expand upon or to clarify information in the report. Any contact with subjects of the report or with ~~nonmandatory~~ reporters, other than the original ~~reporter~~ reporter(s), automatically causes the report of suspected child abuse to be accepted for assessment.

175.24(3) **175.24(4)** When it is determined that the report of suspected child abuse fails to constitute an allegation of child abuse, the report of suspected child abuse shall become a rejected intake. Rejected intake information shall be maintained by the department for three years from the date the report was rejected and shall then be destroyed.

175.24(4) **175.24(5)** The county attorney shall be notified of all reports of suspected child abuse. When a report of suspected child abuse is received which does not meet the requirements ~~to become a case, but has~~ for an assessment or is accepted as a family assessment, and there is information about ~~illegal activity~~ a criminal act harming a child, the department shall notify law enforcement of the report.

175.24(5) **175.24(6)** When it is determined that a report of a child needing the assistance of the court fails to meet the definition of "child in need of assistance" in Iowa Code section 232.2(6), the report shall become a rejected child in need of assistance intake. The department shall maintain the report for three years from the date the report was rejected and shall then destroy it.

ITEM 9. Amend rule 441—175.25(232) as follows:

~~441—175.25(232) Child abuse assessment~~ **Assessment process.** ~~An~~ A child abuse assessment shall be initiated within 24 hours following the report of suspected child abuse ~~becoming a case~~. A family assessment shall be initiated within 72 hours following the report of suspected child abuse. The primary purpose in conducting an assessment is to protect the safety of the child named in the report. The secondary purpose of the assessment is to engage the child's family in services in a culturally competent way, to enhance family strengths and to address needs, where this is necessary and desired. ~~There are eight tasks associated with completion of the assessment. These are:~~

175.25(1) *Observing and evaluating the child's safety.* A safety assessment and risk assessment will be completed during the course of a child abuse assessment or family assessment.

a. ~~In instances~~ During a child abuse assessment, when there is an immediate threat to the child's safety, reasonable efforts shall be made to observe the alleged child victim and evaluate the safety of the child named in the report within one hour of receipt of the report of suspected child abuse. Otherwise, reasonable efforts shall be made to observe the alleged child victim and evaluate the child's safety within 24 hours of receipt of the report of suspected child abuse ~~becoming a case~~.

(1) When the alleged perpetrator clearly does not have access to the alleged child victim, reasonable efforts shall be made to observe the alleged child victim and evaluate the child's safety within 96 hours of receipt of the report of suspected child abuse.

(2) When reasonable efforts have been made to observe the alleged child victim within the specified time frames and the worker has established that there is no risk to the alleged child victim, the observation of the alleged child victim may be delayed or waived with supervisory approval.

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b. During a family assessment, reasonable efforts shall be made to observe the alleged child victim and evaluate the child's safety within 72 hours of receipt of the report of suspected child abuse.

(1) When reasonable efforts have been made to observe the alleged child victim within the specified time frame and the worker has established that there is no risk to the alleged child victim, the observation of the alleged child victim may be delayed or waived with supervisory approval.

(2) If at any time during a family assessment a child is determined unsafe or in imminent danger, it appears that the immediate safety or well-being of a child is endangered, it appears that the family may flee or the child may disappear, or that the facts otherwise warrant, the department shall immediately commence a child abuse assessment as defined in Iowa Code section 232.71B as amended by 2013 Iowa Acts, House File 590.

(3) If the department determines that safety issues continue to require a child to reside outside of the child's home at the conclusion of a family assessment, the department shall transfer the assessment to the child abuse assessment pathway for a disposition.

175.25(2) *Interviewing the alleged child victim.* The primary purpose of an interview with the child, during the course of a child abuse assessment or family assessment, is to gather information regarding the abuse allegation, the child's immediate safety, and risk of abuse. During a child abuse assessment, the child protection worker shall also identify the person or persons responsible for the alleged abuse as well as the nature, extent, and cause of injuries, if any, to the child named in the report of suspected child abuse.

175.25(3) *Interviewing subjects of the report and other sources.*

a. Attempts During a child abuse assessment, attempts shall be made to conduct interviews with subjects of the report and persons who have relevant information to share regarding the allegations. This may include contact with physicians to assess the child's condition. The child's custodial parents or guardians and the alleged perpetrator (if different) shall be interviewed, or offered the opportunity to be interviewed. The court may waive the requirement of the interview for good cause.

b. During a family assessment, the child's custodial parents or guardians shall be interviewed or offered the opportunity to be interviewed. The child protection worker may request information from any person believed to have knowledge regarding a child named in an assessment. A family assessment requires the cooperation of the family; should a family choose not to participate, the department is required to transfer the assessment to the child abuse assessment pathway for a disposition.

175.25(4) *Gathering of physical and documentary evidence.* ~~Evidence~~ During a child abuse assessment, evidence shall be gathered from, but not be limited to, interviews, observations, photographs, medical and psychological reports and records, reports from child protection centers, written reports, audiotapes and their transcripts or summaries, videotapes and their transcripts or summaries, or other electronic forms.

175.25(5) *Evaluating the home environment and relationships of household members.* ~~The evaluation may. An evaluation of the home environment shall be conducted during the course of an assessment with the consent of the parent or guardian, include a visit to the home where the child resides. If permission is refused, the juvenile court may authorize the worker to enter the home to observe or interview the child. An evaluation of the home environment shall be conducted during the course of the child abuse assessment.~~

a. If protective concerns are identified, the child protection worker shall evaluate the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

(1) Each ~~ease~~ assessment shall include a full description of observations and information gathered during the assessment process. This description shall provide information which evaluates the safety of the child named in the report.

(2) If the child protection worker has concerns about a child's safety or a family's functioning, the worker shall conduct a more intensive assessment until those concerns are addressed.

b. When an assessment is conducted at an out-of-home setting, an evaluation of the environment and relationships where the abuse allegedly occurred shall be conducted.

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c. The child abuse assessment shall include a description of the name, age, and condition of other children in the same home as the child named in the report.

175.25(6) Evaluating the information. Evaluation During a child abuse assessment, evaluation of information shall include an analysis, which considers the credibility of the physical evidence, observations, and interviews, and shall result in a conclusion of whether or not to confirm the report of suspected child abuse.

175.25(7) Determining placement on central abuse registry. A During a child abuse assessment, a determination of whether the report data and disposition data of a confirmed case of child abuse is subject to placement on the central abuse registry pursuant to Iowa Code section 232.71D ~~as amended by 2011 Iowa Acts, House File 562,~~ shall be made on each assessment. Determining placement on the central abuse registry is not applicable in a family assessment.

175.25(8) Service recommendations and referrals. During or at the conclusion of a child abuse assessment or a family assessment, the department shall consult with the child's family to offer services to the child and the child's family which address strengths and needs identified in the assessment. The department may recommend information, information and referral, community care referral, or services provided by the department. If it is believed that treatment services are necessary for the protection of the abused child or other children in the home, juvenile court intervention shall be sought.

a. Information or information and referral.

(1) Families with children of any age that have confirmed or not confirmed abuse and low risk of abuse shall be provided either information or information and referral when: Either information or information and referral shall be offered when:

1. A family assessment has identified the child to be at low risk of future abuse or neglect; or
2. A child abuse assessment has identified the abuse is not confirmed and the child is believed to be at low risk of future abuse or neglect; or
3. A child abuse assessment has identified the abuse is confirmed and not placed on the registry and the child is believed to be at low risk of future abuse or neglect.

(2) Recommendation options for information and information and referral.

- (1) 1. No When no service needs are identified, and the worker recommends may recommend no service; or
- (2) 2. Service When service needs are identified, and the worker recommends may recommend new or continuing services to the family to be provided through informal supports; or
- (3) 3. Service When service needs are identified, and the worker recommends may recommend new or continuing services to the family to be provided through community agencies organizations.

b. Referral to community care.

(1) With the exception of families of children with an open department service case, court action pending, or abuse in an out-of-home setting, a referral to community care shall be offered to: A referral to community care shall be offered when:

- (1) 1. Families with children whose abuse is not confirmed when there is moderate to high risk of abuse, service needs are identified, and the worker recommends community care. A family assessment has identified the child to be at moderate or high risk of future abuse or neglect; or
- (2) 2. Families with children that have confirmed but not founded abuse and moderate or high risk of abuse when service needs are identified and the worker recommends community care. A child abuse assessment has identified the abuse is not confirmed and the child is believed to be at moderate or high risk of future abuse or neglect; or
- (3) 3. Families with children with founded abuse, a victim child six years of age or older, and a low risk of repeat abuse when service needs are identified and the worker recommends community care. A child abuse assessment has identified the abuse is confirmed and not placed on the registry and the child is believed to be at moderate risk of future abuse or neglect.

(2) Referral to community care not offered. A referral to community care shall not be offered when any child in the family has an open child welfare service case with the department, a child in need of assistance petition was filed or is pending, or if the abuse occurred in an out-of-home setting.

(3) Responsibilities for community care referral.

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1. At the conclusion of a family assessment, the department shall transfer the case, if appropriate, to a contracted provider to review the service plan for the child and family.

2. The contracted provider shall make a referral to the department abuse hotline if a family's noncompliance with a service plan places a child at risk.

- If any of the criteria for child abuse as defined in Iowa Code section 232.68 are met, the department shall commence a child abuse assessment.

- If criteria for a child in need of assistance as defined in Iowa Code section 232.2(6) are met, the department shall determine whether to request a child in need of assistance petition.

c. Referral for department services.

(1) Families with children that have founded abuse and moderate to high risk of abuse and families with victim children under age six that have founded abuse and low risk of abuse shall be offered department services on a voluntary basis. The department shall provide or arrange for and monitor services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court when:

1. A child abuse assessment has identified the abuse is confirmed and not placed on the registry and the child is believed to be at high risk of future abuse or neglect; or

2. A child abuse assessment has identified the abuse is founded.

(1) (2) The worker shall recommend new or continuing treatment services to the family to be provided by the department, either directly or through contracted agencies.

(2) (3) Families that refuse voluntary services shall be referred for a child in need of assistance action petition through juvenile court.

175.25(9) Court action following assessment. If, upon completion of an assessment performed under Iowa Code section 232.71B as amended by 2013 Iowa Acts, House File 590, the department determines that the best interests of the child require juvenile court action, the department shall act appropriately to initiate the action.

a. If at any time during the assessment process the department believes court action is necessary to safeguard a child, the department shall act appropriately to initiate the action.

b. The department shall assist the juvenile court or district court during all stages of court proceedings involving an alleged child abuse case in accordance with the purposes of Iowa Code section 232.71C as amended by 2013 Iowa Acts, House File 590.

ITEM 10. Amend rule 441—175.26(232) as follows:

441—175.26(232) Completion of a child protective written assessment summary report. ~~The child protection worker shall complete a child protective written assessment summary report within 20 business days from the date of the report of child abuse becoming a case. In most instances, the child protective assessment summary shall be developed in conjunction with the child and family being assessed. A child protective assessment summary shall consist of two parts as follows:~~

175.26(1) Report and disposition data *Completion of a child abuse assessment report.* Form 470-3240, Child Protective Services Assessment Summary, shall include report and dispositional data as follows: A child abuse assessment report shall be completed within 20 business days of the receipt of the child abuse report. In most instances, a child abuse assessment report shall be developed in conjunction with the child and family being assessed. A child abuse assessment report shall consist of two parts as follows:

a. *Report and disposition data.* A child abuse assessment report shall include report and disposition data as follows:

~~a-~~ (1) Allegations: the report of suspected child abuse which caused the assessment to be initiated and additional allegations raised after the report of suspected child abuse becomes a case that have not been previously investigated or assessed. If the report of suspected child abuse was initially accepted as a family assessment, the reason why it was transferred to a child abuse assessment shall be identified.

~~b-~~ (2) Evaluation of the child's safety: evaluation of the child's safety and the risk for occurrence or recurrence of abuse. Criteria to be used in the evaluation of the child's safety include, but are not limited to, the severity of the incident or condition, chronicity of the incident or condition, age of the

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child, attitude of the person alleged responsible, current ~~treatment~~ services or supports, access of the person alleged responsible for the abuse to the child, and protectiveness of the parent or caretaker who is not alleged responsible for the abuse.

~~e.~~ (3) Findings and contacts: a description of the child's condition including identification of the nature, extent, and cause of the injuries, if any, to the child named in the report; identification of the injury or risk to which the child was exposed; the circumstances which led to the injury or risk to the child; the identity of the person alleged to be responsible for the injury or risk to the child; an evaluation of the home environment; the name and condition of other children in the same home as the child named in the report if protective concerns are identified; a list of collateral contacts; and a history of confirmed or founded abuse.

~~d.~~ (4) Determination regarding the allegations of child abuse: a statement of determination of whether the allegation of child abuse was founded, confirmed but not placed on the central abuse registry, or not confirmed. The statement shall include a rationale for placing or not placing the ease report on the central abuse registry.

~~e.~~ (5) Recommendation for ~~treatment~~ services as specified in 175.25(8) and a statement describing whether ~~treatment~~ services are necessary to ensure the safety of the child or to prevent or remedy other identified problems.

(1) 1. The statement shall include the type of ~~treatment~~ services recommended, if any, and whether these ~~treatment~~ services are to be provided by the department, a child welfare service contractor, another community agencies organization, other informal supports, or another ~~treatment~~ source.

(2) 2. If ~~treatment~~ services are already being provided, the statement shall include a recommendation whether these ~~treatment~~ services should continue.

~~f.~~ (6) Juvenile court recommendation: a statement describing whether juvenile court action is necessary to ensure the safety of the child; the type of action needed, if any; and the rationale for the recommendation.

~~g.~~ (7) Criminal court recommendation: a statement describing whether criminal court action is necessary and the rationale for the recommendation.

~~h.~~ (8) Addendum: An addendum to ~~an~~ a child abuse assessment summary report shall be completed within 20 business days when any of the following occur:

(1) 1. New information becomes available that would alter the finding, conclusion, or recommendation of the summary report.

(2) 2. Substantive information that supports the finding becomes available.

(3) 3. A subject who was not previously interviewed requests an interview to address the allegations of the ease report.

(4) 4. A review or a final appeal decision modifies the summary report.

~~175.26(2) b.~~ Assessment data. Form 470-4133, Family Risk Assessment, Form 470-4132, Safety Assessment, and Form 470-4461, Safety Plan, if applicable, may be used as part of the child's initial case plan, referenced at 441—subrule 130.7(3), for cases in which the department will provide treatment services. A safety assessment, family risk assessment, and safety plan, if applicable, may be used as part of the child's initial case plan, referenced at 441—subrule 130.7(3), for cases in which the department will provide services.

175.26(2) Completion of a family assessment report. A family assessment report shall be completed within ten business days of the receipt of the report of suspected child abuse. A family assessment report shall consist of two parts as follows:

a. Report data. A family assessment report shall include report data as follows:

(1) Allegations: the report of suspected child abuse which caused the assessment to be initiated and additional allegations raised after the report of suspected child abuse becomes a case that have not been previously assessed.

(2) Evaluation of the child's safety: evaluation of the child's safety and the risk for occurrence or reoccurrence of abuse. Criteria to be used in the evaluation of the child's safety include, but are not limited to, the severity of the incident or condition, chronicity of the incident or condition, age of the child, attitude of the person alleged responsible, current services or supports, access of the person alleged

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responsible for the abuse to the child, and protectiveness of the parent or caretaker who is not alleged responsible for the abuse.

(3) Contacts: description of the circumstances that led to the allegations of abuse; strengths and needs of the child, and of the child's parent, home, and family; any information obtained from others during the assessment; a history of confirmed or founded abuse; and an evaluation of the home environment and evaluation of any other children in the same home as the parents or other persons responsible for their care.

(4) Recommendation for services as specified in 175.25(8) and a statement describing whether services are necessary to ensure the safety of the child or to prevent or remedy other identified problems.

1. The statement shall include the type of services recommended, if any, and whether these services are to be provided by the department, a child welfare service contractor, another community organization, other informal supports, or another source.

2. If services are already being provided, the statement shall include a recommendation whether these services should continue.

b. Assessment data. A safety assessment, family risk assessment, and safety plan may be used as part of the information referred for any services in which the family voluntarily agrees to participate.

ITEM 11. Amend rule 441—175.27(232) as follows:

441—175.27(232) Contact with juvenile court or the county attorney. The child protection worker may orally contact juvenile court or the county attorney, or both, as circumstances warrant.

175.27(1) Report of intake. When a report of suspected child abuse is accepted or rejected for assessment, the county attorney shall be provided ~~Form 470-0607,~~ a Child Protective Service Intake form, with information about the allegation of child abuse and with identifying information about the subjects of the report.

175.27(2) Report of disposition. The child protection worker shall provide the juvenile court and the county attorney with a copy of ~~Form 470-3240, Child Protective Services Assessment Summary~~ the child abuse assessment report, which pertains to the findings, determinations, and recommendations regarding the ~~report of~~ child abuse assessment.

175.27(3) Report of assessment. The child protection worker shall provide the county attorney and the juvenile court with a copy of ~~Form 470-4133,~~ the Family Risk Assessment, and Forms 470-4132, the Safety Assessment, and 470-4461, Safety Plan, and family assessment report when any of the following occur:

a. County attorney's or juvenile court's assistance necessary. The worker requires the court's or the county attorney's assistance to complete the assessment process.

b. Court's protection needed. The worker believes that the child requires the court's protection.

c. Child adjudicated. The child is currently adjudicated or pending adjudication under a child in need of assistance petition or a delinquency petition.

d. County attorney or juvenile court requests copy. The county attorney or juvenile court requests a copy of the child abuse assessment data. The child protection worker shall document when the assessment data is provided to the county attorney or juvenile court and the rationale provided for the request.

ITEM 12. Amend rule 441—175.28(232) as follows:

441—175.28(232) Consultation with health practitioners or mental health professionals. The child protection worker may contact a health practitioner or a mental health professional as circumstances warrant and shall contact a health practitioner or a mental health professional when the worker requires the assistance of the health practitioner or mental health professional in order to complete the assessment process or when the worker requires the opinion or advice of the health practitioner or mental health professional in order to determine if the child requires or should have required medical, health or mental health care as a result of suspected abuse.

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ITEM 13. Amend rule 441—175.29(232) as follows:

441—175.29(232) Consultation with law enforcement.

175.29(1) ~~The~~ During the course of a child abuse assessment, the child protection worker may contact law enforcement as warranted and shall contact law enforcement when the worker believes that:

- ~~1. a.~~ The abuse reported may require a criminal investigation and subsequent prosecution.
- ~~2. b.~~ The child must be separated from the person responsible for the abuse.
- ~~3. c.~~ Contact by the child protection worker with the family will result in a volatile and dangerous response by the child or family members.

175.29(2) During the course of a family assessment, the child protection worker shall not involve law enforcement for the purposes of a joint investigation, but shall immediately refer any information regarding a criminal act harming a child to the appropriate law enforcement agency.

ITEM 14. Amend rule 441—175.30(232) as follows:

441—175.30(232) Information shared with law enforcement. When the department is jointly conducting a child abuse assessment with law enforcement personnel, the department may share information gathered during the child abuse assessment process when an assessment is conducted in conjunction with a criminal investigation ~~or the reported abuse has been referred to law enforcement.~~ When the department has rejected an intake or an intake is accepted for a family assessment, only the information collected at intake (excluding reporter information) may be shared with law enforcement.

ITEM 15. Amend rule 441—175.31(232) as follows:

441—175.31(232) Completion of required correspondence.

175.31(1) *Notification to parents that ~~a child abuse~~ an assessment is being conducted.* Written notice shall be provided to the parents of a child who is the subject of an assessment within five working days of commencing an assessment ~~unless the assessment is completed within the five working days.~~ Both custodial and noncustodial parents shall be notified, if their whereabouts are known. If it is believed that notification will result in danger to the child or others, an emergency order to prohibit parental notification shall be sought from juvenile court.

175.31(2) *Notification of completion of assessment and right to request correction.* Written notice which indicates that the child abuse assessment is completed shall be provided to all subjects of a child abuse assessment and to the mandatory reporter who made the report of child abuse. Both custodial and noncustodial parents shall be notified if their whereabouts are known.

a. The notice shall contain the following information pursuant to Iowa Code section 235A.19:

(1) A subject may request correction of the information contained within the child protection abuse assessment summary report if the subject disagrees with the information.

(2) A person alleged named responsible for the abuse has the right to appeal if the department does not correct the data or findings as requested.

(3) A subject, other than the person alleged named responsible for the abuse, has the opportunity to file a motion to intervene in an appeal hearing.

b. If the child protective abuse assessment results in a determination that abuse is confirmed, the notice shall indicate the type of abuse, name of the child and name of the person responsible for the abuse and whether the report has been placed on the central abuse registry.

c. The department shall provide written notice to the parent/guardian of each child listed in the family assessment report of the completion of the assessment and review any service recommendations. Because no determination concerning child abuse or neglect is made and nothing is reported to the central abuse registry, a subject of a family assessment shall not be afforded the opportunity for a contested case hearing pursuant to Iowa Code chapter 17A.

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ITEM 16. Amend rule 441—175.32(232,235A) as follows:

441—175.32(232,235A) Case records. The assessment case record shall contain the ~~child protective assessment summary report~~ as described in rule 441—175.26(232) and any related correspondence or information which pertains to the assessment or to the child and family. The name of the person who made the report of child abuse shall not be disclosed to the subjects of the report. The ~~child protective assessment summary~~ has two parts.

~~1.—Report and disposition data as described in 175.26(1). Subjects of the report have access to report and disposition data, including, where applicable, confirmation of placement on the central abuse registry for abuse reports meeting the criteria pursuant to Iowa Code section 232.71D as amended by 2011 Iowa Acts, House File 562. Form 470-3240, Child Protective Services Assessment Summary, shall be submitted to the central abuse registry only if the abuse is confirmed and determined to meet the criteria pursuant to Iowa Code section 232.71D as amended by 2011 Iowa Acts, House File 562.~~

~~2.—Assessment data as described in 175.26(2). Assessment data shall be available to subjects. Release of assessment data shall be accomplished only when the parent or guardian approves the release as provided through Iowa Code chapter 217, or as specified in Iowa Code section 235A.15. Assessment data shall not be submitted to the central abuse registry.~~

~~**175.32(1) Assessments where abuse was confirmed but not placed on the central abuse registry.** The following conditions apply to case records for assessments in which abuse was confirmed but not placed on the central registry:~~

~~a.—Access to the report data and disposition data is authorized only to the subjects of the report, the child protection worker, law enforcement officer responsible for assisting in the assessment or for the temporary emergency removal of a child from the child's home, the multidisciplinary team assisting the department in the assessment of the abuse, county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department or contract personnel necessary for official duties, the department of justice, and the attorney for the department.~~

~~b.—The child protective assessment summary is retained five years from date of intake or five years from the date of closure of the service record, whichever occurs later.~~

~~c.—The child protective assessment summary is subject to confidentiality provisions of Iowa Code chapter 217 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.~~

175.32(1) Child abuse assessment report. A child abuse assessment report has two parts:

a. Report and disposition data as described in 175.26(1)“a.” Subjects of the report have access to report and disposition data, including, where applicable, confirmation of placement on the central abuse registry for abuse reports meeting the criteria pursuant to Iowa Code section 232.71D as amended by 2013 Iowa Acts, House File 590. A child abuse assessment report shall be submitted to the central abuse registry only if the abuse is confirmed and determined to meet the criteria pursuant to Iowa Code section 232.71D as amended by 2013 Iowa Acts, House File 590.

b. Assessment data as described in 175.26(1)“b” shall be available to subjects. Release of assessment data shall be accomplished only when the parent or guardian approves the release as provided through Iowa Code section 217.30 or as specified in Iowa Code section 235A.15. Assessment data shall not be submitted to the central abuse registry.

~~**175.32(2) Assessments not placed on the central abuse registry where abuse was not confirmed.** The following conditions apply to case records for assessments in which abuse was not confirmed and not placed on the central registry:~~

~~a.—Access to the report data on a child abuse assessment summary where abuse was not determined to have occurred and, therefore, the assessment was not placed on the central abuse registry is authorized only to the subjects of the assessment, the child protection worker, county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that~~

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~~access is necessary, the department of justice, and department or contract personnel necessary for official duties.~~

~~*b.*—Records are retained five years from date of intake or five years from the date of closure of the service record, whichever occurs later.~~

~~*c.*—The child protective assessment summary is subject to confidentiality provisions of Iowa Code chapter 217 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.~~

175.32(2) *Family assessment report.* A family assessment report has two parts:

a. Report data as described in 175.26(2)“a.” Subjects of the report have access to report data. A family assessment report shall not be submitted to the central abuse registry.

b. Assessment data as described in 175.26(2)“b.” Assessment data shall be available to subjects. Release of assessment data shall be accomplished only when the parent or guardian of a child named in a family assessment report approves the release as provided through Iowa Code section 217.30 or as specified in Iowa Code section 235A.15. Assessment data shall not be submitted to the central abuse registry.

175.32(3) *Child abuse assessments where abuse was confirmed but not placed on the central abuse registry.* The following conditions apply to case records for assessments in which abuse was confirmed but not placed on the central registry.

a. Access to the report data and disposition data is authorized only to the subjects of the report, the child protection worker, the law enforcement officer responsible for assisting in the assessment or for the temporary emergency removal of a child from the child’s home, the multidisciplinary team assisting the department in the assessment of the abuse, the county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department or contract personnel necessary for official duties, the department of justice, and the attorney for the department.

b. The child abuse assessment is retained for five years from the date of intake or five years from the date of closure of the service record, whichever occurs later.

c. The child abuse assessment report is subject to the confidentiality provisions of Iowa Code section 217.30 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.

175.32(4) *Child abuse assessments not placed on the central abuse registry where abuse was not confirmed.* The following conditions apply to case records for assessments in which abuse was not confirmed and not placed on the central registry:

a. Access to the report data on a child abuse assessment summary where abuse was not determined to have occurred and, therefore, the assessment was not placed on the central abuse registry is authorized only to the subjects of the assessment, the child protection worker, the county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department of justice, and department or contract personnel necessary for official duties.

b. Records are retained for five years from the date of intake or five years from the date of closure of the service record, whichever occurs later.

c. The child abuse assessment report is subject to the confidentiality provisions of Iowa Code section 217.30 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.

175.32(5) *Family assessment.* The following conditions apply to case records for all family assessments:

a. Access to the report data on a family assessment report is authorized only to the subjects of the assessment, the child protection worker, a person or agency responsible for the care of the child

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if the department or juvenile court determines that access is necessary, the department of justice, and department or contract personnel necessary for official duties.

b. Records are retained for five years from the date of intake or five years from the date of closure of the service record, whichever occurs later.

c. The family assessment report is subject to confidentiality provisions of Iowa Code section 217.30 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.

ITEM 17. Amend rule 441—175.33(232,235A) as follows:

441—175.33(232,235A) Child protection centers. The department may contract with designated child protection centers for assistance in conducting child abuse assessments. When a child who is the subject of an assessment is interviewed by staff at a child protection center, that interview may be used in conjunction with an interview conducted by the child protection worker. Written reports developed by the child protection center shall be provided to the child protection worker and may be included in the assessment case record. Video or audio records are considered to be part of the assessment process and shall be maintained by the child protection center under the same confidentiality provisions of Iowa Code ~~chapter 217~~ section 217.30 and 441—Chapter 9. A family assessment will not be eligible for services or assistance from a child protection center.

ITEM 18. Amend rule 441—175.35(232,235A) as follows:

441—175.35(232,235A) Jurisdiction of assessments. Child protection workers serving the county in which the child's home is located have primary responsibility for completing the ~~child abuse~~ assessment except when the suspected abuse occurs in an out-of-home placement. Circumstances in which the department shall conduct an assessment when another state is involved include the following:

175.35(1) *Child resides in Iowa but incident occurred in another state.* When the child who is the subject of a report of suspected abuse physically resides in Iowa; but has allegedly been abused in another state, the worker shall do all of the following:

- a. Obtain available information from the reporter.
- b. Make an oral report to the office of the other state's protective services agency and request assistance from the other state in completing the assessment.
- c. Complete the assessment with assistance, as available, of the other state.

175.35(2) and 175.35(3) No change.

ITEM 19. Amend rule 441—175.36(235A) as follows:

441—175.36(235A) Multidisciplinary teams. Multidisciplinary teams shall be developed in county or multicounty areas in which more than 50 child abuse cases are received annually. These teams may be used as an advisory group to assist the department in conducting child abuse assessments. Multidisciplinary teams consist of professionals practicing in the disciplines of medicine, public health, mental health, social work, child development, education, law, juvenile probation, law enforcement, nursing, and substance abuse counseling. Members of multidisciplinary teams shall maintain confidentiality of cases in which they provide consultation. Rejected intakes shall not be shared with multidisciplinary teams since ~~they~~ the rejected intakes are not considered to be child abuse information. During the course of ~~an~~ a child abuse assessment, information regarding the initial report of child abuse and information related to the child and family functioning may be shared with the multidisciplinary team. After a conclusion is made, only report data and disposition data on confirmed cases of child abuse may be shared with the team members. When the multidisciplinary team is created, all team members shall execute an agreement, filed with the central abuse registry, which specifies:

175.36(1) Consultation. The team shall be consulted solely for the purpose of assisting the department in the child abuse assessment; and diagnosis ~~and treatment~~ of child abuse cases.

175.36(2) and 175.36(3) No change.

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175.36(4) Confidentiality provisions. Any written report or document produced by the team pertaining to an assessment case shall be made a part of the file for the case and shall be subject to all confidentiality provisions of 441—Chapter 9, unless the child abuse assessment results in placement on the central abuse registry in which case the written report or document shall be subject to all confidentiality provisions of Iowa Code chapter 235A.

175.36(5) Written records. Any written records maintained by the team which identify an individual child abuse assessment case shall be destroyed when the agreement lapses.

175.36(6) to 175.36(8) No change.

ITEM 20. Amend rule 441—175.38(235) as follows:

441—175.38(235) Written authorizations. Requests for information from members of the general public as to whether a person is named on the central abuse registry as having abused a child shall be submitted on ~~Form 470-3301~~, the Authorization for Release of Child Abuse Information form ; to the county office of the department or the central abuse registry. The form shall be completed and signed by the person requesting the information and the person authorizing the check for the release of child abuse information.

ITEM 21. Amend rule 441—175.39(232) as follows:

441—175.39(232) Founded child abuse. Reports of child abuse where abuse has been confirmed shall be placed on the central abuse registry as founded child abuse for either five or ten years under any of the circumstances specified by Iowa Code section 232.71D as amended by 2013 Iowa Acts, House File 590. When none of the placement criteria listed in Iowa Code section 232.71D(3) “b” as amended by 2013 Iowa Acts, House File 590, are applicable, reports of denial of critical care by failure to provide adequate clothing or failure to provide adequate supervision and physical abuse where abuse has been confirmed and determined to be minor, isolated, and unlikely to reoccur shall not be placed on the central abuse registry as a case of founded child abuse. The confirmed abuse shall be placed on the registry unless all three conditions are met.

175.39(1) and 175.39(2) No change.

ITEM 22. Amend rule 441—175.41(235A) as follows:

441—175.41(235A) Access to child abuse information. Requests for child abuse information shall include sufficient information to demonstrate that the requesting party has authorized access to the information.

175.41(1) Written requests. Requests for child abuse information shall be submitted on ~~Form 470-0643~~, a Request for Child Abuse Information form ; to the county office of the department, except requests made for the purpose of determining employability of a person in a department-operated facility shall be submitted to the central abuse registry. Subjects of a report may submit a request for child abuse information to the county office of the department on ~~Form 470-0643~~, a Request for Child Abuse Information form, ~~or on Form 470-3243~~, a Notice of Child Abuse Assessment: Founded form ; ~~Form 470-3575~~, a Notice of Child Abuse Assessment: Confirmed Not Registered form ; ~~or on Form 470-3242~~, a Notice of Child Abuse Assessment: Not Confirmed form, or a family assessment report form. The county office is granted permission to release child abuse information to the subject of a report immediately upon verification of the identity and subject status.

175.41(2) Oral requests. Oral requests for child abuse information may be made when a person making the request believes that the information is needed immediately and if the person is authorized to access the information. When an oral request to obtain child abuse information is granted, the person approving the request shall document the approval to the central abuse registry through use of a ~~Form 470-0643~~, Request for Child Abuse Information form ; or ~~Form 470-3243~~, a Notice of Child Abuse Assessment: Founded form.

Upon approval of any request for child abuse information authorized by this rule, the department shall withhold the name of the person who made the report of child abuse unless ordered by a juvenile

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court or district court after a finding that the person's name is needed to resolve an issue in any phase of a case involving child abuse. Written requests and oral requests do not apply to child abuse information that is disseminated to an employee of the department, to a juvenile court, or to the attorney representing the department as authorized by Iowa Code section 235A.15.

175.41(3) Written authorizations. Requests for information from members of the general public as to whether a person is named on the central abuse registry as having abused a child shall be submitted on ~~Form 470-3301~~, an Authorization for Release of Child Abuse Information form ; to the county office of the department or the central abuse registry. The form shall be completed and signed by the person requesting the information and the person authorizing the check for the release of child abuse information. The department shall not provide requested information when the authorization form is incomplete. Incomplete authorization forms shall be returned to the requester.

ITEM 23. Amend subrule 175.43(2) as follows:

175.43(2) Membership of panels. Each panel established shall be composed of a multidisciplinary team of volunteer members who are broadly representative of the community in which the panel is established, including members who possess knowledge and skills related to the diagnosis, assessments, and disposition of child abuse cases, and who have expertise in the prevention and treatment of child abuse. The membership of each panel shall include professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, domestic violence, mental health, social work, child development, education, law, juvenile probation, law enforcement; or representatives from organizations that advocate for the protection of children. The panel shall function under the leadership of a chairperson and vice-chairperson who are elected annually by the membership. Members shall enter into a contract with the department by ~~signing Form 470-3602, Iowa Child Protection System Citizens' Review Panel Contract.~~

ITEM 24. Adopt the following new definition of "Assessment" in rule **441—186.1(234)**:

"*Assessment*" means the process by which the department responds to all accepted reports of alleged child abuse. An "assessment" addresses child safety, family functioning, culturally competent practice, and identifies the family strengths and needs, and engages the family in services if needed. The department's assessment process occurs either through a child abuse assessment or a family assessment.

ITEM 25. Amend rule **441—186.1(234)**, definition of "Child abuse assessment," as follows:

"*Child abuse assessment*" means ~~the~~ an assessment process by which the department carries out its legal mandate to ascertain if child abuse has occurred, record findings, develop conclusions based upon evidence, address the safety of the child and family functioning, engage the family in services if needed, enhance family strengths, and address needs in a culturally sensitive manner 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); or which allege child abuse as defined in Iowa Code section 232.68(2) "a" (4) that also allege imminent danger, 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 central abuse registry are met.

ITEM 26. Amend rule 441—186.2(234) as follows:

441—186.2(234) Eligibility. A family's eligibility for community care is established by department referral to the community care contractor.

186.2(1) Referral indicated. The department will refer a family for community care when ~~all of~~ the following conditions exist:

a. A child abuse assessment has identified a need for community care: and the child abuse assessment findings are one of the following:

b. ~~The child abuse assessment findings are one of the following:~~

(1) Abuse is not confirmed, but the child is believed to be at moderate to high risk of future abuse or neglect; or

(2) Abuse is confirmed but not founded, and the child is believed to be at moderate ~~or high~~ risk of future abuse or neglect; ~~or.~~

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~~(3) Abuse is founded, the child is six years of age or older, and the child is believed to be at low risk of repeat abuse.~~

~~b. A family assessment has identified a need for community care and the child is believed to be at moderate to high risk of future abuse or neglect.~~

~~c. The family has voluntarily agreed to be referred to community care.~~

186.2(2) Referral not indicated. The department will not refer a family for community care when:

~~a. A child has been adjudicated a child in need of assistance or a child in need of assistance petition was filed or is pending. Court orders are not used as a mechanism for families to receive community care.~~

~~b. Any child in the household has an open child welfare service case with the department.~~

~~c. The abuse occurred in an out-of-home setting.~~

ARC 0922C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 56, “Fining and Citations,” Iowa Administrative Code.

The amendments describe the process for the informal conference on a contested citation issued to a facility licensed pursuant to Iowa Code chapter 135C, which is provided for in Iowa Code section 135C.42, and incorporate legislative changes made by 2013 Iowa Acts, Senate File 394.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

The State Board of Health reviewed the proposed amendments at its July 10, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 27, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

These amendments are intended to implement Iowa Code sections 135C.14 and 135C.42 and 2013 Iowa Acts, Senate File 394.

The following amendments are proposed.

ITEM 1. Amend subrule 56.14(3) as follows:

56.14(3) Informal conference. If the facility desires to contest a citation for a class I, class II or class III violation, the facility shall notify ~~the director of the department of inspections and appeals~~ in writing that it desires to contest such citation and request in writing an informal conference with ~~a representative of the department of inspections and appeals~~ an independent reviewer. The informal conference will be held concurrently with any informal dispute resolution held pursuant to 42 CFR Section 488.331 for those health care facilities certified under Medicare or the medical assistance program.

a. Definition. For purposes of this subrule, “independent reviewer” means an attorney licensed in the state of Iowa who is not currently and has not been employed by the department in the past eight years, or has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.

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b. Request for informal conference. The request for an informal conference must be in writing, addressed to the compliance officer and include the following:

- (1) Identification of the citation(s) being disputed;
- (2) The type of informal conference requested: face-to-face or telephone conference; and
- (3) A request for surveyor worksheets for the citation(s) being disputed, if desired.

c. Submission of documentation. Within the same ten-day period required for submission of a plan of correction pursuant to 481—subrule 50.10(7), the facility shall submit the following:

- (1) The names of those who will be attending the informal conference, including legal counsel; and
- (2) Documentation supporting the facility's position. The facility must highlight or use some other means to identify written information pertinent to the disputed deficiency(ies). Supporting documentation that is not submitted within the required time frame will not be considered.

d. Face-to-face or telephone conference. A face-to-face or telephone conference, if requested, will be scheduled to occur within ten business days of the receipt of the written request, all supporting documentation, and the plan of correction required by 481—subrule 50.10(7).

- (1) Failure to submit supporting documentation will not delay scheduling.
- (2) The conference will be scheduled for one hour to allow the facility to informally present information and explanation concerning the contested deficiencies. Due to the confidential nature of the conference, attendance may be limited.
- (3) If additional information is requested during the informal conference, the facility will have two business days to deliver the additional materials to the department.

(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the facility may be given one opportunity to reschedule the face-to-face conference.

e. Results. The results of the informal conference will generally be sent within ten business days after the date of the informal conference, or within ten business days after the receipt of additional information, if requested.

(1) The independent reviewer may affirm or may modify or dismiss the citation. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the citation.

(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) citation if changes result from the informal conference.

(3) The facility must submit to the department a new plan of correction for the amended or corrected citation within ten calendar days from the date of the letter conveying the results of the informal conference.

ITEM 2. Amend rule 481—56.15(135C) as follows:

481—56.15(135C) Procedure for facility after informal conference. After the conclusion of an informal conference requested by the licensee and provided pursuant to 56.14(3):

56.15(1) If the facility does not desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five ~~working~~ business days after the informal conference, or within five ~~working~~ business days after receipt of the written decision and explanation of the ~~department of inspections and appeals' representative at the informal conference~~ independent reviewer, whichever occurs later, comply with the provisions of subrule 56.14(1).

56.15(2) If the facility does desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five ~~working~~ business days after the informal conference, or within five ~~working~~ business days after receipt of the written decision and explanation of the ~~department of inspections and appeals' representative at the informal conference, as the case may be,~~ independent reviewer, whichever occurs later, notify the department of inspections and appeals in writing of the facility's intent to formally contest the citation.

ARC 0907C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” Iowa Administrative Code.

Currently, Iowa Code chapter 155A, Iowa Administrative Code rule 657—8.32(124,155A), and 2013 Iowa Acts, Senate File 353, give pharmacists some authority to administer certain immunizations. The Department’s rules limit the administration of injectable medications to qualified nurses or physicians. The proposed amendments allow pharmacists to administer injectable medications as permitted by Iowa law.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

The State Board of Health reviewed the proposed amendments at its July 10, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 27, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

These amendments are intended to implement Iowa Code section 135C.14.

The following amendments are proposed.

ITEM 1. Amend paragraph **57.19(3)“h”** as follows:

h. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, ~~or~~ physician, or pharmacist.

ITEM 2. Amend paragraph **58.21(15)“a”** as follows:

a. Injectable medications shall ~~not~~ be administered as permitted by Iowa law by ~~anyone other than~~ a qualified nurse, ~~or~~ physician, or pharmacist. In the case of a resident who has been certified by the resident’s physician as capable of taking the resident’s own insulin, the resident may inject the resident’s own insulin. (II)

ITEM 3. Amend paragraph **62.15(2)“j”** as follows:

j. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, ~~or~~ physician, or pharmacist.

ITEM 4. Amend paragraph **63.18(3)“i”** as follows:

i. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, ~~or~~ physician, or pharmacist.

ITEM 5. Amend paragraph **65.17(1)“i”** as follows:

i. Injectable medications shall ~~not~~ be administered as permitted by Iowa law by ~~anyone other than a prescriber or licensed~~ a qualified nurse, physician, or pharmacist ~~except when residents have been certified by a physician as capable of taking their insulin. When~~ In the case of a resident who has been

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certified by the resident's physician as capable of taking the resident's own insulin, the resident may prepare and inject the resident's own insulin. (II)

ITEM 6. Amend paragraph 67.5(6)“a” as follows:

a. The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by ~~unlicensed assistive personnel certified and noncertified staff~~ in accordance with requirements in ~~655 Chapter 6 governing nurse delegation~~ subrule 67.9(5). Injectable medications shall be administered as permitted by Iowa law by a registered nurse, licensed practical nurse, advanced registered nurse practitioner, physician or pharmacist.

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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 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 58, “Nursing Facilities,” Iowa Administrative Code.

Effective with services furnished on or after January 1, 2011, Section 1814(a)(2) of the federal Social Security Act, which was amended by Section 3108 of the federal Affordable Care Act, authorizes physician assistants who are not employed by the facility to perform skilled nursing facility level of care certifications and recertifications. This amendment proposes to adopt the federal law in order to maintain consistency between federal regulations and state rules.

The Department does not believe that the proposed amendment imposes any financial hardship on any regulated entity, body, or individual.

The State Board of Health reviewed and approved the proposed amendment at its July 10, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before August 27, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

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

This amendment is intended to implement Iowa Code section 135C.14.

The following amendment is proposed.

Amend subrule 58.14(8) as follows:

58.14(8) Physician delegation of tasks. Each resident shall be visited by or shall visit the resident's physician at least twice a year. The year period shall be measured from the date of admission and is not to include preadmission physicals.

a. For a skilled nursing patient, the resident must be seen by a physician for the initial comprehensive visit. Additional visits are required at least once every 30 days for 90 days after admission and at least once every 60 days thereafter. After the initial comprehensive visit, alternate required visits may be performed by an advanced registered nurse practitioner, clinical nurse specialist or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

b. Notwithstanding the provisions of 42 CFR 483.40, any required physician task or visit in a nursing facility may also be performed by an advanced registered nurse practitioner, clinical nurse

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specialist, or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

c. In dually certified skilled nursing/nursing facilities, the advanced registered nurse practitioner, clinical nurse specialist, and physician assistant must follow the skilled nursing facility requirements for services for skilled nursing facility stays. For nursing facility stays in skilled nursing/nursing facilities, any required physician task or visit may be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant working in collaboration with the physician. (III)

d. Nurse practitioners, clinical nurse specialists, and physician assistants may perform other tasks that are not reserved to the physician such as visits outside the normal schedule needed to address new symptoms or other changes in medical status. (III)

Table 1: Authority for non-physician practitioners to perform visits, sign orders, and sign certifications/recertifications when permitted by state law*

	Initial Comprehensive Visit/Orders	Other Required Visits ¹	Other Medically Necessary Visits and Orders ²	Certification/Recertification
Skilled Nursing Facilities				
Nurse Physician assistant, nurse practitioner and clinical nurse specialist employed by the facility	May not perform/May not sign	May perform <u>alternate visits</u>	May perform and sign	May not sign
Nurse Physician assistant, nurse practitioner and clinical nurse specialist not a facility employee	May not perform/May not sign	May perform <u>alternate visits</u>	May perform and sign	May sign subject to state requirements
Physician assistant regardless of employer	May not perform/May not sign	May perform	May perform and sign	May not sign
Nursing Facilities				
Nurse practitioner, clinical nurse specialist, and physician assistant employed by the facility	May not perform/May not sign	May not perform	May perform and sign	May sign subject to state requirements Not applicable ⁺
Nurse practitioner, clinical nurse specialist, and physician assistant not a facility employee	May perform/May sign	May perform	May perform and sign	May sign subject to state requirements Not applicable ⁺

*As permitted by state law governing the scope and practice of nurse practitioners, clinical nurse specialists, and physician assistants.

¹ Other required visits include the skilled nursing resident monthly visits that may be alternated between physician and advanced registered nurse practitioners, clinical nurse specialists, or physician assistants after the initial comprehensive visit is completed.

² Medically necessary visits may be performed prior to the initial comprehensive visit.

⁺This requirement relates specifically to coverage of Part A Medicare stays, which can take place only in a Medicare-certified skilled nursing facility.

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Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 231C.3(1), the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 67, “General Provisions for Elder Group Homes, Assisted Living Programs and Adult Day Services,” Iowa Administrative Code.

The proposed amendments implement changes resulting from legislation in 2013 Iowa Acts, Senate File 394, which establishes an informal conference process for assisted living programs. The legislation gives programs the opportunity to contest the Department’s final findings in an informal conference with an independent reviewer.

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

Any interested person may make written suggestions or comments on the proposed amendments on or before August 27, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to david.werning@dia.iowa.gov.

Additionally, there will be a public hearing on August 28, 2013, at 10 a.m. in Room 319 of the Lucas State Office Building, 321 East 12th Street, 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 person who intends to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Inspections and Appeals and advise of special needs.

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

These amendments are intended to implement Iowa Code section 231C.3(1) and 2013 Iowa Acts, Senate File 394.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition in rule **481—67.1(231B,231C,231D)**:

“*Independent reviewer*” means an attorney licensed in the state of Iowa who is not currently and has not been employed by the department in the past eight years, or has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.

ITEM 2. Rescind rule 481—67.10(17A,231B,231C,231D) and adopt the following **new** rule in lieu thereof:

481—67.10(17A,231B,231C,231D) Monitoring.

67.10(1) *Frequency of monitoring.* The department shall monitor a certified program at least once during the program’s certification period.

67.10(2) *Accessibility of records and program areas.* All records and areas of the program deemed necessary to determine compliance with the applicable requirements shall be accessible to the department for purposes of monitoring.

67.10(3) *Standard for determining whether a regulatory insufficiency exists.* The department shall use a preponderance-of-the-evidence standard when determining whether a regulatory insufficiency

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exists. A preponderance-of-the-evidence standard does not require that the monitor shall have personally witnessed the alleged violation.

ITEM 3. Amend paragraph **67.11(1)“b”** as follows:

b. When the nature of the complaint is outside the department’s authority, the department shall forward the complaint or refer the complainant, if known, to the appropriate investigatory entity.

ITEM 4. Amend subrule 67.11(5) as follows:

67.11(5) Notification of program and complainant. The department shall notify the program and, if known, the complainant of the final report regarding the complaint investigation. ~~The department and the program shall follow the procedures outlined in subrules 67.10(2) through 67.10(7).~~

ITEM 5. Rescind rule 481—67.12(17A,231B,231C,231D) and adopt the following new rule in lieu thereof:

481—67.12(17A,231B,231D) Adult day services and elder group homes—preliminary report, plan of correction and request for reconsideration.

67.12(1) Preliminary report. When a regulatory insufficiency is found, a preliminary report detailing the insufficiency shall be sent by the department to the adult day services program or elder group home within 10 working days. The department may send the report electronically or by certified mail.

67.12(2) Plan of correction. Within 10 working days following receipt of the preliminary report, the adult day services program or elder group home shall submit a plan of correction to the department.

a. Contents of plan. The plan of correction shall include:

- (1) Elements detailing how the program will correct each regulatory insufficiency;
- (2) The date by which the regulatory insufficiency will be corrected;
- (3) What measures will be taken to ensure the problem does not recur;
- (4) How the program plans to monitor performance to ensure compliance; and
- (5) Any other required information.

The date by which the regulatory insufficiency will be corrected shall not exceed 30 days following the date of the exit interview without approval of the department.

b. Review of plan. The department shall review the plan of correction within 10 working days of receipt. The department may request additional information or suggest revisions to the plan. Once an acceptable plan of correction has been received, the department shall issue a final report within 10 working days and shall determine whether any enforcement action related to the program’s continued certification is necessary.

67.12(3) Request for reconsideration. Within 10 working days of receiving the preliminary report, the adult day services program or elder group home may submit a request for reconsideration in response to a regulatory insufficiency. Regardless of whether a request for reconsideration is submitted, a plan of correction must be submitted.

a. The request may include additional information to support the request for reconsideration.

b. The department shall review the request for reconsideration and additional information and determine whether to withdraw or modify the regulatory insufficiency.

c. The department shall accept a request for reconsideration if the additional information submitted by the program shows by a preponderance of the evidence that the regulatory insufficiency did not exist at the time of the monitoring.

d. The department’s decision regarding a request for reconsideration shall be reflected in the final report.

67.12(4) Final report. The final report shall be issued after the plan of correction and request for reconsideration have been considered. The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found. The final report may be delivered to the applicant or certificate holder by electronic or certified mail, or by personal service.

67.12(5) Appeal of final report. The final report and the civil penalty, if assessed, may be appealed. A written notice of appeal and request for hearing shall be delivered to the department within 30 days after the mailing or service of notice.

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67.12(6) Hearings. Hearings shall be conducted by the administrative hearings division of the department pursuant to Iowa Code chapter 17A and 481—Chapter 10.

67.12(7) Monitoring revisit. The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. The department may issue a regulatory insufficiency for failure to implement the plan of correction. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

ITEM 6. Rescind rule 481—67.13(17A,231B,231C,231D) and adopt the following new rule in lieu thereof:

481—67.13(17A,231C,85GA,SF394) Assisted living programs—exit interview, final report, plan of correction.

67.13(1) Exit interview. The department shall provide an exit interview in person or by telephone at the conclusion of a monitoring, during which the department shall inform the assisted living program's representative of all issues and areas of concern related to insufficient practices. A second exit interview shall be provided if the department identifies additional issues or areas of concern. The program shall have 2 working days from the date of the exit interview to submit additional or rebuttal information to the department.

67.13(2) Final report. The department shall issue the final report of a monitoring within 10 working days after completion of the on-site monitoring or the receipt by the department of additional or rebuttal information, by personal service, electronically or by certified mail. The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found.

67.13(3) Plan of correction. Within 10 working days following receipt of the final report, the program shall submit a plan of correction to the department.

a. Contents of plan. The plan of correction shall include:

- (1) Elements detailing how the program will correct each regulatory insufficiency;
- (2) The date by which the regulatory insufficiency will be corrected;
- (3) What measures will be taken to ensure the problem does not recur;
- (4) How the program plans to monitor performance to ensure compliance; and
- (5) Any other required information.

The date by which the regulatory insufficiency will be corrected shall not exceed 30 days from receipt of the final report pursuant to subrule 67.13(2) without approval of the department.

b. Review of plan. The department shall review the plan of correction within 10 working days. The department may request additional information or suggest revisions to the plan.

67.13(4) Monitoring revisit. The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. The department may issue a regulatory insufficiency for failure to implement the plan of correction. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

ITEM 7. Rescind rule 481—67.14(17A,231B,231C,231D) and adopt the following new rule in lieu thereof:

481—67.14(17A,231C,85GA,SF394) Assisted living programs—response to final report. Within 20 working days after the issuance of the final report and assessment of civil penalty, if any, the assisted living program shall respond in the following manner.

67.14(1) If not contesting final report. If the program does not desire to seek an informal conference or contest the final report and civil penalty, if assessed, the program shall remit to the department of inspections and appeals the amount of the civil penalty, if assessed. If an assisted living program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if the requirements of subrule 67.17(5) are met.

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

67.14(2) Informal conference. If the assisted living program desires to contest the final report and civil penalty, if assessed, and request an informal conference, the assisted living program shall notify the department of inspections and appeals in writing that it desires to contest the final report and civil penalty and request in writing an informal conference with an independent reviewer.

a. Request for informal conference. The request for an informal conference must be in writing and include the following:

- (1) Identification of the regulatory insufficiency(ies) being disputed;
- (2) The type of informal conference requested: face-to-face or telephone conference; and
- (3) A request for monitor's notes for the regulatory insufficiencies being disputed, if desired.

b. Submission of documentation. The program shall submit the following within 10 working days from the date of the program's written request for an informal conference:

- (1) The names of those who will be attending the informal conference, including legal counsel; and
- (2) Documentation supporting the assisted living program's position. The assisted living program must highlight or use some other means to identify written information pertinent to the disputed regulatory insufficiency(ies). Supporting documentation that is not submitted with the request for an informal conference will not be considered.

c. Face-to-face or telephone conference. A face-to-face or telephone conference, if requested, will be scheduled to occur within 10 working days of the receipt of the written request, all supporting documentation and the plan of correction required by subrule 67.13(3).

(1) Failure to submit supporting documentation will not delay scheduling.

(2) The conference will be scheduled for one hour. The assisted living program will informally present information and explanation concerning the contested regulatory insufficiency(ies). The department will have time to respond to the assisted living program's presentation. Due to the confidential nature of the conference, attendance may be limited.

(3) If additional information is requested by the independent reviewer during the informal conference, the assisted living program will have 2 working days to deliver the additional materials to the independent reviewer.

(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the assisted living program may be given one opportunity to reschedule the face-to-face conference.

d. Results. The results of the informal conference will generally be sent within 10 working days after the date of the informal conference, or within 10 working days after the receipt of additional information, if requested.

(1) The independent reviewer may affirm or may modify or dismiss the regulatory insufficiency and civil penalty. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the regulatory insufficiency.

(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) final report if changes result from the informal conference.

(3) The assisted living program must submit to the department a new plan of correction for the amended or corrected report within 10 calendar days from the date of the letter conveying the results of the conference.

(4) If the informal conference results in dismissal of a regulatory insufficiency for which a civil penalty was assessed, the corresponding civil penalty will be rescinded.

67.14(3) Procedure after informal conference. After the conclusion of an informal conference:

a. If the assisted living program does not desire to further contest an affirmed or modified final report, the assisted living program shall, within 5 working days after receipt of the written decision of the independent reviewer, remit to the department of inspections and appeals the civil penalty, if assessed.

b. If the assisted living program does desire to further contest an affirmed or modified final report, the assisted living program shall, within 5 working days after receipt of the written decision of the independent reviewer, notify the department of inspections and appeals in writing that it desires to formally contest the final report.

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

67.14(4) Appeals. Formal hearings shall be conducted by the administrative hearings division pursuant to Iowa Code chapter 17A and 481—Chapter 10.

ITEM 8. Renumber rules **481—67.15(17A,231C,231D)** to **481—67.18(231B,231C,231D)** as **481—67.20(17A,231C,231D)** to **481—67.23(231B,231C,231D)**.

ITEM 9. Adopt the following **new** rules 481—67.15(17A,231B,231C,231D) to 481—67.18(17A,231B,231C,231D):

481—67.15(17A,231B,231C,231D) Denial, suspension or revocation of a certificate.

67.15(1) Notice and request for hearing. The denial, suspension or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for such actions. A denial, suspension or revocation shall be effective 30 days after certified mailing or personal service of the notice, unless the applicant or certificate holder gives the department written notice requesting a hearing within the 30-day period. If a timely request for hearing is made, the notice shall be deemed suspended pending the outcome of the hearing, unless subrule 67.15(3) or 67.15(4) applies. If an enforcement action has been implemented immediately in accordance with subrule 67.15(3) or 67.15(4), the enforcement action remains in effect regardless of a request for hearing.

67.15(2) Hearings. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and 481—Chapter 10.

67.15(3) Immediate suspension of a certificate. When the department finds that an imminent danger to the health or safety of tenants of a program exists which requires action on an emergency basis, the department may direct removal of all tenants from the program and suspend the certificate or require additional remedies to ensure the ongoing safety of the program's tenants prior to a hearing.

67.15(4) Immediate imposition of enforcement action. When the department finds that an imminent danger to the health or safety of tenants exists which requires action on an emergency basis, the department may immediately impose a conditional certificate and accompanying conditions upon the program in lieu of immediate suspension of the certificate and removal of the tenants from the program if the department finds that tenants' health and safety would still be protected. The program may request a hearing, but the immediate enforcement action remains in effect regardless of the request for hearing.

481—67.16(17A,231B,231C,231D) Conditional certification.

67.16(1) Conditional certification. In lieu of denial, suspension or revocation of a certificate, the department may issue a conditional certificate for a period of up to one year. Notwithstanding subrule 67.15(4), a conditional certificate shall be issued only when regulatory insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm.

a. The department shall specify the reasons for the conditional certificate in the notice issuing the conditional certificate.

b. The department may place conditions upon a certificate, such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions deemed appropriate by the department.

c. Failure by the program to adhere to the plan of correction or conditions placed on the certificate may result in suspension or revocation of the conditional certification and may result in further enforcement action as available under applicable requirements.

d. A program must be in substantial compliance with applicable requirements before the removal of a conditional certificate by the department. Prior to lifting a conditional certificate, the department may conduct a monitoring to verify substantial compliance. Once the program is in substantial compliance with applicable requirements, the department shall lift the conditional certificate.

67.16(2) Appeal of conditional certificate. A written request for hearing must be received by the department within 30 days after the mailing or service of notice. The conditional certificate shall not be suspended pending the hearing. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and 481—Chapter 10.

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

481—67.17(17A,231B,231C,231D) Civil penalties.

67.17(1) *When civil penalties may be issued.* Civil penalties may be issued when the director finds that any of the following has occurred:

a. A program that does not comply with applicable requirements and the noncompliance results in imminent danger or a substantial probability of resultant death or physical harm to a tenant may be assessed a civil penalty of not more than \$10,000.

b. A program that continues to fail or refuses to comply with applicable requirements within prescribed time frames established by the department or approved by the department in the program's plan of correction and the noncompliance has a direct relationship to the health, safety, or security of tenants may be assessed a civil penalty of not more than \$5,000.

c. A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than \$1,000.

d. A program that discriminates or retaliates in any way against a tenant, tenant's family, or an employee of the program who has initiated or participated in any proceeding authorized by Iowa Code chapter 231B, 231C or 231D and the corresponding administrative rules may be assessed a civil penalty of not more than \$5,000.

67.17(2) *Duplicate civil penalties prohibited.* The department shall not impose duplicate civil penalties on a program for the same set of facts and circumstances.

67.17(3) *Factors in determining the amount of a civil penalty.* The department shall consider the following factors when determining the amount of a civil penalty:

a. The frequency and length of time the regulatory insufficiency occurred (i.e., whether the regulatory insufficiency was an isolated or a widespread occurrence, practice, or condition);

b. The past history of the program as it relates to the nature of the regulatory insufficiency (the department shall not consider more than the current certification period and the immediately previous certification period);

c. The culpability of the program as it relates to the reasons the regulatory insufficiency occurred;

d. The extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;

e. The relationship of the regulatory insufficiency to any other types of regulatory insufficiencies which have occurred in the program;

f. The actions of the program after the occurrence of the regulatory insufficiency, including when corrective measures, if any, were implemented and whether the program notified the director as required;

g. The accuracy and extent of records kept by the program which relate to the regulatory insufficiency, and the availability of such records to the department;

h. The rights of tenants to make informed decisions;

i. Whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

67.17(4) *Civil penalties due.* The civil penalty shall be paid to the department within 30 days following the program's receipt of the final report and demand letter. The program may appeal in accordance with rule 481—67.12(17A,231B,231D) or 481—67.14(17A,231C,85GA,SF394). If the program appeals, the civil penalty shall be deemed suspended until the appeal is resolved.

67.17(5) *Reduction of civil penalty amount by 35 percent.* If an assisted living program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if both of the following requirements are met:

a. The program does not request a formal hearing pursuant to rule 481—67.12(17A,231B,231D) or 481—67.14(17A,231C,85GA,SF394), or withdraws its request for formal hearing within 30 calendar days of the date that the civil penalty was assessed; and

b. The civil penalty is paid and payment is received by the department within 30 calendar days of receipt of the final report.

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

481—67.18(17A,231B,231C,231D) Judicial review. Judicial review shall be conducted pursuant to Iowa Code chapter 17A and 481—Chapter 10.

ITEM 10. Amend **481—Chapter 67**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 231B, 231C as amended by 2013 Iowa Acts, Senate File 394, and 231D.

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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 plan for the Low-Income Housing Tax Credit Program with the 2014 qualified allocation plan (QAP), which is incorporated by reference in rule 265—12.1(16).

The qualified allocation plan sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the postreservation requirements, the appeal process, and the compliance monitoring component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the qualified allocation plan 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 2014 qualified allocation plan 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 plan is 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 plan until 4:30 p.m. on August 27, 2013. 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 dave.vaske@iowa.gov.

The Authority will hold a public hearing on August 27, 2013, to receive public comments on these amendments and on the proposed 2014 qualified allocation plan. 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 2014 qualified allocation plan based on comments received from the public.

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.

IOWA FINANCE AUTHORITY[265](cont'd)

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

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2013~~ 2014 Qualified Allocation Plan shall be the qualified allocation plan for the allocation of ~~2013~~ 2014 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The qualified allocation plan does not include any amendments or editions created subsequent to October ~~40~~ 2, ~~2012~~ 2013.

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

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at <http://www.iowafinanceauthority.gov>. Copies of the qualified allocation plan, 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 plan incorporates by reference IRC Section 42 and the regulations in effect as of October ~~40~~ 2, ~~2012~~ 2013. Additionally, the plan incorporates by reference Iowa Code section 16.52. 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 0905C

LABOR SERVICES DIVISION[875]

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 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The proposed amendment adopts by reference changes to federal occupational safety and health standards concerning specialized equipment known as “digger derricks” that are used for tasks such as installing utility poles. Under the existing standards, most of the work done by digger derricks is exempt from the cranes and derricks standard. The change expands the exemption for digger derricks.

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

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on September 3, 2013, a public hearing will be held on September 4, 2013, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than September 4, 2013, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

LABOR SERVICES DIVISION[875](cont'd)

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

After analysis and review of this rule making, this amendment will have no impact on jobs as it expands an exemption from a regulation.

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

The following amendment is proposed.

Amend rule **875—26.1(88)** by inserting the following at the end thereof:

78 Fed. Reg. 32116 (May 29, 2013)

ARC 0943C

MEDICINE BOARD[653]

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 147.10, 148.2, and 272C.2, the Board of Medicine hereby proposes to amend Chapter 8, “Fees,” Chapter 9, “Permanent Physician Licensure,” and Chapter 10, “Resident, Special and Temporary Physician Licensure,” Iowa Administrative Code.

Chapter 8 defines application and licensure fees for physicians; Chapter 9 defines requirements for permanent physician licensure; and Chapter 10 defines requirements for resident, special and temporary physician licensure. The proposed amendments to these chapters reduce the resident physician licensure fee from \$150 to \$100; reduce the criminal background check fee (all licenses) from \$55 to \$45; reduce the licensure verification fee from \$40 to \$30; eliminate the \$25 duplicate license fee; eliminate the \$50 electronic data fee; and increase the quarterly monitoring fee from \$100 to up to \$300. Other amendments eliminate redundant or outdated language. The proposed fee reductions reflect a decrease in the Board’s expenses associated with providing such services. The proposed increase in monitoring fees gives the Board ability to recover costs in cases that will require extraordinary work.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on June 28, 2013.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on August 27, 2013. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by e-mail to mark.bowden@iowa.gov.

There will be a public hearing on August 27, 2013, at 11 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

After analysis and review of this rule making, it has been determined that the amendments could have a positive impact on jobs. The reduction in fees for resident licensure could encourage physicians to pursue postgraduate training in the state of Iowa and subsequent employment in Iowa. The elimination of fees for certain public records could assist in the recruitment of physicians wishing to practice in Iowa.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 8.2(2) as follows:

8.2(2) Fees for acupuncturists. The following fees apply to licensure for acupuncturists.

a. to d. No change.

e. ~~Fee for a duplicate wall certificate or renewal card, \$25. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

MEDICINE BOARD[653](cont'd)

~~f. e.~~ Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, ~~\$55~~ \$45. ~~The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

ITEM 2. Amend subrule 8.4(1) as follows:

8.4(1) Fees for permanent licensure. For provisions for permanent licensure, see 653—Chapter 9, “Permanent Physician Licensure.” The following fees shall apply to permanent licensure.

a. Initial licensure, \$450 plus the \$45 fee for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

b. to e. No change.

f. Reinstatement of a license to practice one year or more after becoming inactive, \$500 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

g. No change.

ITEM 3. Amend paragraph **8.4(2)“a”** as follows:

a. Application for a resident physician license, ~~\$150~~ \$100 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

ITEM 4. Amend paragraph **8.4(3)“a”** as follows:

a. Application for a special physician license, \$300 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

ITEM 5. Amend paragraph **8.4(4)“a”** as follows:

a. Application for a temporary physician license, \$100 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

ITEM 6. Rescind subrule **8.4(6)**.

ITEM 7. Renumber subrule **8.4(7)** as **8.4(6)**.

ITEM 8. Amend renumbered subrule 8.4(6) as follows:

8.4(6) Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, ~~\$55~~ \$45. ~~The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

ITEM 9. Amend subrule 8.5(1) as follows:

8.5(1) *Verification fees.*

a. Physicians shall use VeriDoc to secure a certified statement that verifies Iowa licensure status for any state medical board that accepts VeriDoc. VeriDoc is accessible at <http://www.veridoc.org/>. The fee for this service is ~~\$40~~ \$30.

b. A physician who needs a certified statement that verifies Iowa licensure status for a state medical board that does not accept verification from VeriDoc shall make a written request for a certified statement with payment of a ~~\$40~~ \$30 verification fee to the Iowa Board of Medicine. The Iowa board shall provide a certified statement that verifies Iowa licensure status to the nonaccepting state medical board.

c. No change.

d. The board shall provide an automated telephone or electronic verification service whereby ~~callers~~ users can input the licensee’s license number or social security number ~~and receive verbally to learn~~ the licensee’s current licensure status. There is no fee for this service.

The board shall provide a license number for an individual caller to use in the automated telephone or electronic verification service. Businesses that utilize verifications will be required to utilize the automated telephone or electronic verification service or the alternative outlined in 8.5(1) “c.”

ITEM 10. Amend subrule 8.6(2) as follows:

8.6(2) *Purchase of public records.* Public records are available according to 653—Chapter 2, “Public Records and Fair Information Practices.” Payment made to the Iowa Board of Medicine shall be received in the board office prior to the release of the records.

MEDICINE BOARD[653](cont'd)

~~a. Copies~~ Printed copies of public records shall be calculated at \$.25 per page plus labor. ~~A The board may charge a \$16 per hour fee shall be charged~~ for labor in excess of one-quarter hour for searching and copying documents or retrieving and copying information stored electronically. No additional fee shall be charged for delivery of the records by mail, ~~or fax, or e-mail~~. Fax is an option if the requested records are fewer than 30 pages. The board office shall not require payment when the fees for the request would be less than \$5 total.

~~b. Electronic copies of public records delivered by e-mail shall be calculated at \$.10 per page; the minimum charge shall be \$5 provided at no charge per page. A The board may charge a \$16 per hour fee shall be charged~~ for labor in excess of one-quarter hour for searching and copying documents or retrieving and copying information stored electronically. ~~The board office shall not require payment when the fees for the requests would be less than \$5 total.~~

~~c. Printed copies of press releases, statements of charges, final orders and consent agreements from each board meeting shall be available for an annual subscription fee of \$192 or a prorated portion thereof based on the calendar year.~~

ITEM 11. Amend rule 653—8.7(147,148,272C) as follows:

653—8.7(147,148,272C) Purchase of a licensee Licensee data list. A data list of all physicians and acupuncturists includes the following information about each licensee: full name, year of birth, mailing address, business telephone number, ~~E-mail address~~, Iowa county (if applicable), medical school (if applicable), year of graduation from medical school (if applicable), two medical specialties (if available), license issue date, license expiration date, license number, license type, license status, and an indicator of whether the board has taken any public action on the license. ~~The fee for an electronic file of the list is \$50. There is no fee for an electronic file of this list. A printed copy of the data list is available at the board's office at fees described in rule 653—8.6(147,148,272C). Payment made to the Iowa Board of Medicine shall be received in the board office prior to the release of a printed copy of the list. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

ITEM 12. Amend rule 653—8.9(147,148,272C) as follows:

653—8.9(147,148,272C) Copies of the laws and rules. ~~Copies~~ Electronic copies of laws and rules pertaining to the practice of medicine or acupuncture are available ~~from on~~ the board for the following fees: board's Web site, www.medicalboard.iowa.gov, at no cost. Printed copies of these laws and rules are available at the board's office at fees described in rule 653—8.6(147,148,272C).

~~1. Iowa Code and Iowa Administrative Code access, no fee, available at www.medicalboard.iowa.gov.~~

~~2. Printed copies of the Iowa Code chapters that pertain to the practice of medicine or acupuncture, \$10.~~

~~3. Printed copies of board rules in the Iowa Administrative Code, \$10.~~

ITEM 13. Amend rule 653—8.12(8,147,148,272C) as follows:

653—8.12(8,147,148,272C) Request for reports. The board may request a report from the National Practitioner Data Bank ~~or the Healthcare Integrity and Protection Data Bank~~ regarding an applicant or licensee. The cost of obtaining the report is included within the fee for initial licensure or licensure reinstatement or renewal. ~~However, that portion of the fee spent to obtain that report shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

ITEM 14. Amend rule 653—8.13(8,147,148,272C) as follows:

653—8.13(8,147,148,272C) Monitoring fee. ~~A provision for payment of \$100~~ The board may require payment of up to \$300 per quarter to cover the board's expenses ~~in monitoring to monitor~~ a licensee's compliance with the a settlement agreement may be included in the settlement agreement, and payments shall be considered repayment receipts as defined in Iowa Code section 8.2 or final decision and order.

MEDICINE BOARD[653](cont'd)

ITEM 15. Amend paragraph **9.4(2)“a”** as follows:

a. Pay a nonrefundable initial application fee of \$450 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

ITEM 16. Amend paragraph **9.5(2)“a”** as follows:

a. Pay a nonrefundable initial application fee of \$450 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

ITEM 17. Amend paragraph **9.6(2)“a”** as follows:

a. Pay a nonrefundable initial application fee of \$450 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

ITEM 18. Amend subrule 9.15(2) as follows:

9.15(2) *Reinstatement of an unrestricted Iowa license that has been inactive for one year or longer.* An individual whose license is in inactive status and who has not submitted a reinstatement application that was received by the board within one year of the license's becoming inactive shall follow the application cycle specified in this rule and shall satisfy the following requirements for reinstatement:

a. Submit an application for reinstatement to the board upon forms provided by the board. The application shall require the following information:

(1) to (8) No change.

(9) A completed fingerprint packet to facilitate a national criminal history background check. The \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

b. Pay the reinstatement fee of \$500 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks. No fee is required for reinstatement for those whose licenses became inactive between December 8, 1999, and July 4, 2001; however, the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed.

c. to e. No change.

ITEM 19. Amend subparagraph **10.3(3)“a”(1)** as follows:

(1) Pay a nonrefundable application fee of ~~\$150~~ \$100 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

ITEM 20. Amend subrule 10.3(9) as follows:

10.3(9) *An Iowa resident physician who changes resident training programs in Iowa.* A resident physician who changes resident training programs shall acquire new resident physician licensure or permanent licensure prior to entering the new resident training program. Such changes include a transfer to a different program in the same institution, a move to a program in another institution, or becoming a fellow after completing a residency in the same core program. An individual who contracts with an institution to be in two programs from the time of application for the resident license shall not be required to apply for another resident license for the second program. ~~A resident physician licensee applying for a new resident license shall submit the following:~~

~~a. A nonrefundable resident licensure application fee of \$100;~~

~~b. Materials required in subparagraphs 10.3(3)“b”(1) to (4) and (7) to (10);~~

~~c. A statement from the director of the applicant's most recent residency program documenting the applicant's progress in the program and whether any warnings had been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action; and~~

MEDICINE BOARD[653](cont'd)

ITEM 21. Amend subparagraph **10.4(3)“a”(1)** as follows:

(1) Pay a nonrefundable special license fee of \$300 plus the \$45 fee identified in 653—subrule 8.4(7) 8.4(6) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks;

ITEM 22. Amend paragraph **10.5(3)“a”** as follows:

a. Pay a nonrefundable application fee of \$100 plus the \$45 fee identified in 653—subrule 8.4(7) 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). A physician who is serving as a camp physician and who is not receiving payment other than expenses shall be exempt from the license application fee and the fee for the criminal history background check.

ARC 0942C

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 148F.3, the Iowa Board of Podiatry hereby gives Notice of Intended Action to amend Chapter 5, “Fees”; to adopt Chapter 221, “Licensure of Orthotists, Prosthetists, and Pedorthists”; to amend Chapter 224, “Discipline for Podiatrists”; and to adopt Chapter 225, “Continuing Education for Orthotists, Prosthetists, and Pedorthists,” Iowa Administrative Code.

The amendments in Item 1 make changes to Chapter 5 to increase the licensure fee for podiatrists to \$300 for a new license, \$150 for a temporary license, \$360 for a reactivation, and \$300 for a license renewal. These fee increases are required to make the Board of Podiatry self-sustaining. The licensure fee for the new professions of orthotics, prosthetics, and pedorthics is a two-tier licensure fee. The two-tier system will allow the new professions to comply with a legislative mandate to reimburse \$28,000 to the general fund by July 1, 2015. After July 1, 2015, the initial licensure fee and the renewal fee will revert to a lower self-sustaining fee of \$300. Chapter 5 is common to all professions for which licensure is administered by the Division; however, the proposed changes affect only the Board of Podiatry.

Item 2 proposes a new chapter that defines the licensure requirements for the new professions. In accordance with Iowa Code chapter 148F, proposed Chapter 221 includes language for a transition period for those practitioners currently practicing orthotics, prosthetics, or pedorthics.

Items 3 to 10 incorporate the new professions into the Board of Podiatry’s discipline chapter.

Item 11 proposes new Chapter 225 that defines the continuing education requirements for renewal of an orthotic, prosthetic, or pedorthic license. The proposed rules require 30 hours per biennium for prosthetists and orthotists and 20 hours for pedorthists.

Any interested person may make written comments on the proposed amendments no later than August 27, 2013, addressed to Tony Alden, Professional Licensure Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075; e-mail tony.alden@idph.iowa.gov; fax (515)281-3121.

A public hearing will be held on August 27, 2013, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, 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.

These amendments are subject to waiver pursuant to 645—Chapter 18.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code chapters 17A, 147, 148F, and 272C.

The following amendments are proposed.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 1. Amend rule 645—5.15(147,149) as follows:

645—5.15(147,148F,149) Podiatry license fees. All fees are nonrefundable.

5.15(1) License fee for license to practice podiatry, license by endorsement, or license by reciprocity ~~or temporary license~~ is ~~\$120~~ \$300.

5.15(2) License fee for temporary license to practice podiatry is \$150.

5.15(3) The fee for a license to practice orthotics, prosthetics, or pedorthics received on or before July 1, 2015, shall be \$600. The fee for a license to practice orthotics, prosthetics, or pedorthics received after July 1, 2015, shall be \$300.

~~5.15(2)~~ **5.15(4)** Biennial license renewal fee is ~~\$168~~ \$300 for each biennium.

5.15(5) Reactivation fee is \$360.

5.15(6) Temporary license renewal fee is \$150.

~~5.15(3)~~ **5.15(7)** Late fee for failure to renew before expiration is \$60.

~~5.15(4)~~ Reactivation fee is \$228.

~~5.15(5)~~ **5.15(8)** Duplicate or reissued license certificate or wallet card fee is \$20.

~~5.15(6)~~ **5.15(9)** Verification of license fee is \$20.

~~5.15(7)~~ **5.15(10)** Returned check fee is \$25.

~~5.15(8)~~ **5.15(11)** Disciplinary hearing fee is a maximum of \$75.

~~5.15(9)~~ Temporary license renewal fee is \$84 per year.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 148F, 149 and 272C.

ITEM 2. Adopt the following **new** 645—Chapter 221:

CHAPTER 221

LICENSURE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—221.1(148F) Definitions. For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of podiatry.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as a orthotist, prosthetist, or pedorthist in the state of Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is or has been licensed in another state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of orthotists, prosthetists, or pedorthists who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—221.8(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who have the same or similar qualifications to those required in Iowa.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“Reinstatement” means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

645—221.2(148F) Transition period. Current practitioners of orthotics, prosthetics, and pedorthics who submit a completed application and appropriate licensure fee to the board office on or prior to June 30, 2014, may be issued an initial license based on the following criteria:

1. Verification of current certification in good standing as an orthotist, prosthetist, or pedorthist from the American Board for Certification in Orthotics, Prosthetics, and Pedorthics, Incorporated. The verification must be submitted to the board directly from the accrediting body; or

2. Verification of current certification in good standing as an orthotist, prosthetist, or pedorthist from the Board of Certification, International. The verification must be submitted to the board directly from the accrediting body; or

3. Verification of continuous practice as an orthotist, prosthetist, or pedorthist for at least five of seven years in an accredited and bonded facility. The five years of continuous practice must occur between July 1, 2007, and June 30, 2014.

645—221.3(148F) Requirements for licensure. The following criteria shall apply to licensure:

221.3(1) An applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to the Board of Podiatry, Bureau of Professional Licensure, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

221.3(2) An applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

221.3(3) Each application shall be accompanied by the appropriate fees payable to the Board of Podiatry. The fees are nonrefundable.

221.3(4) No application will be considered complete until official copies of academic transcripts are received.

a. Applicants for licensure in orthotics or prosthetics must submit proof of graduation from an educational program approved by the Commission on Accreditation of Allied Health Education Programs.

b. Applicants for licensure in pedorthics must submit proof of graduation from an educational program approved by the National Commission on Orthotic and Prosthetic Education.

221.3(5) Transcripts must be sent directly from the school to the board.

221.3(6) Licensees who were issued their licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

221.3(7) Incomplete applications that have been on file in the board office for more than two years shall be:

a. Considered invalid and shall be destroyed; or

b. Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

221.3(8) The applicant shall ensure that the passing score from the appropriate professional examination is sent directly to the board from the examination service.

221.3(9) Applicants for licensure in orthotics or prosthetics must provide documentation of successful completion of a residency program accredited by the National Commission on Orthotic and Prosthetic Education.

221.3(10) Applicants for licensure in pedorthics must provide documentation of successful completion of a qualified clinical experience program.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

645—221.4(148F) Written examinations.

221.4(1) Prosthetists must have completed and passed the Board of Certification/Accreditation, International (BOC), or American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated (ABC), examination for prosthetists.

221.4(2) Orthotists must have completed and passed the BOC or ABC examination for orthotists.

221.4(3) Pedorthists must have completed and passed the BOC or ABC examination for pedorthists.

221.4(4) The applicant has responsibility for:

- a. Making arrangements to take the examinations; and
- b. Arranging to have the examination score reports sent directly to the board from the ABC or BOC.

221.4(5) A passing score as recommended by the administrators of the ABC or BOC examinations shall be required.

645—221.5(149) Educational qualifications.

221.5(1) An applicant for licensure to practice as an orthotist or prosthetist shall present official copies of academic transcripts, verifying completion of the following requirements:

- a. A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the school to the board of podiatry; and
- b. Verification of completion of an academic program in orthotics or prosthetics accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP). Transcripts must be sent directly from the school to the board of podiatry.

221.5(2) An applicant for licensure to practice as a pedorthist shall present official copies of academic transcripts, verifying completion of the following requirements:

- a. A high school diploma or its equivalent; and
- b. Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the school to the board of podiatry.

645—221.6(148F) Licensure by endorsement.

221.6(1) An applicant who has been a licensed orthotist, prosthetist, or pedorthist under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia, another state, territory, province or foreign country who:

- a. Submits to the board a completed application;
- b. Pays the licensure fee;
- c. Shows evidence of licensure requirements that are similar to those required in Iowa;
- d. For prosthetic or orthotic licensure, provides:
 - (1) A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the school to the board of podiatry; and
 - (2) Verification of completion of an academic program in orthotics or prosthetics accredited by CAAHEP. Transcripts must be sent directly from the school to the board of podiatry;
- e. For pedorthic licensure, provides:
 - (1) A high school diploma or its equivalent; and
 - (2) Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the school to the board of podiatry;
- f. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:
 - (1) Licensee's name;
 - (2) Date of initial licensure;
 - (3) Current licensure status; and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(4) Any disciplinary action taken against the license.

g. Submits a copy of the scores from the appropriate professional examination to be sent directly from the examination service to the board.

221.6(2) Individuals who were issued their licenses by endorsement within six months of the license renewal date will not be required to renew their licenses until the next renewal date two years later.

645—221.7(148F) License renewal.

221.7(1) The biennial license renewal period for a license to practice orthotics, prosthetics, or pedorthics shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

221.7(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

221.7(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—225.2(148F,272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

221.7(4) Upon receipt of the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

221.7(5) A person licensed to practice orthotics, prosthetics, or pedorthics shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

221.7(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.15(7). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

221.7(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice as an orthotist, prosthetist, or pedorthist in Iowa until the license is reactivated. A licensee who practices as an orthotist, prosthetist, or pedorthist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—221.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

221.8(1) Submit a reactivation application on a form provided by the board.

221.8(2) Pay the reactivation fee that is due as specified in rule 645—5.15(147,148F,149).

221.8(3) Provide verification of current competence to practice by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(2) Verification of completion of:

1. For orthotists or prosthetists, 30 hours of continuing education within two years of application for reactivation.

2. For pedorthists, 20 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of:

1. For orthotists or prosthetists, 60 hours of continuing education within two years of application for reactivation.

2. For pedorthists, 40 hours of continuing education within two years of application for reactivation.

645—221.9(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—221.8(17A,147,272C) prior to practicing as an orthotist, a prosthetist, or a pedorthist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148F, and 272C.

ITEM 3. Amend **645—Chapter 224**, title, as follows:

DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

ITEM 4. Amend rule 645—224.1(149) as follows:

645—224.1(148F,149) Definitions.

"Board" means the board of podiatry.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice as a podiatrist, orthotist, prosthetist, or pedorthist in Iowa.

ITEM 5. Amend rule 645—224.2(149,272C), introductory paragraph, as follows:

645—224.2(148F,149,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—224.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 6. Amend subrule 224.2(2) as follows:

224.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. to *c.* No change.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a podiatrist, orthotist, prosthetist, or pedorthist in this state.

e. and *f.* No change.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 7. Rescind and reserve subrule **224.2(8)**.

ITEM 8. Amend subrules 224.2(24) and 224.2(26) as follows:

224.2(24) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a podiatrist, orthotist, prosthetist, or pedorthist.

224.2(26) Representing oneself as a podiatrist, orthotist, prosthetist, or pedorthist when one's license has been suspended or revoked, or when one's license is on inactive status.

ITEM 9. Adopt the following **new** rule 645—224.6(148F,149,272C):

645—224.6(148F,149,272C) Indiscriminately prescribing, administering or dispensing any drug for other than a lawful purpose. The board may impose any of the disciplinary sanctions provided in rule 645—224.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

224.6(1) Self-prescribing or self-dispensing controlled substances.

224.6(2) Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

a. Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

b. Immediate family includes spouse or life partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life partner.

224.6(3) Prescribing or dispensing controlled substances outside the scope of the practice of podiatry.

ITEM 10. Amend **645—Chapter 224**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 147, 148F, 149 and 272C.

ITEM 11. Adopt the following **new** 645—Chapter 225:

CHAPTER 225

CONTINUING EDUCATION FOR ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—225.1(148F) Definitions. For the purpose of these rules, the following definitions shall apply:

"*ABC*" means the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated.

"*Active license*" means a license that is current and has not expired.

"*Approved program/activity*" means a continuing education program/activity meeting the standards set forth in these rules.

"*Audit*" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"*Board*" means the board of podiatry.

"*BOC*" means the Board of Certification/Accreditation, International.

"*Continuing education*" means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"*Hour of continuing education*" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"*Inactive license*" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"*Independent study*" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“License” means license to practice.

“Licensee” means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

645—225.2(148F,272C) Continuing education requirements.

225.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year.

a. Each biennium, each person who is licensed to practice as an orthotist in this state shall be required to complete a minimum of 30 hours of continuing education.

b. Each biennium, each person who is licensed to practice as a prosthetist in this state shall be required to complete a minimum of 30 hours of continuing education.

c. Each biennium, each person who is licensed to practice as a pedorthist in this state shall be required to complete a minimum of 20 hours of continuing education.

225.2(2) Requirements for 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.

a. The new orthotic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

b. The new prosthetic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

c. The new pedorthic licensee will be required to complete a minimum of 20 hours of continuing education per biennium for each subsequent license renewal.

225.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

225.2(4) No hours of continuing education shall be carried over into the next biennium.

225.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—225.3(148F,272C) Standards.

225.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program.

At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, and presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

225.3(2) *Specific criteria for licensees.*

a. Licensees may obtain continuing education hours of credit by attending workshops, conferences, symposiums, electronically transmitted courses, live interactive conferences, and academic courses which relate directly to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses which apply to the field of orthotics, prosthetics, or pedorthics will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. Licensees may obtain continuing education hours of credit by teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of a course.

c. Continuing education hours of credit may be granted for any of the following activities not to exceed a maximum combined total of 15 hours for orthotists and prosthetists and 10 hours for pedorthists:

(1) Presenting professional programs which meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

(3) Viewing videotaped presentations and electronically transmitted material that have a postcourse test if the following criteria are met:

1. There is a sponsoring group or agency;
2. There is a facilitator or program official present;
3. The program official is not the only attendee; and
4. The program meets all the criteria specified in this rule.

(4) Participating in home study courses that have a certificate of completion and a postcourse test.

(5) Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics.

(6) Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics.

(7) Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics.

645—225.4(148F,272C) Audit of continuing education report. In addition to the requirements of 645—4.11(272C), proof of current BOC or ABC certification as an orthotist, prosthetist, or pedorthist shall be accepted in lieu of individual certificates of completion for an audit.

These rules are intended to implement Iowa Code section 272C.2 and chapter 148F.

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PUBLIC HEALTH DEPARTMENT[641]

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 105.4, the Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt new Chapter 23, “Plumbing and Mechanical Systems Board—Licensee Practice,” Iowa Administrative Code.

The purpose of this chapter is to clarify the standards governing the practice of the licensed trades defined in Iowa Code chapter 105. The rules describe the conduct and minimum requirements that the Plumbing and Mechanical Systems Board expects from a licensed contractor, master, journey person or apprentice working in the plumbing, mechanical, HVAC-refrigeration, sheet metal, and hydronics disciplines; and the conduct and minimum requirements for those possessing one of the specialty licenses, a medical gas certificate, or an inactive master/journey license. These rules also implement 2013 Iowa Acts, Senate File 427, to add new mechanical, HVAC-refrigeration, and sheet metal disciplines to the rules.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Any interested person may make written suggestions or comments on these rules on or before August 27, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cynthia.houlson@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 11:30 a.m. to 1 p.m., 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 rules. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Public Library
529 Pierce Street
Sioux City

Crestwood High School
1000 4th Avenue East
Cresco

Public Library, Meeting Room C
415 Commercial Street
Waterloo

Ottumwa Regional Health Center
1001 E. Pennsylvania
Ottumwa

Spirit Lake High School
2701 Hill Avenue
Spirit Lake

Public Library Information Center
Kelinson Room
2950 Learning Campus Drive
Bettendorf

Lucas State Office Building, Sixth Floor
321 E. 12th Street
Des Moines

Iowa Western Community College – 2
923 E. Washington
Clarinda

Burlington High School
421 Terrace Drive
Burlington

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 Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

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

These rules are intended to implement Iowa Code chapter 105.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 23:

CHAPTER 23
PLUMBING AND MECHANICAL SYSTEMS BOARD—
LICENSEE PRACTICE

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—23.1(105) Definitions. For purposes of these rules, the following definitions shall apply:

“*Board*” means the plumbing and mechanical systems board as established pursuant to Iowa Code section 105.3.

“*Contractor*” means a person or entity that provides plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems services on a contractual basis and who is paid a predetermined amount under that contract for rendering those services.

“*Helper*” means a person who performs general manual labor activities and who provides assistance to an apprentice, journeyperson, or master, while under the supervision of a journeyperson or master.

“*Journeyperson*” means an individual who possesses a valid and current journey level license issued by the board.

“*Lapsed license*” means a license that expired prior to June 30, 2017, and was not renewed within 60 days following its expiration date, or a license that expired on or after June 30, 2017, and was not renewed by the following August 31.

“*Licensee*” means a person holding a license issued by the board, including an apprentice, journeyperson, or master license in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronics trades; a combined license; a special, restricted sublicense; or a medical gas certificate.

“*Master*” means an individual who possesses a valid and current master level license issued by the board.

“*Master of record*” means an individual possessing an active master license under Iowa Code chapter 105 who shall be responsible for the proper designing, installing, and repairing of plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems and who is actively in charge of the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic work of a contractor.

This rule is intended to implement Iowa Code sections 105.10, 105.14, 105.16, 105.18, 105.19 and 105.20.

641—23.2(105) Duties of all licensees, specialty licensees, and certificate holders.

23.2(1) While conducting business or performing work covered under Iowa Code chapter 105, each licensee must keep a copy of the licensee’s board-issued, wallet-sized licensing identification card issued under Iowa Code section 105.12(2) on the licensee’s person or in an easily retrievable area at the work site.

23.2(2) Each licensee must maintain a residential or business address on record with the board. In the event the licensee’s residential or business address changes, the licensee shall so notify the board.

23.2(3) Each licensee shall apply for and obtain all applicable permits prior to performing any work covered under Iowa Code chapter 105 as may be required by any law, ordinance, or regulation of this state, or a political subdivision therein.

23.2(4) A licensee shall present upon request a copy of the licensee’s board-issued, wallet-sized license identification card issued under Iowa Code section 105.12(2).

23.2(5) A licensee possessing a lapsed license may not operate as a contractor or work in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a medical gas system installer or work in a specialty license discipline until the license is reinstated and renewed.

23.2(6) Each licensee shall perform all Iowa Code chapter 105-covered work in conformity with the applicable professional code.

23.2(7) A licensee shall not perform any Iowa Code chapter 105-covered work for which the licensee does not possess the requisite license.

23.2(8) A licensee shall conform to the minimum standard of acceptable and prevailing practice and shall exercise the degree of workmanlike care which is ordinarily exercised by the average licensee in the applicable trade acting in the same or similar circumstances.

23.2(9) A licensee who utilizes the services of an unlicensed person as a helper shall be responsible for the work performed by the helper and shall ensure that such work conforms to the minimum standard of acceptable and prevailing practice.

This rule is intended to implement Iowa Code sections 105.10, 105.14, 105.16, 105.18 and 105.19.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—23.3(105) Contractor license. A contractor licensed under Iowa Code chapter 105 shall adhere to the following requirements, the violation of which may give rise to disciplinary action:

23.3(1) Master license requirement. A contractor shall not engage in the business of designing, installing, or repairing plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems unless at all times the contractor holds or employs at least one person holding an active master license issued by the board for each discipline in which the contractor conducts business. Without prior board approval, a contractor shall not knowingly utilize a master licensee to meet this requirement if the master licensee is simultaneously associated with another contractor in that discipline.

a. Notwithstanding subrule 23.3(1), in the event a licensed master of record's employment with the contractor is terminated, or the master of record otherwise discontinues the master of record's relationship with the contractor, or the master of record's master license is lapsed, suspended, revoked, expired, or otherwise invalidated, the contractor may continue to provide plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems services for a period of up to six months without identifying a new master of record.

b. To utilize the six-month grace period set forth in paragraph 23.3(1) "a," a contractor must notify the board of the contractor's loss of the master of record within 30 days from the date the master of record is no longer associated with the contractor, absent exigent circumstances.

23.3(2) Display of license. A person holding a contractor license shall keep the current license certificate publicly displayed in the primary place in which the person practices.

23.3(3) Surety bond. A person or entity holding a contractor license must maintain during the licensing period a surety bond issued by an entity licensed to do business in Iowa in a minimum amount of \$5,000. If a person operates the contractor business as a sole proprietorship, the person must personally obtain and maintain the surety bond. If a person operates the contractor business as an employee or owner of a legal entity, the legal entity must obtain and maintain the surety bond and the surety bond must cover all plumbing or mechanical work performed by the legal entity. The surety bond required under this subrule must contain a provision that requires the issuing entity to provide the board ten days' written notice before the surety bond can be canceled.

23.3(4) Public liability insurance. A person or entity holding a contractor license must maintain during the licensing period public liability insurance issued by an entity licensed to do business in Iowa in a minimum amount of \$500,000. If a person operates the contractor business as a sole proprietorship, the person must personally obtain and maintain the public liability insurance. If a person operates the contractor business as an employee or owner of a legal entity, the legal entity must obtain and maintain the public liability insurance, and the public liability insurance must cover all plumbing and mechanical work performed by the legal entity. The public liability insurance required under this subrule must contain a provision that requires the issuing entity to provide the board ten days' written notice before the public liability insurance can be canceled.

23.3(5) Contractor registration with the labor commissioner. Through June 30, 2017, a contractor must maintain registration as a contractor with the labor commissioner pursuant to Iowa Code chapter 91C. Effective July 1, 2017, a contractor must maintain such registration by providing the board with the necessary information.

23.3(6) Permanent place of business. A contractor must maintain a permanent place of business, the address of which must be provided to the board. If a contractor changes the permanent place of business, the contractor must provide the board the new address within 30 days of the change.

23.3(7) Licensure requirement. A contractor shall not knowingly allow an employee to perform work covered under Iowa Code chapter 105 without the applicable license.

23.3(8) Supervision. A contractor shall not knowingly allow an apprentice employed by the contractor to perform work covered under Iowa Code chapter 105 without supervision of the apprentice by a master or journeyman who is also employed by the contractor and who is licensed in the discipline in which the apprentice is performing such work.

This rule is intended to implement Iowa Code sections 105.10, 105.14, 105.16, 105.18, 105.19 and 105.22.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—23.4(105) Master license. A master licensed under Iowa Code chapter 105 shall adhere to the following requirements, the violation of which may give rise to disciplinary action:

23.4(1) Contractor relationship. A master may only be a master of record for one contractor in any particular discipline at any one time, except that a contractor or a master may seek prior board approval to serve as the master of record for more than one contractor in a particular discipline. An individual who possesses master licenses in multiple disciplines may be a master of record for multiple contractors so long as the individual is only a master of record for one contractor in any particular discipline at one time.

23.4(2) Contractor. A master shall not knowingly perform work covered under Iowa Code chapter 105 for an unlicensed contractor.

23.4(3) Supervision. A master who superintends the design, installation, or repair of plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems shall be available to supervise journeypersons or apprentices as needed and may only provide such supervision in the discipline or disciplines in which the master is licensed. A master shall not knowingly supervise unlicensed persons who perform work covered under Iowa Code chapter 105 for which a board-issued license is required.

23.4(4) Master of record. A master who serves as a master of record for a contractor and who disassociates from the contractor must notify the board and the contractor of the disassociation, if notice was not previously provided, within 30 days from the date of disassociation, absent exigent circumstances.

This rule is intended to implement Iowa Code section 105.22.

641—23.5(105) Journeyperson license. A journeyperson licensed under Iowa Code chapter 105 shall adhere to the following requirements, the violation of which may give rise to disciplinary action:

23.5(1) Working under supervision. A journeyperson must work under the supervision of a master licensed in the discipline of the work being performed in the design, installation, and repair of plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems.

23.5(2) Contractor. A journeyperson shall not knowingly perform work covered under Iowa Code chapter 105 for an unlicensed contractor.

23.5(3) Supervision. A journeyperson who superintends one or more apprentices may only provide such supervision in the discipline(s) in which the journeyperson is licensed and only while performing work for the same contractor licensed under Iowa Code chapter 105. A journeyperson shall not knowingly supervise unlicensed persons who perform work covered under Iowa Code chapter 105 for which a board-issued license is required.

This rule is intended to implement Iowa Code sections 105.10, 105.14, 105.16, 105.18 and 105.19.

641—23.6(105) Apprentice license. An apprentice licensed under Iowa Code chapter 105 shall adhere to the following requirements, the violation of which may give rise to disciplinary action:

23.6(1) Working under supervision. An apprentice may only perform work covered under Iowa Code chapter 105 under the supervision of a master or journeyperson.

23.6(2) Contractor. An apprentice shall not knowingly perform work covered under Iowa Code chapter 105 for an unlicensed contractor.

This rule is intended to implement Iowa Code section 105.22.

641—23.7(105) Specialty licenses and certifications.

23.7(1) Medical gas certification.

a. A person who possesses a medical gas certification and who performs medical gas brazing must maintain the person's brazing continuity.

b. A person who possesses a medical gas certification must maintain the person's valid certification issued from the National Inspection Testing Certification (NITC) Corporation or an equivalent authority approved by the board.

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23.7(2) *Hearth systems specialty license.*

a. A person who possesses a hearth systems specialty license must maintain the person's valid certification issued from the National Fireplace Institute or equivalent authority approved by the board.

b. A hearth systems specialty license allows a licensee to perform work in the installation of gas burning and solid fuel appliances that offer a decorative view of the flames, from the connector pipe to the shutoff valve located within three feet of the appliance. A hearth systems specialty license further allows for work in the venting systems associated with a hearth appliance, log lighters, gas log sets, fireplace inserts, and freestanding stoves. A hearth systems specialty license does not allow a licensee to install a shutoff valve, or perform any other mechanical or HVAC-refrigeration work.

c. A person possessing a hearth systems specialty license shall not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and shall not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(3) *Service technician HVAC specialty license.*

a. A licensee who holds a service technician HVAC specialty license by demonstrating the licensee possesses a valid certification from North American Technical Excellence, Inc. or an equivalent authority approved by the board must maintain valid certification from North American Technical Excellence, Inc. or an equivalent authority approved by the board.

b. A service technician HVAC specialty license allows a licensee to perform work from the appliance shutoff valve to the appliance and any part and component of the appliance, including the disconnection and reconnection of the existing appliance to the gas piping and the installation of a shutoff valve no more than 3 feet from the appliance. A service technician HVAC specialty license does not allow a licensee to perform any other mechanical or HVAC-refrigeration work.

c. A person possessing a service technician HVAC specialty license shall not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and shall not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(4) *Disconnect/reconnect plumbing technician specialty license.*

a. A disconnect/reconnect plumbing technician specialty license allows a licensee to perform work from the appliance shutoff valve or the fixture shutoff valve to the appliance or fixture and any part or component of the appliance or fixture, including the disconnection and reconnection of the existing appliance or fixture to the water or sewer piping and the installation of a shutoff valve no more than 3 feet from the appliance or fixture. A disconnect/reconnect plumbing technician specialty license does not allow a licensee to perform any other plumbing work.

b. A person possessing a disconnect/reconnect plumbing technician specialty license shall not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and shall not perform work within the limited scope of the person's specialty license unless the person can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

23.7(5) *Private school or college routine maintenance specialty license.*

a. A private school or college routine maintenance specialty license allows a licensee to perform routine maintenance within the scope of the licensee's employment with a private school or college. For purposes of this subrule, "routine maintenance" shall mean the maintenance, repair, or replacement of existing fixtures or parts of plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic systems in which no changes in original design are made. Fixtures or parts do not include smoke and fire dampers or water, gas, or steam piping permanent repairs except for traps and strainers. Routine maintenance shall include emergency repairs. Routine maintenance does not include the replacement of furnaces, boilers, cooling appliances, or water heaters more than 100 gallons in size.

b. A person possessing a private school or college routine maintenance specialty license shall not perform Iowa Code chapter 105-covered work beyond the limited scope of the person's specialty license, and shall not perform work within the limited scope of the person's specialty license unless the person

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can conform to the minimum standard of acceptable and prevailing practice of a licensee performing such work.

This rule is intended to implement Iowa Code section 105.22.

641—23.8(105) Inactive license.

23.8(1) A person possessing an inactive license under 641—subrule 29.2(6) shall not perform any plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic work for which licensure is required so long as the person's license is held in inactive status.

23.8(2) A person possessing an active journeyman/inactive master license under 641—subrule 29.2(5) shall not perform any plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic work for which a master license is required so long as the person's master license is held in inactive status.

This rule is intended to implement Iowa Code sections 105.20 and 105.22.

ARC 0936C**PUBLIC HEALTH DEPARTMENT[641]****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 2013 Iowa Acts, Senate File 427, section 35, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 27, “Plumbing and Mechanical Systems Board—Administrative and Regulatory Authority,” Iowa Administrative Code.

The proposed amendments incorporate new mechanical, HVAC-refrigeration, and sheet metal disciplines identified in 2013 Iowa Acts, Senate File 427, into definitions for license and licensee. 2013 Iowa Acts, Senate File 427, became effective upon enactment on April 26, 2013, by operation of section 36 of the Senate File. The new disciplines are also incorporated into the rules setting forth the purpose of the Board and into one of the subrules addressing investigations of violations.

Any interested person may make written suggestions or comments on these amendments on or before August 27, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cynthia.houlson@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 11:30 a.m. to 1 p.m., 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. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Public Library
529 Pierce Street
Sioux City
Crestwood High School
1000 4th Avenue East
Cresco

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Public Library, Meeting Room C
415 Commercial Street
Waterloo

Ottumwa Regional Health Center
1001 E. Pennsylvania
Ottumwa

Spirit Lake High School
2701 Hill Avenue
Spirit Lake

Public Library Information Center
Kelinson Room
2950 Learning Campus Drive
Bettendorf

Lucas State Office Building, Sixth Floor
321 E. 12th Street
Des Moines

Iowa Western Community College – 2
923 E. Washington
Clarinda

Burlington High School
421 Terrace Drive
Burlington

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 Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

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

These amendments are intended to implement 2013 Iowa Acts, Senate File 427.

The following amendments are proposed.

ITEM 1. Amend rule **641—27.1(17A,105)**, definitions of “License” and “Licensee,” as follows:

“*License*” means a license to operate as a contractor or work in the plumbing, ~~HVAC, refrigeration,~~ mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board.

“*Licensee*” means a person or entity licensed to operate as a contractor or work in the plumbing, ~~HVAC, refrigeration,~~ mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board.

ITEM 2. Amend rule **641—27.2(17A,105,83GA,ch151)**, parenthetical implementation statute, as follows:

(17A,105,~~83GA,ch151~~)

ITEM 3. Amend subrule 27.2(1) as follows:

27.2(1) Licensing of qualified applicants to operate as a contractor or work in the plumbing, ~~HVAC, refrigeration,~~ mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board by examination, renewal, endorsement, and reciprocity.

ITEM 4. Amend paragraph **27.3(8)“e”** as follows:

e. Investigate alleged violations of statutes or rules that relate to operation as a contractor; work in the plumbing, ~~HVAC, refrigeration,~~ mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines; work as a certified medical gas system installer; or work in the specialty license disciplines developed by the board upon receipt of a complaint or upon the board’s own initiation. The investigation will be based on information or evidence received by the board.

ARC 0935C**PUBLIC HEALTH DEPARTMENT[641]****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 2013 Iowa Acts, Senate File 427, section 35, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 28, “Plumbing and Mechanical Systems Board—Licensure Fees,” Iowa Administrative Code.

These amendments are necessary to implement 2013 Iowa Acts, Senate File 427, which became effective upon enactment on April 26, 2013, by operation of section 36 of the Senate File. The proposed amendments identify the fees associated with apprentice, journey and master licenses, medical gas piping certificates, inactive licenses, contractor licenses, and specialty licenses. The fees are applicable to initial licenses, reciprocal licenses, and renewal licenses. In addition, all licenses are issued for a period of three years and until June 29, 2017, those renewing for less than three years will have their license fees prorated using a one-sixth deduction for each six-month period. Late fees and requirements for lapsed licenses are also included. A fee for converting an HVAC-refrigeration or hydronics license to a mechanical license is also included.

Any interested person may make written suggestions or comments on these amendments on or before August 27, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cynthia.houlson@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 11:30 a.m. to 1 p.m., 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. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

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Ottumwa Regional Health Center
1001 E. Pennsylvania
Ottumwa

Spirit Lake High School
2701 Hill Avenue
Spirit Lake

Public Library Information Center
Kelinson Room
2950 Learning Campus Drive
Bettendorf

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Lucas State Office Building, Sixth Floor
321 E. 12th Street
Des Moines

Iowa Western Community College – 2
923 E. Washington
Clarinda

Burlington High School
421 Terrace Drive
Burlington

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 Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

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

These amendments are intended to implement Iowa Code section 105.9 as amended by 2013 Iowa Acts, Senate File 427.

The following amendments are proposed.

ITEM 1. Amend subrule 28.1(1) as follows:

28.1(1) License fee for Fees for three-year initial licenses are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is ~~\$50~~ \$150.
- c. A master license as defined in 641—subrule 29.2(3) is ~~\$125~~ \$300.
- d. A medical gas pipe certificate as defined in 641—29.3(105) is ~~\$50~~ \$75.
- e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is \$50.
- f. A contractor license as defined in 641—subrule 29.2(4) is \$150.
- g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and 29.2(11) is ~~\$50~~ \$75.
- h. Fees for all initial licenses issued for a period less than three years shall be prorated using a one-sixth deduction for each six-month period.

ITEM 2. Amend subrule 28.1(2) as follows:

28.1(2) Reciprocal license fee for Fees for three-year reciprocal licenses are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is ~~\$50~~ \$150.
- c. A master license as defined in 641—subrule 29.2(3) is ~~\$125~~ \$300.
- d. Fees for all reciprocal licenses issued for a period of less than three years shall be prorated using a one-sixth deduction for each six-month period.

ITEM 3. Amend subrule 28.1(3) as follows:

28.1(3) Renewal license fee for Fees for renewal of licenses are as follows:

- a. An apprentice license as defined in 641—subrule 29.2(1) is \$50.
- b. A journey license as defined in 641—subrule 29.2(2) is ~~\$50~~ \$150.
- c. A master license as defined in 641—subrule 29.2(3) is ~~\$125~~ \$300.
- d. A medical gas pipe certificate as defined in 641—29.3(105) is ~~\$50~~ \$75.
- e. An inactive license as defined in 641—subrules 29.2(5) and 29.2(6) is \$50.
- f. A contractor license as defined in 641—subrule 29.2(4) is \$150.
- g. A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and 29.2(11) is ~~\$50~~ \$75.
- h. The renewal fee shall be waived for all licenses renewed from January 1, 2011, through December 31, 2012. However, if applicable, late fees as set forth in subrule 28.1(5) and paper application fees as set forth in subrule 28.1(10) will be applied. Through June 29, 2017, fees for all

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licenses renewed for a period less than three years shall be prorated using a one-sixth deduction for each six-month period.

ITEM 4. Amend subrule 28.1(5) as follows:

28.1(5) A late fee for failure to renew before expiration is determined as follows:

a. A Prior to July 1, 2017, a licensee who allows a license to lapse for 30 days or less may reinstate and renew the license with payment of the appropriate renewal fee and without payment of a late fee. Beginning July 1, 2017, a licensee who does not timely renew but renews a license on or before the following July 31 may reinstate and renew the license upon payment of the appropriate renewal fee and without payment of a late fee.

b. A Prior to July 1, 2017, a licensee who allows a license to lapse for more than 30 days but less than 60 days may reinstate and renew the license without examination upon payment of a \$60 late fee and the appropriate renewal of license fee. Beginning July 1, 2017, a licensee who does not timely renew but renews a license between the following August 1 and August 31 may reinstate and renew the license without examination upon payment of a \$60 late fee and the appropriate renewal of license fee.

c. A Prior to July 1, 2017, a licensee who allows a license to lapse for more than 60 days but not more than 365 days may reinstate and renew the license without examination upon payment of a \$100 late fee and the appropriate renewal of license fee. Beginning July 1, 2017, a licensee who does not timely renew but renews a license after the following August 31 and on or before the following June 30 may reinstate and renew the license without examination upon payment of a \$100 late fee and the appropriate renewal of license fee. A licensee whose license has lapsed for more than 60 days may not work as a plumbing or mechanical professional or contractor in Iowa until the license is renewed. A licensee who works as a plumbing or mechanical professional under a license that has lapsed more than 60 days, including under a special restricted license; works as a geothermal heat pump installer with a lapsed license; or operates as a contractor in the state of Iowa with a lapsed license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code chapter 105, criminal sanctions pursuant to Iowa Code chapter 105, and other available legal remedies.

ITEM 5. Adopt the following **new** subrule 28.1(12):

28.1(12) The fee for converting an HVAC-refrigeration or hydronics license to a mechanical license is \$50. This fee shall not apply at the time of reissue.

ITEM 6. Amend **641—Chapter 28**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 105~~ section 105.9 as amended by ~~2011~~ 2013 Iowa Acts, House File 392 Senate File 427, and ~~chapter 272C~~.

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PUBLIC HEALTH DEPARTMENT[641]

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 2013 Iowa Acts, Senate File 427, section 35, and Iowa Code section 105.4, the Department of Public Health and the Plumbing and Mechanical Systems Board hereby give Notice of Intended Action to amend Chapter 29, “Plumbing and Mechanical Systems Board—Application, Licensure, and Examination,” Iowa Administrative Code.

Items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17 and 18 are necessary to implement 2013 Iowa Acts, Senate File 427, which became effective upon enactment on April 26, 2013, by operation of section 36 of the Senate File.

The following items have the following additional purposes:

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Item 2 modifies the definition of “hydronic” to reflect the most current definition contained in Iowa Code section 105.2(8).

Item 12 rescinds subrule 29.4(3), which states that “An applicant shall have no record of felony conviction relating to the profession as determined by the board.”

Item 13 specifies circumstances under which an application for licensure shall be deemed incomplete.

Item 14 removes the requirement that examinations adopted by the Board must be “nationally recognized.”

Item 15 modifies the required score for passage of examinations from 75 percent to 70 percent.

Item 16 omits the obsolete requirement that a licensee “provide evidence that the licensee continues to meet the general requirements for licensure under rule 641—29.2(105)” in order to qualify for renewal.

Any interested person may make written suggestions or comments on these amendments on or before August 27, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cynthia.houlson@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 11:30 a.m. to 1 p.m., 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. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

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1001 E. Pennsylvania
Ottumwa

Spirit Lake High School
2701 Hill Avenue
Spirit Lake

Public Library Information Center
Kelinson Room
2950 Learning Campus Drive
Bettendorf

Lucas State Office Building, Sixth Floor
321 E. 12th Street
Des Moines

Iowa Western Community College – 2
923 E. Washington
Clarinda

Burlington High School
421 Terrace Drive
Burlington

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 Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

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

These amendments are intended to implement Iowa Code sections 105.2, 105.5, 105.9, 105.18, 105.19, 105.20 and 105.22 and 2013 Iowa Acts, Senate File 427.

The following amendments are proposed.

ITEM 1. Adopt the following new definition of “Sheet metal” in rule **641—29.1(105)**:

“*Sheet metal*” means heating, ventilation, air conditioning, pollution control, fume hood systems and related ducted systems or installation of equipment associated with any component of a sheet metal system. “Sheet metal” excludes refrigeration and electrical lines and all natural gas, propane, liquid propane, or other gas lines associated with any component of a sheet metal system.

ITEM 2. Amend the following definitions in rule **641—29.1(105)**:

“*Apprentice*” means any person, other than a helper, journey person, or master, who, as a principal occupation, is engaged in working as an employee of a plumbing, ~~HVAC, refrigeration, mechanical,~~ HVAC-refrigeration, sheet metal, or hydronic systems contractor under the supervision of either a master or a journey person and is progressing toward completion of an apprenticeship training program registered by the Office of Apprenticeship of the United States Department of Labor while learning and assisting in the design, installation, and repair of plumbing, HVAC, refrigeration, sheet metal, or hydronic systems, as applicable.

“*Hearth systems specialty license*” means a sublicense under an ~~HVAC-refrigeration or mechanical~~ license to perform work in the installation of gas burning and solid fuel appliances that offer a decorative view of the flames, from the connector pipe to the shutoff valve located within 3 feet of the appliance. This sublicense is further allowed to perform work in the venting systems, log lighters, gas log sets, fireplace inserts, and freestanding stoves.

“*Hydronic*” means a heating or cooling system that transfers heating or cooling by circulating fluid through a closed system, including boilers, pressure vessels, refrigerated equipment in connection with chilled water systems, all steam piping, hot or chilled water piping together with all control devices and accessories, installed as part of, or in connection with, any heating or cooling system or appliance whose primary purpose is to provide comfort using a liquid, water, or steam as the heating or cooling media. “Hydronic” includes all low-pressure and high-pressure systems and all natural, propane, liquid propane, or other gas lines associated with any component of a hydronic system. For the purposes of this definition, “primary purpose is to provide comfort” means a system or appliance in which at least 51 percent of the capacity generated by its operation, on an annual average, is dedicated to comfort heating or cooling.

“*Inactive license*” means a license that is available for a plumbing, ~~HVAC, refrigeration, mechanical,~~ HVAC-refrigeration, sheet metal, or hydronic professional who is not actively engaged in running a business or working in the business in the corresponding discipline at that license level.

“*Journey person*” means any person, other than a master, who, as a principal occupation, is engaged as an employee of, or otherwise working under the direction of, a master in the design, installation, and repair of plumbing, ~~HVAC, refrigeration, mechanical,~~ HVAC-refrigeration, sheet metal, or hydronic systems, as applicable.

“*Licensee*” means a person or entity licensed to operate as a contractor or work in the plumbing, ~~HVAC, refrigeration, mechanical,~~ HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board.

“*Master*” means any person who works in the planning or superintending of the design, installation, or repair of plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems and is otherwise lawfully qualified to conduct the business of plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems, and who is familiar with the laws and rules governing the same.

“*Mechanical systems*” means HVAC, refrigeration, sheet metal, and hydronic systems.

“*Routine maintenance*” means the maintenance, repair, or replacement of existing fixtures or parts of plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems in which no changes in original design are made. Fixtures or parts do not include smoke and fire dampers or water, gas or steam piping permanent repairs except for traps or strainers. Routine maintenance shall include

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emergency repairs. "Routine maintenance" does not include the replacement of furnaces, boilers, cooling appliances, or water heaters more than 100 gallons in size.

"Service technician HVAC specialty license" means a sublicense under an HVAC-refrigeration or mechanical license to perform work from the appliance shutoff valve to the appliance and any part and component of the appliance, including the disconnection and reconnection of the existing appliance to the gas piping and the installation of a shutoff valve no more than 3 feet away from the appliance.

ITEM 3. Amend rule 641—29.2(105), introductory paragraph, as follows:

641—29.2(105) Available licenses and general requirements. Effective January 1, 2011, all licenses issued by the board will be for a three-year period, except where a shorter or longer period is required or allowed by statute. ~~All licenses issued prior to January 1, 2011, will be for a two-year period.~~ Subject to the general requirements set forth herein and the minimum qualifications for licensure set forth in rule 641—29.4(105), the following licenses are available:

ITEM 4. Amend subparagraph **29.2(2)“a”(2)** as follows:

(2) Pass the state journeyman licensing examination in the applicable discipline. An individual who has passed both the journeyman HVAC-refrigeration examination and the journeyman hydronic examination separately shall be qualified to be issued a journeyman mechanical license without having to pass the journeyman mechanical examination.

ITEM 5. Amend paragraph **29.2(3)“b”** as follows:

b. Pass the state master licensing examination for the applicable discipline. An individual who has passed both the master HVAC-refrigeration examination and the master hydronic examination separately shall be qualified to be issued a master mechanical license without having to pass the master mechanical examination.

ITEM 6. Adopt the following new subparagraphs **29.2(4)“a”(1)** to **(3)**:

(1) Through June 30, 2017, the application shall include the applicant's state contractor registration number.

(2) Effective July 1, 2017, the application shall include proof of workers' compensation insurance coverage, proof of unemployment insurance compliance and, for out-of-state contractors, a bond as described in Iowa Code chapter 91C.

(3) Effective July 1, 2017, contractor licensure under Iowa Code chapter 105 as amended by 2013 Iowa Acts, Senate File 427, shall constitute registration as a contractor under Iowa Code chapter 91C.

ITEM 7. Rescind paragraph **29.2(4)“b.”**

ITEM 8. Reletter paragraphs **29.2(4)“c”** to **“g”** as **29.2(4)“b”** to **“f.”**

ITEM 9. Amend relettered paragraph **29.2(4)“e”** as follows:

e. Provide a certificate to the board that the public liability insurance policy required under paragraph 29.2(4)“*d c*” and the surety bond required under paragraph 29.2(4)“*e d*” shall not be canceled without the entity first giving ~~45~~ 10 days' written notice to the board.

ITEM 10. Amend paragraphs **29.2(5)“c”** and **“d”** as follows:

c. Provide evidence that the applicant is not performing plumbing, ~~HVAC, refrigeration, mechanical,~~ HVAC-refrigeration, sheet metal, or hydronic work for which a master license is required.

d. Acknowledge awareness that the applicant is unable to perform any plumbing, ~~HVAC, refrigeration, mechanical,~~ HVAC-refrigeration, sheet metal, or hydronic work for which a master license is required so long as the applicant's master license is held in inactive status.

ITEM 11. Amend paragraphs **29.2(6)“c”** and **“d”** as follows:

c. Provide the board with evidence that the applicant is not actively engaged working in the plumbing, ~~HVAC, refrigeration, mechanical,~~ HVAC-refrigeration, sheet metal, or hydronic disciplines for which licensure is required.

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d. Acknowledge awareness that the applicant is unable to perform any plumbing, HVAC, refrigeration, mechanical, HVAC-refrigeration, sheet metal, or hydronic work for which licensure is required so long as the applicant's license is held in inactive status.

ITEM 12. Rescind subrule **29.4(3)**.

ITEM 13. Adopt the following **new** paragraph **29.5(4)“c”**:

c. Documentation of criminal convictions related to the practice of the profession, which shall include a full explanation from the applicant. No application shall be considered complete unless and until the licensee responds to board requests for additional information regarding applicant criminal convictions.

ITEM 14. Amend paragraph **29.6(2)“a”** as follows:

a. The examination will be written and proctored by a ~~nationally recognized~~ testing agency selected by the board ~~through a competitive bid process~~.

ITEM 15. Amend paragraph **29.6(2)“d”** as follows:

d. A score of ~~75~~ 70 percent or better will be considered passing.

ITEM 16. Rescind rule 641—29.7(105) and adopt the following **new** rule in lieu thereof:

641—29.7(105) License renewal.

29.7(1) The period of licensure to operate as a contractor or work as a master, journey person or apprentice in the plumbing, mechanical, HVAC-refrigeration, sheet metal, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board shall be for a period of three years, except as allowed or required in circumstances described in this subrule.

a. All licenses issued or renewed on or after July 1, 2014, shall expire on June 30 every three years, beginning with June 30, 2017.

b. All licenses that currently possess an expiration date prior to June 30, 2014, shall be granted a one-time extension of the expiration date to June 30, 2014, at no additional charge and with no additional continuing education requirements. The licensees holding the licenses described in this rule shall pay a full renewal fee upon renewal and shall be issued a license with an expiration date of June 30, 2017.

c. Licensees with a renewal date that falls from July 1, 2014, through June 29, 2017, shall have the license renewal fee prorated using a one-sixth deduction for each six-month period following July 1, 2014. Applicable late renewal fees shall apply during this period. Licenses renewed through June 29, 2017, shall be issued with an expiration date of June 30, 2017.

d. Fees for new licenses issued after the July 1 beginning of each three-year renewal cycle shall be prorated using a one-sixth deduction for each six-month period of the renewal cycle.

e. A licensee whose license expires between June 30, 2014, and July 1, 2017, may voluntarily renew the license early so the license may have an expiration date of June 30, 2017. This voluntary early renewal may happen at any time on or after July 1, 2014. Notwithstanding any shortened compliance period, licensees who renew their licenses between June 30, 2014, and July 1, 2017, shall meet all of the continuing education requirements that would otherwise be required at both the July 1, 2017, renewal and the prior renewal.

29.7(2) Renewal notification.

a. Through December 31, 2016, the board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. After December 31, 2016, the board shall cease this practice.

b. The licensee is responsible for renewing the license prior to its expiration.

c. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

29.7(3) Specific renewal requirements.

a. A licensee seeking renewal shall:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(1) Meet the continuing education requirements as set forth in rule 641—30.2(105). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

(2) Submit the completed renewal application and renewal fee before the license expiration date.

b. Failure to renew a license within two months after the expiration of the license shall not invalidate the license, but a reasonable penalty may be assessed as set forth in 641—subrule 28.1(5), in addition to the license renewal fee, to allow reinstatement of the license.

(1) Prior to July 1, 2017, a licensee who allows a license to lapse for 30 days or less may reinstate and renew the license without examination upon payment of the appropriate renewal of license fee as defined in 641—subrule 28.1(3). Beginning July 1, 2017, a licensee who does not timely renew but renews the license on or before the following July 31 may reinstate and renew the license without examination upon payment of the appropriate renewal of license fee as defined in 641—subrule 28.1(3).

(2) Prior to July 1, 2017, a licensee who allows a license to lapse for more than 30 days but less than 60 days may reinstate and renew the license without examination upon payment of a \$60 late fee and the appropriate renewal of license fee as defined in 641—subrule 28.1(3). Beginning July 1, 2017, a licensee who does not timely renew but renews a license between the following August 1 and August 31 may reinstate and renew the license without examination upon payment of a \$60 late fee and the appropriate renewal of license fee as defined in 641—subrule 28.1(3).

c. Prior to July 1, 2017, a licensee who allows a license to lapse for more than 60 days but not more than 365 days may reinstate and renew the license without examination upon payment of a \$100 late fee and the appropriate renewal of license fee as defined in 641—subrule 28.1(3). Beginning July 1, 2017, a licensee who does not timely renew but renews a license after the following August 31 and on or before the following June 30 may reinstate and renew the license without examination upon payment of a \$100 late fee and the appropriate renewal of license fee as defined in 641—subrule 28.1(3).

d. A licensee who allows a license to lapse for more than one year may reinstate and renew the license by either of the following means:

(1) Retaking and successfully passing the applicable licensing examination and paying the appropriate renewal fee as defined in 641—subrule 28.1(3), or

(2) Retaking and successfully completing all continuing education requirements as set forth in rule 641—30.2(105) and paying the appropriate renewal fee as defined in 641—subrule 28.1(3).

e. A licensee who reinstates and renews a lapsed license under paragraph 29.7(3)“*d*” shall not be entitled to a prorated, reduced renewal fee.

ITEM 17. Rescind rule 641—29.8(83GA, HF2531) and adopt the following new rule in lieu thereof:

641—29.8(105) License reissue. Each reissued license shall be for the same level of license held by the licensee at the time of renewal. Beginning July 1, 2014, upon renewal, licenses shall be reissued as follows:

29.8(1) An individual who holds a refrigeration license shall be reissued an HVAC-refrigeration license; an individual who holds an HVAC license shall be reissued either an HVAC-refrigeration license or a sheet metal license, at the election of the licensee.

29.8(2) An individual who holds an HVAC license and a hydronic license shall be reissued a mechanical license.

29.8(3) An individual who holds a refrigeration license and a hydronic license shall be reissued a mechanical license.

29.8(4) An individual who holds a refrigeration license or an HVAC license and has passed the board-designated hydronics test prior to June 30, 2014, shall be reissued a mechanical license.

29.8(5) An individual who holds only a hydronics license shall be reissued a hydronics license.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 18. Amend **641—Chapter 29**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 105~~ sections 105.2, 105.5, 105.9, 105.18, 105.19, 105.20, 105.22 and 272C.3 as amended by 2011 and 2013 Iowa Acts, ~~House File 392~~ Senate File 427.

ARC 0933C

PUBLIC HEALTH DEPARTMENT[641]

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 2013 Iowa Acts, Senate File 427, section 35, and Iowa Code section 105.4, the Department of Public Health and the Plumbing and Mechanical Systems Board hereby give Notice of Intended Action to amend Chapter 30, “Continuing Education for Plumbing and Mechanical Systems Professionals,” Iowa Administrative Code.

Items 1, 2, 3, 5, and 8 are necessary to implement 2013 Iowa Acts, Senate File 427, which became effective upon enactment on April 26, 2013, by operation of section 36 of the Senate File.

The additional purposes of the following items are as follows:

Item 6 increases the number of hours of continuing education a licensee may obtain through computer-based courses. This amendment is intended to decrease the burden on licensees that may result from traveling to in-person continuing education courses.

Items 1 and 7 clarify that an audit performed pursuant to 641—30.5(105) shall be referred to as “compliance review.”

Any interested person may make written suggestions or comments on these amendments on or before August 27, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cynthia.houlson@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 11:30 a.m. to 1 p.m., 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. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

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529 Pierce Street
Sioux City

Crestwood High School
1000 4th Avenue East
Cresco

Public Library, Meeting Room C
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Waterloo

Ottumwa Regional Health Center
1001 E. Pennsylvania
Ottumwa

Spirit Lake High School
2701 Hill Avenue
Spirit Lake

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Public Library Information Center
 Kelinson Room
 2950 Learning Campus Drive
 Bettendorf

Lucas State Office Building, Sixth Floor
 321 E. 12th Street
 Des Moines

Iowa Western Community College – 2
 923 E. Washington
 Clarinda

Burlington High School
 421 Terrace Drive
 Burlington

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 Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

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

These amendments are intended to implement 2013 Iowa Acts, Senate File 427.

The following amendments are proposed.

ITEM 1. Rescind the definition of “Audit” in rule **641—30.1(105)**.

ITEM 2. Adopt the following **new** definitions in rule **641—30.1(105)**:

“*Compliance review*” means the selection by the board of licensees for verification of satisfactory completion of continuing education requirements during a specified continuing education compliance period.

“*Continuing education compliance period*” means the period between renewals during which a licensee must obtain the requisite amount of continuing education in order to renew the licensee’s license.

“*Iowa mechanical code*” means the most current version of the International Mechanical Code, as adopted and amended by the board.

“*Iowa plumbing code*” means the most current version of the Uniform Plumbing Code, as adopted and amended by the board.

ITEM 3. Amend subrule 30.2(2) as follows:

30.2(2) ~~Each continuing education compliance period:~~ The following continuing education requirements shall apply only to each licensee’s first renewal on or after July 1, 2014. For all renewals thereafter, the requirements of subrule 30.2(3) shall apply:

a. to d. No change.

ITEM 4. Renumber subrules **30.2(3)** to **30.2(5)** as **30.2(4)** to **30.2(6)**.

ITEM 5. Adopt the following **new** subrule 30.2(3):

30.2(3) During each continuing education compliance period, each active or inactive master and journeyman licensee must obtain the following amounts of continuing education:

a. Safety education. Each licensee holding a single license shall complete two hours, and each licensee holding multiple licenses shall complete four hours, of continuing education in the content area of the Iowa Occupational Safety and Health Act.

b. Code education.

(1) Each licensee holding one or more license or sublicense in a mechanical discipline shall complete two hours of continuing education in the content area of the Iowa mechanical code.

(2) Each licensee holding a plumbing license or sublicense shall complete two hours of continuing education in the content area of the Iowa plumbing code.

c. Discipline education.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(1) A licensee holding a single plumbing license or sublicense, or a single license or sublicense in a mechanical discipline, shall complete four hours of continuing education in the discipline in which the licensee holds a license.

(2) A licensee holding multiple licenses or sublicenses shall complete eight hours of continuing education in the relevant disciplines.

d. Private school or college maintenance specialty license. For the purposes of this subrule, a private school or college routine maintenance specialty license shall be considered to be a sublicense of whatever discipline(s) in which the licensee actually practices.

ITEM 6. Amend renumbered subrule 30.2(4) as follows:

30.2(4) Up to ~~2 hours~~ one-half of board-approved continuing education required by subrule 30.2(2) each continuing education compliance period may be obtained through completion of computer-based continuing education programs/activities approved by the board.

ITEM 7. Amend rule 641—30.5(105), introductory paragraph, as follows:

641—30.5(105) Audit Compliance review of continuing education requirements. The board may conduct ~~an audit~~ a review of a licensee's license renewal application to ~~review~~ determine compliance with continuing education requirements.

ITEM 8. Amend **641—Chapter 30**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 105 and 272C and 2013 Iowa Acts, Senate File 427.

ARC 0932C

PUBLIC HEALTH DEPARTMENT[641]

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 2013 Iowa Acts, Senate File 427, section 35, and Iowa Code section 105.4, the Department of Public Health and the Plumbing and Mechanical Systems Board hereby give Notice of Intended Action to amend Chapter 32, “Plumbing and Mechanical Systems Board—Licensee Discipline,” Iowa Administrative Code.

Item 4 is necessary to implement 2013 Iowa Acts, Senate File 427, which became effective upon enactment on April 26, 2013, by operation of section 36 of the Senate File.

The following items have the following additional purposes:

Items 1, 2, and 3 clarify the following additional grounds for licensee discipline: failure to comply with a compliance review of continuing education; practice outside the scope of a license; practicing as a journey person without the supervision of a master; practicing in a trade for which the licensee does not hold a Board-issued license; contracting for Iowa Code chapter 105-covered work in Iowa without a contractor license; practicing with a lapsed license; and practicing as a contractor without the required bonding and insurance.

Item 5 clarifies that an order imposing civil penalty may be administratively issued subsequent to the Board's issuing a notice of intent to impose such penalty, and that a licensee can waive right to hearing at any time and pay a penalty noticed under rule 641—32.5(105).

Item 6 clarifies that the settlement agreement provisions for contested cases apply if a notice of hearing is issued under paragraph 32.5(5)“c.”

Item 7 establishes procedures which would allow the Board to participate in the state offset program to attempt to collect delinquent civil penalties.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Any interested person may make written suggestions or comments on these amendments on or before August 27, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cynthia.houlson@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 11:30 a.m. to 1 p.m., 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. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

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Burlington High School
421 Terrace Drive
Burlington

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 Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

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

These amendments are intended to implement Iowa Code sections 8A.504, 105.22, 105.23, 105.27 and 105.28 and 2013 Iowa Acts, Senate File 427.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Lapsed license” in rule **641—32.1(105,272C)**:

“*Lapsed license*” means a license that expired prior to June 30, 2017, and was not renewed within 60 days following its expiration date, or a license that expired on or after June 30, 2017, and was not renewed by the following August 31.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 2. Amend subrule 32.2(12) as follows:

32.2(12) Failure to ~~cooperate with a board audit~~ timely submit the requested materials in response to a compliance review conducted pursuant to 641—30.5(105).

ITEM 3. Adopt the following **new** subrules 32.2(35), 32.2(36) and 32.2(37):

32.2(35) Practice outside the scope of the license, which shall include, but not be limited to:

- a. Practicing as a journey person without the supervision of a master.
- b. Practicing in a trade for which the licensee does not hold a board-issued license.
- c. Contracting for plumbing or mechanical work in the state of Iowa without a board-issued contractor license.

32.2(36) Practicing on a lapsed license.

32.2(37) Practicing as a contractor without valid bonding or insurance, as required by Iowa Code section 105.19 as amended by 2013 Iowa Acts, Senate File 427.

ITEM 4. Amend subrule 32.5(1) as follows:

32.5(1) Unlawful practices. Practices by an unlicensed person which are subject to civil penalties include, but are not limited to:

- a. Acts or practices by unlicensed persons which require licensure to install or repair plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems under Iowa Code chapter 105.
- b. Acts or practices by unlicensed persons which require certification to install or repair medical gas piping systems under Iowa Code chapter 105.
- c. Engaging in the business of designing, installing, or repairing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems without employing a licensed master.
- d. Providing plumbing, mechanical, HVAC, refrigeration, sheet metal, or hydronic systems services on a contractual basis.

~~e.~~ e. Use or attempted use of a licensee's certificate or wallet card or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.

~~e.~~ f. Falsely impersonating a person licensed under Iowa Code chapter 105 as amended by 2013 Iowa Acts, Senate File 427.

~~f.~~ g. Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.

~~g.~~ h. Other violations of Iowa Code chapter 105.

~~h.~~ i. Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

ITEM 5. Amend paragraph **32.5(5)“b”** as follows:

b. If a request for hearing is not timely made, or if the nonlicensee waives in writing the right to hearing and agrees to pay the penalty, the board chairperson, ~~or the chairperson's designee,~~ or the board executive may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 105, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

ITEM 6. Rescind paragraph **32.5(5)“d”** and adopt the following **new** paragraph in lieu thereof:

d. Subsequent to the issuance of a notice of hearing under this subrule, the settlement agreement provisions of 641—33.23(272C) shall apply.

ITEM 7. Adopt the following **new** rule 641—32.6(105,272C):

641—32.6(105,272C) Collection of delinquent civil penalties and discipline-related debts.

32.6(1) The board may participate in the department of administrative service's income offset program.

32.6(2) Definitions. For purposes of this rule, the following definitions apply:

“*Debtor*” means any person who owes a debt to the board as a result of a proceeding in which notice and opportunity to be heard was afforded.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“Income offset program” means the program established in Iowa Code section 8A.504 through which the department of administrative services coordinates with state agencies to satisfy liabilities owed to those state agencies.

“Notification of offset” means receipt of actual notice by the board from the department of administrative services that the debtor is entitled to a payment that qualifies for offset.

“Preoffset notice” means the notice required by 32.6(5)“a.”

32.6(3) The board office may provide the department of administrative services a liability file.

a. With respect to each individual debtor, the liability file shall contain the following:

(1) Information relevant to the identification of the debtor, as required by the department of administrative services and including the debtor’s name and social security number or federal identification number,

(2) The amount of liability, and

(3) A written statement declaring the debt to have occurred.

b. The board office shall certify the liability file at least semiannually, as required by the department of administrative services.

c. The board office shall update the liability file:

(1) When necessary to reflect new debtors, and

(2) When the status of a debt changes due to payment of the debt, invalidation of the liability, alternate payment arrangements with the debtor, bankruptcy, or other factors.

32.6(4) Due diligence.

a. Before submitting debtor information to the outstanding liability file, the board office shall make a good faith attempt to collect from the debtor. Such attempt shall include at least all of the following:

(1) A telephone call requesting payment.

(2) An initial letter to the debtor’s last discernible address requesting payment within 15 days.

(3) A second letter to the debtor’s last discernible address requesting payment within 10 days.

b. The board office shall document due diligence and retain such documentation.

32.6(5) Notification of offset. Within 10 calendar days of receiving notification from the department of administrative services that the debtor is entitled to a payment, the board office shall:

a. Send a preoffset notice to the debtor. The preoffset notice shall inform the debtor of the amount the department intends to claim, and shall include all of the following information:

(1) The board’s right to the payment in question.

(2) The board’s right to recover the payment through the offset procedure.

(3) The basis of the board’s case in regard to the debt.

(4) The right of the debtor to request, in accordance with subrule 32.6(6) and within 15 days of the mailing of the preoffset notice, a split of the payment between parties when the payment in question is jointly owned or otherwise owned by two or more persons.

(5) The debtor’s right to appeal the offset, in accordance with subrule 32.6(7) and within 15 days of the mailing of the preoffset notice, and the procedure to follow in that appeal.

(6) The board office’s contact information, including a telephone number, for the debtor to contact in case of questions.

b. Notify the department of administrative services that the preoffset notice has been sent to the debtor, and supply a copy of the preoffset notice to the department of administrative services.

32.6(6) Request to divide a jointly or commonly owned right to payment.

a. A debtor who receives a preoffset notice may request release of a joint or common owner’s share, if the request is received by the board within 15 days of the date the preoffset notice is mailed.

b. In conjunction with such a request, the debtor shall provide to the board the full name and social security number of any joint or common owner.

c. Upon receipt of such a request, the board office shall notify the department of administrative services of the request.

32.6(7) Appeal process.

a. A debtor who receives a preoffset notice may request an appeal of the underlying debt, if such request is made within 15 days of the date the preoffset notice is mailed.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

b. Request for appeal must be submitted in writing to the Iowa Plumbing and Mechanical Systems Board, Attn: Offset Appeals, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

c. If a request for appeal is timely made, the board office shall issue a notice of hearing to the debtor, and also serve a copy upon the assistant attorney general for the board.

d. The appeal shall be conducted as a contested case proceeding pursuant to 641—Chapter 33.

e. If a request for appeal is timely made, the board office shall notify the department of administrative services within 45 days of the notification of offset. The board shall hold a payment in abeyance until the final disposition of the contested liability or offset.

32.6(8) Once any offset has been completed, the board office shall notify the debtor of the action taken, and what balance, if any, still remains owing to the board.

ARC 0931C**PUBLIC HEALTH DEPARTMENT[641]****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 105.4 and 272C.5, the Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to amend Chapter 33, “Plumbing and Mechanical Systems Board—Contested Cases,” Iowa Administrative Code.

The proposed amendments pertain to the statement of charges issued by the Board. Item 1 rescinds paragraph 33.13(2)“b” which states, “Any allegation in the statement of charges not denied in the answer is considered admitted.” The effect of this rescission is to ensure that licensees have an opportunity to raise any potential defense in a contested case disciplinary proceeding, regardless of whether a licensee timely files an answer and regardless of the contents of the answer. It is the intent of the Board through these amendments to make the discipline process as fair as possible to licensees.

Any interested person may make written suggestions or comments on these amendments on or before August 27, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cynthia.houlson@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 11:30 a.m. to 1 p.m., 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. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

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PUBLIC HEALTH DEPARTMENT[641](cont'd)

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Burlington High School
421 Terrace Drive
Burlington

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 Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

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

These amendments are intended to implement Iowa Code chapter 17A and section 105.27.

The following amendments are proposed.

ITEM 1. Rescind paragraph 33.13(2)“b.”

ITEM 2. Reletter paragraph 33.13(2)“c” as 33.13(2)“b.”

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PUBLIC HEALTH DEPARTMENT[641]

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 2013 Iowa Acts, Senate File 427, section 35, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 35, “Plumbing and Mechanical Systems Board—Licensure of Nonresident Applicant—Reciprocity,” Iowa Administrative Code.

These amendments are necessary to implement 2013 Iowa Acts, Senate File 427, which became effective upon enactment on April 26, 2013, by operation of section 36 of the Senate File. The proposed amendments identify three new disciplines: mechanical, HVAC-refrigeration, and sheet metal, which will be added to the disciplines recognized for the purpose of reciprocity.

Any interested person may make written suggestions or comments on these amendments on or before August 27, 2013. Written materials should be directed to Cynthia Houlson, Plumbing and Mechanical Systems Board, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-6114; e-mail cynthia.houlson@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 11:30 a.m. to 1 p.m., 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. This

PUBLIC HEALTH DEPARTMENT[641](cont'd)

hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

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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 Plumbing and Mechanical Systems Board at the above address and advise staff of specific needs.

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

These amendments are intended to implement Iowa Code section 105.21 as amended by 2013 Iowa Acts, Senate File 427.

The following amendments are proposed.

ITEM 1. Amend rule 641—35.2(105) as follows:

641—35.2(105) Reciprocity agreements.

35.2(1) The board may enter into reciprocity agreements with other states that have plumbing, HVAC, ~~refrigeration~~, mechanical, HVAC-refrigeration, sheet metal, and hydronic licensing requirements similar to those set forth under Iowa law.

35.2(2) The board shall not enter into a reciprocity agreement with another state unless the other state grants the same reciprocity licensing privileges to residents of Iowa who have obtained Iowa plumbing, HVAC, ~~refrigeration~~, mechanical, HVAC-refrigeration, sheet metal, or hydronic licenses under Iowa Code chapter 105 as amended by 2013 Iowa Acts, Senate File 427.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 2. Amend paragraph **35.3(1)“b”** as follows:

b. The applicant possesses a valid plumbing, HVAC, ~~refrigeration,~~ mechanical, HVAC-refrigeration, sheet metal, or hydronic license issued from a state with which the board has entered into a reciprocity agreement;

ITEM 3. Amend **641—Chapter 35**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 105~~ section 105.21 as amended by 2013 Iowa Acts, Senate File 427.

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PUBLIC HEALTH DEPARTMENT[641]

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 144.3 and 144.46, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 95, “Vital Records: General Administration,” Iowa Administrative Code.

The rules in Chapter 95 describe the general administration of vital records including definitions, fees, the handling of records, access to records, issuance of certified copies and confidentiality. These proposed amendments increase certain fees related to vital records beginning January 1, 2014. These fees will revert back to current levels beginning July 1, 2019. The additional moneys generated by this time-limited fee increase will support the development and implementation of the Iowa Vital Events System. This includes the electronic registration and issuance of new events and the conversion of historical events into one system to manage the Civil Registry and health data collected and managed by the Department.

Any interested person may make written comments or suggestions on the proposed amendments on or before August 27, 2013. Such written comments should be directed to Jill France, Bureau of Health Statistics, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to jill.france@idph.iowa.gov.

There will be a public hearing on August 27, 2013, from 10 to 11:30 a.m., 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. The hearing will be conducted in Room 517-518, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa.

An opportunity to receive public comment will also be held by conference call on August 27, 2013, from 10 to 11:30 a.m. Persons wishing to participate in the conference call at any point during that time may dial 1-866-393-7315. Participants will be asked to provide their first and last names. The call will be recorded as required for a public hearing.

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

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

These amendments are intended to implement Iowa Code sections 144.46 and 144.46A.

The following amendments are proposed.

ITEM 1. Amend subrule 95.6(1) as follows:

95.6(1) Fees for services provided by state registrar or county registrar. The following fees shall be charged and remitted for the various services provided by the state registrar or the county registrar.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

a. The state registrar or county registrar, as applicable, shall charge a fee of ~~\$15~~ \$20 to conduct a search for a record. On and after July 1, 2019, this fee will revert to \$15.

(1) The search fee shall include one certified copy of the record.

(2) For each additional certified copy of the same record, a ~~\$15~~ \$20 fee shall be charged. On and after July 1, 2019, this fee will revert to \$15.

(3) If, following a search, no record is found, the ~~\$15~~ \$20 fee shall be retained. On and after July 1, 2019, this fee will revert to \$15.

b. The state registrar shall charge a fee of ~~\$15~~ \$20 to prepare an adoption certificate, to amend a certificate, to amend a certificate of live birth to reflect a legal change of name, to prepare a delayed certificate, to process other administrative or legal actions, or for the search and preparation of copies of supporting documents on file in the state registrar's office. On and after July 1, 2019, this fee will revert to \$15. No fee shall be charged for establishment of paternity.

c. and *d.* No change.

e. The state registrar shall charge a fee of ~~\$15~~ \$20 to amend an abstract or other legal documentation in support of the preparation of a new certificate. On and after July 1, 2019, this fee will revert to \$15.

f. No change.

g. The state registrar shall charge a fee of ~~\$15~~ \$20 to conduct a search for a certificate of fetal death for the purpose of issuing an uncertified copy of a certificate of birth resulting in stillbirth pursuant to ~~2012 Iowa Acts, House File 2368, section 4~~ Iowa Code section 144.31A. On and after July 1, 2019, this fee will revert to \$15.

ITEM 2. Amend subrule 95.6(2) as follows:

95.6(2) *Overpayments.* Any overpayment of less than ~~\$15~~ \$20 received by the state registrar for the copying of or search for vital records, or for the preparation or amending of a certificate, shall not be refunded. The state registrar shall retain the first ~~\$9~~ \$14 of any overpayment with any remaining amount to be deposited in the general fund of the state. On and after July 1, 2019, the overpayment amount will revert to \$15 and the amount retained by the state registrar will revert to \$9.

ITEM 3. Amend subrule 95.6(5) as follows:

95.6(5) *Distribution of fees.*

a. All fees collected by the county registrar and the state registrar shall be distributed as follows:

(1) For fees collected by a county registrar, with the exception of the fee in subrule 95.6(4), the county registrar shall retain \$4 of each ~~\$15~~ \$20 fee collected by that office, ~~which~~. On and after July 1, 2019, this \$20 fee will revert to \$15. Fees collected shall be divided as follows:

1. For a birth certificate or a marriage certificate, the state registrar shall receive ~~\$8~~ \$13, and \$3 shall be deposited in the general fund of the state, except for the fee collected pursuant to paragraph 95.6(1) "*f.*" On and after July 1, 2019, the amount received by the state registrar will revert to \$8.

2. For a death certificate, the state registrar shall receive ~~\$6~~ \$11, the office of the state medical examiner shall receive \$3, and \$2 shall be deposited in the general fund of the state. On and after July 1, 2019, the amount received by the state registrar will revert to \$6.

(2) For fees collected by the state registrar, the state registrar shall retain all fees, with the exception of the fees in paragraph 95.6(1) "*a.*" of which the state registrar shall retain ~~\$9~~ \$14 of each ~~\$15~~ \$20 fee collected for the issuance of certified copies. On and after July 1, 2019, the fee collected will revert to \$15 and the amount retained by the state registrar will revert to \$9. The \$6 balance of certified copy fees collected by the state registrar shall be divided as follows:

1. For a birth certificate or a marriage certificate, \$6 shall be deposited in the general fund of the state.

2. For a death certificate, the office of the state medical examiner shall receive \$3, and \$3 shall be deposited in the general fund of the state.

b. All fees retained by the state registrar shall be added to the vital records fund established by the department pursuant to Iowa Code section 144.46A.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

c. All fees received by the office of the state medical examiner shall be added to the operating budget established for the operation of that office.

ARC 0925C**PUBLIC HEALTH DEPARTMENT[641]****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 144.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 96, “Birth Registration,” and Chapter 99, “Vital Records Modifications,” Iowa Administrative Code.

The rules in Chapter 96 describe the responsibilities and process for the registration of births. The proposed amendments in Chapter 96 institute a process for establishing parentage on the birth certificate for married lesbian couples when one of the parties to the marriage delivers a child.

The rules in Chapter 99 describe the processes in place for amending vital records. The proposed amendments in Chapter 99 clarify who an entitled person is for purposes of requesting corrections of a minor error or amending a birth certificate; clarify how intended parents are established on a record following a birth by gestational surrogate arrangement; and clarify terminology changing “father” to “parent” and “husband” to “spouse.” These changes are necessary to comply with the *Gartner v. Iowa Department of Public Health*, Supreme Court Decision No. 12-0243.

Any interested person may make written comments or suggestions on the proposed amendments on or before August 27, 2013. Such written comments should be directed to Jill France, Bureau of Health Statistics, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to jill.france@idph.iowa.gov.

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

These amendments are intended to implement *Gartner v. Iowa Department of Public Health*, Supreme Court Decision No. 12-0243.

The following amendments are proposed.

ITEM 1. Amend paragraph **96.5(1)“b”** as follows:

b. Obtain the signature of the mother or her legal ~~husband~~ spouse or other signature as directed by the state registrar;

ITEM 2. Amend paragraph **96.6(2)“c”** as follows:

c. The original Iowa official birth worksheet completed and signed by the mother, or her legal ~~husband~~ spouse, or as directed by the state registrar; and

ITEM 3. Amend paragraph **96.7(1)“c”** as follows:

c. The ~~father or the mother of the infant~~ or her legal spouse.

ITEM 4. Amend subrule 96.7(5) as follows:

96.7(5) The official non-institution birth worksheet shall include a notarized signature of the mother or her legal ~~husband~~ spouse and shall be accompanied by a clear photocopy of that person’s current government-issued photo identification. If photo identification is unavailable, other identifying documentation may be acceptable to the state registrar.

ITEM 5. Amend subparagraph **96.18(2)“b”(5)** as follows:

(5) The full name of the ~~father~~ mother’s legal spouse. However, if the mother was not married ~~to the father of the child~~ at the time of conception or birth or at any time during the period between conception and birth, the name of ~~the father~~ a second parent shall not be entered on the delayed certificate unless

PUBLIC HEALTH DEPARTMENT[641](cont'd)

the child has been adopted or legitimated or parentage has been determined by a court of competent jurisdiction ~~or there is evidence of acknowledgment of paternity by both parents.~~

ITEM 6. Amend subrule 99.4(2) as follows:

99.4(2) For a certificate of live birth, entitled persons include in the following descending order of priority:

- ~~a. The single parent or both parents~~ Either parent as shown on the child's certificate of live birth;
- ~~or~~
- ~~b. The mother, in the case of the death or incapacity of the father;~~
- ~~c. The father if listed on the birth certificate, in the case of the death or incapacity of the mother;~~
- ~~or~~
- ~~d.~~ b. The legal guardian or agency having legal custody of the child.

ITEM 7. Amend paragraphs **99.5(1)“b”** and **“c”** as follows:

- ~~b.~~ The mother, in the case of the death or incapacity of the ~~father~~ second parent;
- ~~c.~~ The ~~father~~ second parent if listed on the birth certificate, in the case of the death or incapacity of the mother; or

ITEM 8. Amend subrule 99.6(2) as follows:

99.6(2) For a certificate of live birth, entitled persons include in the following descending order of priority:

- ~~a. The single parent or both parents~~ Either parent as shown on the child's certificate of live birth;
- ~~b.~~ The mother, in the case of the death or incapacity of the ~~father~~ second parent;
- ~~c.~~ The ~~father~~ second parent if listed on the birth certificate, in the case of the death or incapacity of the mother; or
- ~~d.~~ The legal guardian or agency having legal custody of the child.

ITEM 9. Rescind subrules 99.15(4) to 99.15(12) and adopt the following **new** subrules in lieu thereof:

99.15(4) Two intended parents—both intended parents are biological parents to the child. If the intended mother is the egg donor and the intended father is the sperm donor to the child being carried by the gestational surrogate:

- ~~a.~~ After the birth of the child, the intended parents shall petition a court of competent jurisdiction to establish legal paternity and maternity of the child.
- ~~b.~~ The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother and father as the legal mother and father and requiring the state registrar to seal the original birth certificate and all related documentation.

~~c.~~ The court order shall:

- (1) Identify the child's full name as stated on the original certificate of live birth;
- (2) State the child's date of birth and place of birth;
- (3) Identify the full names of the birth mother and her legal spouse, if married;
- (4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child;

and

(5) Identify the intended parents' full names prior to any marriage, full current legal names, dates of birth, birthplaces, social security numbers, and full current residential address including county.

~~d.~~ The intended parents or their legal representative shall:

- (1) Submit a certified copy of the court order to the state registrar;
- (2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and
- (3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(5) Two intended parents—intended mother is biological mother to the child; her legal spouse is not a biological parent. If the intended mother is the egg donor but her legal spouse is not the sperm donor, the intended mother shall petition a court of competent jurisdiction after the birth of the child to establish legal maternity.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

a. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother as the legal mother and shall require the state registrar to seal the original certificate of live birth and all related documents.

b. The court order establishing legal maternity shall:

- (1) Identify the child's full name as stated on the original certificate of live birth;
- (2) State the child's date of birth and place of birth;
- (3) Identify the full names of the birth mother and her legal spouse, if married;
- (4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child;

and

(5) Identify the intended mother's full name prior to any marriage, full current name, date of birth, birthplace, social security number, and full current residential address including county.

c. The intended mother or her legal representative shall:

- (1) Submit a certified copy of the court order to the state registrar;
- (2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and
- (3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(6) Two intended parents—intended father is biological father to the child; his legal spouse is not a biological parent.

a. If the surrogate birth mother is unmarried and the intended father is the sperm donor, the unmarried surrogate birth mother and the intended father may complete a Voluntary Paternity Affidavit form after the child's birth to place the intended father's name and information on the certificate of live birth.

b. If the surrogate birth mother is married and the intended father is the sperm donor, the married surrogate birth mother and the intended father shall by court order disestablish the surrogate birth mother's legal spouse as the legal parent and may complete a Voluntary Paternity Affidavit form pursuant to Iowa Code section 144.13.

c. The court order that disestablishes the married surrogate birth mother's legal spouse and the completed Voluntary Paternity Affidavit form shall be submitted to the state registrar.

d. If a certified copy of the certificate of live birth is requested, a notarized written request shall also be submitted to the state registrar with the certified copy fee and mailing instructions.

e. There is no administrative fee to process the completed Voluntary Paternity Affidavit form.

f. Adoption laws shall be followed to reestablish the certificate of live birth by establishing the nonbiological parent on the certificate of live birth pursuant to Iowa Code chapter 600.

99.15(7) Two intended parents—neither biological parent to the child. If the intended parents are neither the egg donor nor sperm donor, adoption laws shall be followed to reestablish the certificate of live birth by disestablishing the birth mother and her legal spouse, if any, and establishing the nonbiological parents on the certificate of live birth pursuant to Iowa Code chapter 600.

99.15(8) One female intended parent—biological mother to the child. If the intended mother is the egg donor to the child being carried by the gestational surrogate:

a. After the birth of the child, the intended mother shall petition a court of competent jurisdiction to establish legal maternity of the child.

b. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother as the legal mother and requiring the state registrar to seal the original certificate of live birth and all related documentation.

c. The court order shall:

- (1) Identify the child's full name as stated on the original certificate of live birth;
- (2) State the child's date of birth and place of birth;
- (3) Identify the full names of the birth mother and her legal spouse, if married;
- (4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child;

and

(5) Identify the intended parent's full name prior to any marriage, full current legal name, date of birth, birthplace, social security number, and full current residential address including county.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

d. The intended parent or her legal representative shall:

- (1) Submit a certified copy of the court order to the state registrar;
- (2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and
- (3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(9) One male intended parent—biological father to the child.

a. If the surrogate birth mother is unmarried and the intended father is the sperm donor, the unmarried surrogate birth mother and the intended father may complete a Voluntary Paternity Affidavit form after the child's birth to place the intended father's name and information on the certificate of live birth.

b. If the surrogate birth mother is married and the intended father is the sperm donor, the married surrogate birth mother and the intended father shall by court order disestablish the surrogate birth mother's legal spouse as the legal parent and may complete a Voluntary Paternity Affidavit form pursuant to Iowa Code section 144.13.

c. The court order that disestablishes the married surrogate birth mother's legal spouse and the completed Voluntary Paternity Affidavit form shall be submitted to the state registrar.

d. If a certified copy of the certificate of live birth is requested, a notarized written request shall also be submitted to the state registrar with the certified copy fee and mailing instructions.

e. There is no administrative fee to process the completed Voluntary Paternity Affidavit form.

f. If the intended father has been established as the legal father pursuant to paragraph 99.15(9) "a" or "b" and the surrogate birth mother and the intended father wish to remove the surrogate birth mother as the legal mother from the certificate of live birth, the parties shall seek a court order. The court order disestablishing legal maternity shall:

- (1) Identify the child's full name as stated on the original certificate of live birth;
- (2) State the child's date of birth and place of birth;
- (3) Identify the full name of the birth mother; and
- (4) Disestablish the birth mother as the legal parent of the child.

g. The intended parent or his legal representative shall:

- (1) Submit a certified copy of the court order to the state registrar;
- (2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and
- (3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

99.15(10) One intended parent—not biological parent to the child. If the intended parent is neither the egg donor nor sperm donor, adoption laws shall be followed to reestablish the certificate of live birth by disestablishing the birth mother and her legal spouse, if any, and establishing the nonbiological parent on the certificate of live birth pursuant to Iowa Code chapter 600.

99.15(11) The state registrar shall seal the original certificate of live birth. The state registrar shall place the original certificate of live birth and all related documents in a sealed file, and the file shall not be opened and inspected except by the state registrar for administrative purposes or upon an order from a court of competent jurisdiction pursuant to Iowa Code section 144.24.

99.15(12) The new certificate of live birth shall not be marked "amended."

ITEM 10. Adopt the following **new** subrules 99.15(13) and 99.15(14):

99.15(13) The new certificate of live birth shall not be on file at the county registrar's office pursuant to rule 641—95.7(144).

99.15(14) A certified copy fee and an administrative fee to replace a parent's information on a certificate of live birth shall be charged and remitted pursuant to rule 641—95.6(144).

ITEM 11. Amend subrule 99.16(1) as follows:

99.16(1) If the birth mother was legally married at the time of conception or birth or at any time during the period between conception and birth, the name of her ~~husband~~ spouse shall be entered on the certificate of live birth as ~~the father~~ a parent pursuant to Iowa Code section 144.13.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 12. Amend subrule 99.16(3) as follows:

99.16(3) If the birth mother was legally married at the time of conception or birth or at any time during the period between conception and birth, and her legal ~~husband~~ spouse is not the biological father, the birth mother and the alleged biological father may:

- a. No change.
- b. Obtain a court order that disestablishes her legal ~~husband~~ spouse as ~~the biological father a parent~~; and
- c. No change.

ITEM 13. Amend subrule 99.17(1) as follows:

99.17(1) If the birth mother was married at the time of conception or birth or at any time during the period between conception and birth, the name of ~~the husband~~ her spouse shall be entered on the certificate of live birth as ~~the father~~ a parent unless paternity has been determined otherwise by a court of competent jurisdiction pursuant to Iowa Code section 144.13.

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SOIL CONSERVATION DIVISION[27]

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 161A.71(3)“a,” the Division of Soil Conservation hereby gives Notice of Intended Action to amend Chapter 101, “Organization and Purpose,” Chapter 102, “Rules of Practice,” Chapter 103, “Appointment and Terms of Members,” Chapter 104, “Local Watershed Improvement Committees,” Chapter 105, “Watershed Improvement Grant Program,” and Chapter 106, “Watershed Improvement Fund,” Iowa Administrative Code.

The proposed amendments conform the rules to statutory changes by clarifying the eligible applicants and specifying the water quality impairments that can be addressed. Technical changes are also made.

Any interested persons may make written suggestions or comments on the proposed amendments on or before August 27, 2013. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

These proposed amendments are subject to the Division’s general waiver provisions.

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

These amendments are intended to implement Iowa Code section 466A.2 and 2013 Iowa Acts, House File 648, section 23.

The following amendments are proposed.

ITEM 1. Amend rule 27—101.1(466A) as follows:

27—101.1(466A) Watershed improvement review board composition. The watershed improvement review board shall be comprised of one member of ~~from each of the following entities~~: the Agribusiness Association of Iowa; ~~one member of the Iowa Association of Water Agencies~~; ~~one member of the Iowa Environmental Council~~; ~~one member of the Iowa Farm Bureau Federation~~; ~~one member of the Iowa Pork Producers Association~~; ~~one member of the Iowa Rural Water Association~~; ~~one member of the Iowa Soybean Association~~; ~~one member representing the soil and water conservation districts of Iowa~~; ~~one member of the Iowa Association of County Conservation Boards~~; ~~one person representing the department of agriculture and land stewardship~~; and ~~one person representing the department of natural resources~~.

SOIL CONSERVATION DIVISION[27](cont'd)

Two state senators shall be appointed, one by the majority leader of the senate and one by the minority leader of the senate. Two state representatives shall be appointed, one by the speaker of the house of representatives and one by the minority leader of the house of representatives. The four members of the general assembly serve as ex officio, nonvoting members.

These members are appointed according to Iowa Code ~~Supplement~~ section 466A.3. The board is ~~responsible for administering grants to local watershed improvement committees awards grants and soil and water conservation districts to promote watershed protection efforts~~ monitors the progress, assists with the development of monitoring plans for local watershed improvement projects, and reviews costs and benefits of mitigation practices utilized by a project.

ITEM 2. Amend rule 27—101.8(466A) as follows:

27—101.8(466A) Technical assistance. The board shall elicit the expertise of other organizations for technical assistance in the work of the board. The organizations may include but are not limited to all of the following: the State University of Iowa; the Iowa State University of Science and Technology; the U.S. Geological Survey; the U.S. Department of Agriculture, Agricultural Research Service, National Soil Tillage Laboratory for Agriculture and the Environment; the U.S. Department of Agriculture, Natural Resource Conservation Service; the Leopold Center for Sustainable Agriculture; the Iowa Association of Municipal Utilities; the Iowa chapter of the American Waterworks Association; the Iowa Water Pollution Control Association; the Iowa League of Cities; the Iowa Cattlemen’s Association; the Iowa Association of Business and Industry; the Iowa Environmental Health Association; the Iowa Corn Growers Association; the Iowa Poultry Association; the Iowa Farmers’ Union; and the Iowa Land Improvement Contractors Association.

ITEM 3. Amend **27—Chapter 101**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 4. Amend rule **27—102.1(466A)**, definition of “Eligible applicant,” as follows:

“Eligible applicant” means a nonprofit organization authorized by the secretary of state; ~~or~~ a soil and water conservation district; a public water supply utility; a county; a city; or a county conservation board.

ITEM 5. Amend rule 27—102.2(466A) as follows:

27—102.2(466A) Public information. The public is invited to obtain information or make informal requests of the board by addressing these matters, either orally or in writing, to the chairperson of the Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319; ~~(515)281-6153~~, or from the department’s Web site at www.iowaagriculture.gov/IWIRB.asp.

ITEM 6. Amend **27—Chapter 102**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 7. Amend **27—Chapter 103**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 8. Amend rules 27—104.3(466A) to 27—104.5(466A) as follows:

27—104.3(466A) Governmental entities. A federal, state or local governmental entity may not be a recipient of a grant from the board, with the exception of a soil and water conservation district, public water supply utility, county, county conservation board, or city. A federal, state or local governmental entity may partner with ~~a committee~~ an eligible applicant to implement a local watershed project.

27—104.4(466A) Responsibilities. A committee or an eligible applicant shall be responsible for application for and implementation of an approved local watershed grant, including providing authorization for project bids and project expenditures under the grant.

SOIL CONSERVATION DIVISION[27](cont'd)

104.4(1) The committee or an eligible applicant shall monitor local performance throughout the local watershed grant project and shall submit a report at six-month intervals or at a frequency set forth in the grant agreement regarding the progress and findings of the project.

104.4(2) The committee or an eligible applicant shall provide monitoring oversight data before, during, and after the project's completion.

27—104.5(466A) Audit. A committee or an eligible applicant receiving a grant from the board may be subject to an audit performed by the auditor.

ITEM 9. Amend **27—Chapter 104**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 10. Amend rule 27—105.1(466A) as follows:

27—105.1(466A) Program purpose. The board shall issue grant awards to eligible applicants to address water quality impairments including but not limited to agricultural runoff and drainage; stream bank erosion; municipal discharge; stormwater runoff; unsewered communities; industrial discharge; ~~or~~ livestock runoff; structures and conservation systems for the prevention and mitigation of floods within the watershed of the project; or removal of channels of waterways to allow waterways to meander.

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

105.2(6) Grant awards shall be for not more than ~~three~~ five years and may be extended for an additional five years after the date that the original period would have ended. Each local watershed improvement grant awarded shall not exceed 10 percent of the funds appropriated to the board. A grant recipient shall not be precluded from applying for future grant awards. Grant awards given by the board to an eligible applicant will have the full amount of awarded watershed improvement funds set aside for the entire project length when initially awarded.

ITEM 12. Amend rule 27—105.4(466A) as follows:

27—105.4(466A) Reports.

105.4(1) Eligible applicants that have been awarded a grant by the board shall submit ~~a written and an~~ an electronic report at six-month intervals. This report shall include but not be limited to a statement of expenditures; progress toward performance measures established in the grant agreement; progress toward deliverables established in the grant agreement; monitoring methods and results; and the time line for project completion.

105.4(2) Eligible applicants that have been awarded a grant by the board shall submit a final ~~written and~~ an electronic report at the conclusion of the grant agreement. This report shall include but not be limited to a final statement of expenditures; performance measures established in the grant agreement; deliverables established in the grant agreement; monitoring methods and results; and findings of the project.

ITEM 13. Amend **27—Chapter 105**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 14. Amend **27—Chapter 106**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ARC 0894C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2013 Iowa Acts, House File 355, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 601, "Application for License," Chapter 604, "License Examination," Chapter 605, "License Issuance," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

2013 Iowa Acts, House File 355, section 1, amends Iowa Code section 321.196 and allows the Department to excuse certain persons from a vision screen or submission of a vision report in order to allow for electronic (online) renewals.

These amendments will allow the Department to implement electronic renewal of driver's licenses for persons between the ages of 18 and 70 and nonoperator's identification cards for persons 18 and older on an every-other-renewal basis.

Item 1 provides that a person who renews a driver's license electronically shall destroy the previous driver's license upon receipt of the renewed license.

Item 2 provides an exception for persons to electronically renew their driver's licenses. A person is not required to complete a vision screen or submit an acceptable vision report.

Item 3 provides that the Department may determine means or methods for renewing a driver's license electronically and sets forth the criteria a person must meet to be eligible to renew a driver's license electronically.

Item 4 provides that the Department may determine means or methods for renewing a nonoperator's identification card electronically and sets forth the criteria a person must meet to be eligible to renew a nonoperator's identification card electronically. The amendment also confirms in rule existing practice regarding surrender of prior driver's licenses or nonoperator's identification cards and provides that a person who renews a nonoperator's identification card electronically shall destroy the previous nonoperator's identification card upon receipt of the renewed nonoperator's identification card.

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

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet e-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than August 27, 2013.

A meeting to hear requested oral presentations is scheduled for Thursday, August 29, 2013, 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.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 0895C**. The content of that submission is incorporated by reference.

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

TRANSPORTATION DEPARTMENT[761](cont'd)

These amendments are intended to implement Iowa Code section 321.196 as amended by 2013 Iowa Acts, House File 355, section 1.

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:

August 1, 2012 — August 31, 2012	3.50%
September 1, 2012 — September 30, 2012	3.50%
October 1, 2012 — October 31, 2012	3.75%
November 1, 2012 — November 30, 2012	3.75%
December 1, 2012 — December 31, 2012	3.75%
January 1, 2013 — January 31, 2013	3.75%
February 1, 2013 — February 28, 2013	3.75%
March 1, 2013 — March 31, 2013	4.00%
April 1, 2013 — April 30, 2013	4.00%
May 1, 2013 — May 31, 2013	4.00%
June 1, 2013 — June 30, 2013	3.75%
July 1, 2013 — July 31, 2013	4.00%
August 1, 2013 — August 31, 2013	4.25%

ARC 0924C

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

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 35A.3(2), the Commission of Veterans Affairs hereby gives Notice of Intended Action to amend Chapter 10, “Iowa Veterans Home,” Iowa Administrative Code.

The intent of the proposed amendments is to comply with the enactment of 2013 Iowa Acts, House File 544, and to reflect the operational changes the Iowa Veterans Home has undertaken since the last revision of Chapter 10.

Any interested person may make written suggestions or comments on the proposed amendments on or before August 27, 2013. Such written materials should be directed to David G. Worley, Commandant, Iowa Veterans Home, 1301 Summit Street, Marshalltown, Iowa 50158-5485; or faxed to (641)753-4278. E-mail may be sent to david.worley@ivh.state.ia.us. Persons who wish to convey their views orally should contact the Commandant’s office at (641)753-4309 at the Iowa Veterans Home.

If requested in writing, a public hearing on the proposed amendments will be held on Wednesday, August 28, 2013, at 8 a.m. in the Ford Memorial Conference Room at the Iowa Veterans Home, 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. 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

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

Iowa Veterans Home to advise of specific needs. If no written or oral requests for a public hearing are received, the public hearing will be canceled without further notice.

These proposed amendments are not subject to waiver.

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

These amendments are intended to implement Iowa Code chapter 35D and 2013 Iowa Acts, House File 544.

The following amendments are proposed.

ITEM 1. Rescind the definitions of “Director of admissions” and “Director of resident and family services” in rule **801—10.1(35D)**.

ITEM 2. Amend the following definitions in rule **801—10.1(35D)**:

“~~Adjutant~~ Chief operating officer” means the chief executive assistant of the commandant who functions as the chief operations officer.

“Gold Star parent” means a parent ~~whose child died while serving in the armed forces of the United States of a deceased member of the United States armed forces who died while serving on active duty during a time of military conflict or who died as a result of such service.~~

“Interdisciplinary resident care committee” or “IRCC” means the member, a social worker, a registered nurse, a dietitian, a medical provider, a recreation specialist ~~and other staff, as appropriate, and a mental health provider, as required,~~ who are involved in reviewing a member’s assessment data and developing a collaborative care plan for the individual member.

“Member” means a ~~patient or~~ resident of IVH.

“~~PASARR PASRR~~” means preadmission screening and ~~annual~~ resident review.

“Spouse” means a person ~~of the opposite sex~~ who is the legal or common-law wife or husband of a veteran.

“Surviving spouse” means a person ~~of the opposite sex~~ who is the legal or common-law widow or widower of a veteran.

“Therapeutic activity” means an activity that is considered as treatment. A therapist shall determine that a particular activity is beneficial to the well-being of a ~~resident~~ member and shall include this determination in the ~~resident’s~~ member’s plan of care.

“Veteran” means a person who served in the active military and who was discharged or released therefrom under honorable conditions ~~other than dishonorable~~. Honorable and general discharges qualify a person as a veteran. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility).

In addition, veteran includes a person who served in the merchant marine or as a civil service crew member between December 7, 1941, and August 15, 1945.

ITEM 3. Adopt the following new definition of “Admissions coordinator” in rule **801—10.1(35D)**:

“Admissions coordinator” means the individual responsible for the coordination of the admissions process.

ITEM 4. Amend subrule 10.2(1) as follows:

10.2(1) Veterans shall be eligible for admittance to IVH in accordance with the following conditions:

a. ~~The individual does not have sufficient means for the individual’s support, or the individual is disabled by reason of disease, wounds, injury or old age or otherwise and is in need of one of the multilevels of care and meets the qualifications for nursing or residential level of care available at IVH, and is unable to defray the expenses of the necessary care, except as described at paragraph “e.”~~

b. The individual cannot be competitively employed on the day of admission or throughout the individual’s residency.

c. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

d. An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

~~e.~~ Individuals who have sufficient means for their own care but who are otherwise eligible to become members of IVH may, if there is room for individuals described in paragraph “a” above, be admitted and allowed to remain at IVH upon payment of the cost of the individual’s care in accordance with rules 801—10.14(35D) to 801—10.23(35D).

~~f. e.~~ The individual must be eligible for care and treatment at a DVA medical center (excluding financial eligibility).

~~g. f.~~ Individuals admitted to the domiciliary level of care must meet DVA criteria stated in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, M-1, Part 1, Chapter 3.11(h) (1), (2), and (3), and have prior DVA approval if the individual’s income level exceeds the established cap.

g. Homelessness does not disqualify persons otherwise eligible for admission to IVH.

ITEM 5. Amend subrule 10.2(3) as follows:

10.2(3) A Gold Star parent shall be eligible for admittance in accordance with the following conditions:

a. The parent’s child died while serving on active duty in the armed forces of the United States during a time of military conflict or died as a result of such service.

~~b. The individual does not have sufficient means for the individual’s support, or the individual is disabled by reason of disease, wounds, injury or old age or otherwise and is in need of one of the multilevels of care and meets the qualifications for nursing or residential level of care available at IVH, and is unable to defray the expenses of the necessary care, except as described at paragraph “e.”~~

c. The individual cannot be competitively employed on the day of admission or throughout the individual’s residency.

d. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

~~e. An individual who has sufficient means for the individual’s own care but who is otherwise eligible to become a member of IVH may, if there is room for individuals described in paragraph “b” above, be admitted and allowed to remain at IVH upon payment of the cost of the individual’s care in accordance with rules 801—10.14(35D) to 801—10.23(35D).~~

~~f. e.~~ An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

~~g. f.~~ Gold Star parents, spouses and surviving spouses admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

ITEM 6. Amend subrule 10.3(2) as follows:

10.3(2) Application shall be made on the “Veteran Application for Admission to the Iowa Veterans Home,” Form 475-0409, the “Spouse’s Application for Admission to the Iowa Veterans Home,” Form 475-0410, or the “Gold Star Parent Application for Admission to the Iowa Veterans Home,” Form ~~475-0411~~ 475-2044. Separate applications shall be required for an eligible veteran and the spouse of the veteran when both veteran and spouse are applying for admission. The applications may be obtained at:

a. The county commission of veterans affairs’ office.

b. DVA medical centers located in or serving veterans in the state of Iowa.

c. IVH.

d. Web site: www.iowaveteranshome.org.

ITEM 7. Amend paragraphs **10.3(4)“d”** and **“e”** as follows:

~~d.~~ If the applicant is a Gold Star parent, an original or certified copy of the ~~veteran’s~~ child’s birth certificate and certification of the child’s death while serving on active duty in the armed forces of the United States during a time of military conflict.

~~e.~~ An original or a certified copy of applicant’s birth certificate ~~if not in receipt of Social Security~~.

ITEM 8. Amend subrule 10.3(6) as follows:

10.3(6) Eligibility determinations are subject to approval by the commandant or designee.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 9. Amend rule 801—10.4(35D) as follows:

801—10.4(35D) Application processing.

10.4(1) Applications received by the admissions office shall be reviewed for completeness. The county commission of veterans affairs shall be required to submit additional information if needed.

10.4(2) The admissions committee shall assign the level ~~and category~~ of care required by the applicant. If a special care unit or treatment is required, this shall be designated.

10.4(3) Regardless of whether or not the applicant can be immediately admitted, the applicant shall be notified by the ~~director of admissions or designee~~ admissions coordinator of the applicant's designated level ~~and category~~ of care. An applicant who does not wish to be admitted to the designated level ~~and category~~ of care may submit evidence to show that another level ~~or category~~ of care may be more appropriate. However, once the admissions committee makes a final determination, the applicant who does not wish to be admitted under the designated level ~~or category~~ of care may withdraw the application ~~in writing~~ or have the application denied.

10.4(4) When space is not immediately available in the level ~~and category~~ of care assigned or on the appropriate special care unit, the applicant's name shall be placed on the appropriate waiting list for that level ~~and category~~ of care or special care unit in the order of the date the application was received.

10.4(5) When space is available at time of application, or when space becomes available in accordance with the designated waiting list, the applicant shall be scheduled for admittance to IVH as follows:

a. An applicant whose physical examination or personal functional assessment, or both if applicable, was completed more than three months prior to the scheduled date of admittance may be required to obtain another physical examination by a medical provider or complete a current personal functional assessment, or both if applicable. This information shall be reviewed to determine that the applicant is capable of functioning at the previously determined level of care ~~and category~~.

b. An applicant who requires a different level ~~and category~~ of care than previously determined shall be admitted to the level of care required if a bed is available or shall have the applicant's name placed on the waiting list for the appropriate level ~~and category~~ of care in accordance with the date the original application was received.

c. If there is a question regarding the level ~~and category~~ of care for which the applicant qualifies, the applicant shall be scheduled for a preadmission ~~examination~~ visit with appropriate staff in order to make a determination of appropriate level ~~and category~~ of care. If there is a question of whether or not the applicant ~~can be appropriately treated within the scope of existing~~ qualifies for nursing or residential level of care programs, or facility license or both, the applicant shall be scheduled for a ~~preadmission screening site visit~~ by appropriate staff.

d. ~~Following the~~ Prior to an applicant's admission to a nursing care unit, the ~~PASARR~~ PASRR is completed.

ITEM 10. Amend rule 801—10.6(35D) as follows:

801—10.6(35D) Admission to IVH.

10.6(1) The applicant shall be notified by the ~~director of admissions or designee~~ admissions coordinator to appear for admission to IVH.

10.6(2) Upon arrival at IVH, the applicant or legal representative shall report to the admissions office for an admission interview.

10.6(3) During the interview, ~~the director of admissions or designee shall review~~ the following items will be reviewed with the applicant or legal representative:

- a.* The applicant's resources.
- b.* The member support, billing process and banking services.
- c.* The "Contractual Agreement," Form ~~475-0694~~ 475-1833.

10.6(4) In order to meet the requirements of subrule 10.6(3), the applicant or legal representative shall complete and sign the following forms as applicable:

- a.* Permission for Treatment, Form 475-0814.

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b. Financial Affidavit, Form 475-0839.

10.6(5) An applicant becomes a member at that point in time when the applicant or legal representative signs and dates the “Contractual Agreement,” Form ~~475-0694~~ 475-1833, or otherwise authorizes, in writing, acceptance of the terms of admittance specified in the Contractual Agreement.

10.6(6) Each member shall be placed on a unit providing the appropriate level ~~and category~~ of care based on individual needs.

a. A member requiring a change in placement based on individual care needs shall be transferred to a unit which provides the appropriate level ~~and category~~ of care within the scope of its licensure.

b. Members shall have priority over new admissions for placement on a unit when a vacant bed becomes available.

10.6(7) Care at IVH shall be provided in accordance with Iowa Code chapter 135C; 481—Chapter 57, Residential Care Facilities; 481—Chapter 58, Nursing Facilities; and DVA State Veterans Homes, Veterans Health Administration, M-5, Part 8, Chapter 2, Procedure for Obtaining Recognition of a State Veterans Home and Applicable Standards, ~~2.06~~, 2.07, Standards for Nursing Care, and ~~2.09~~, 2.08, Standards for Domiciliary Care, November 4, 1992.

ITEM 11. Amend subrule 10.11(2) as follows:

10.11(2) A member has the right to share a room with the member’s spouse when both ~~member and spouse~~ members consent to the arrangement ~~and both require the same level of care~~.

ITEM 12. Rescind paragraph **10.12(1)“e.”**

ITEM 13. Reletter paragraphs **10.12(1)“f”** to **“r”** as **10.12(1)“e”** to **“q.”**

ITEM 14. Amend subparagraphs **10.19(2)“a”(9)** and **(16)** as follows:

(9) The first \$150 received by a member in a month for participation in the incentive therapy or other programs as described ~~at~~ in rule 801—10.30(35D), for members in the domiciliary level of care. For members in the nursing level of care, the first \$75 shall be exempted.

(16) Income from ~~participating employment~~ as outlined in the community reentry program (IVH policy #174) or the IVH discharge planning policy (IVH policy #265).

ITEM 15. Amend subrule 10.20(10) as follows:

10.20(10) ~~Through IVH programs, employment~~ Employment is only allowed as identified in the ~~community reentry program (IVH policy #174) or the IVH discharge planning policy (IVH policy #265)~~.

ITEM 16. Amend rule 801—10.30(35D) as follows:

801—10.30(35D) Incentive therapy and nonprofit rehabilitative programs. Members may be offered the opportunity to perform services for IVH through the incentive therapy program as part of their plan of care. Participating members shall be compensated for their involvement in the incentive therapy program according to applicable guidelines established by the U.S. Department of Labor, Wage, and Hour Division, and the commandant or designee. ~~if~~ If members enrolled in nonprofit rehabilitative programs receive an income from such programs, that income shall be treated in the same manner as the incentive therapy program or IVH policy.

This rule is intended to implement Iowa Code section 35D.7(3).

ITEM 17. Amend subrule 10.35(3) as follows:

10.35(3) IVH shall maintain a commercial account with a federally insured bank for the personal deposits of its members. The account shall be known as the IVH membership account. The commandant or designee shall record each member’s personal deposits individually and shall deposit the funds in the membership account where the members’ deposits shall be held in the aggregate. Interest shall accrue on those accounts that are on deposit the last working Friday of each month. IVH may withdraw moneys from the account maintained pursuant to this subrule to establish certificates of deposit for the benefit of all members.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 18. Amend paragraph **10.36(1)“a”** as follows:

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign “Discharge/Leave Against Medical Advice,” Form 475-0940.

ITEM 19. Amend paragraphs **10.36(2)“a”** and **“d”** as follows:

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign “Discharge/Leave Against Medical Advice,” Form 475-0940.

d. A member or a legal representative who wishes to exceed the 18 visitation days and retain the member’s bed, but does not have medical provider recommendation for an extension, must make arrangements with the ~~director of admissions~~ financial services division administrator or designee for payment of the rate determined by the department of human services income maintenance worker for all days in excess of the 18 visitation days. If prior arrangements and payment are not made, a member may be discharged in accordance with subrule 10.12(2).

ITEM 20. Amend rule 801—10.40(35D), introductory paragraph, as follows:

801—10.40(35D) Requirements for member conduct. The commandant or designee shall administer and enforce all requirements for member conduct. Subject to these rules and Iowa Code section 135C.23, the commandant or designee may transfer or discharge any member from IVH when the commandant or designee determines that the health, safety or welfare of the members or staff is in immediate danger, and other reasonable alternatives have been exhausted.

ITEM 21. Amend paragraphs **10.40(1)“d,” “f”** and **“i”** as follows:

d. Firearms or weapons of any nature shall be turned in to the ~~adjutant~~ commandant or designee for safekeeping. The ~~adjutant~~ commandant or designee shall decide if an instrument is a weapon. Firearms or weapons in the possession of a member which constitute a hazard to self or others shall be removed and stored in a place provided and controlled by the facility.

f. Continuously disruptive behavior on the part of a member, ~~such as fighting with other members, visitors or staff, assault or theft,~~ is grounds for transfer or discharge.

i. Members shall report to the ~~director of admissions~~ admissions coordinator or designee any changes in assets/income, and pay support by the tenth of each month.

ITEM 22. Amend subrule 10.40(3) as follows:

10.40(3) The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member’s violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. If the IRCC, in conjunction with the medical provider and mental health personnel, deems that the member’s behavior poses a threat of imminent danger, the commandant or designee may issue notice of an immediate involuntary discharge. In such an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

The member’s county commission of veterans affairs and the legal representative shall be informed in writing of the decision to discharge. Written notification shall also be issued to appropriate governmental agencies including the commission, the department of inspections and appeals, and the department on aging’s long-term care ombudsman to ensure that the member’s health, safety or welfare shall not be in danger upon the member’s release.

ITEM 23. Amend rule 801—10.43(35D), introductory paragraph, as follows:

801—10.43(35D) Rule enforcement—power to suspend and discharge members. The commandant or designee shall administer and enforce all rules adopted by the commission, including rules of discipline and, subject to these rules, may immediately suspend the membership of and discharge any member from IVH for infraction of the rules when the commandant or designee determines that the health, safety or

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

welfare of the members of IVH is in immediate danger and other reasonable alternatives have been exhausted. The suspension and discharge are temporary pending action by the commission. Judicial review of the action of the commission may be sought in accordance with Iowa Code chapter 17A.

ITEM 24. Amend subrule 10.43(1) as follows:

10.43(1) The commandant or designee shall, with the input and recommendation of the IRCC, involuntarily discharge a member for any of the following reasons:

a. The member has been diagnosed with a substance use disorder but continues to abuse alcohol or an illegal drug in violation of the member's conditional or provisional agreement entered into at the time of admission, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

1. Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

2. By having been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1)“*a*,” if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant or designee may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged under paragraph 10.43(1)“*a*” if the member's actions or behavior jeopardizes the life or safety of other members or staff.

b. The member refuses to utilize the resources available to address issues identified in the member's collaborative care plan, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and the member has been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1)“*b*,” if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant or designee may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged if the member's actions or behavior jeopardizes the life or safety of other members or staff.

c. ~~The member's medical or life skills needs have been met to the extent possible through the services provided by IVH and the member no longer requires a residential or nursing level of care, as determined by the IRCC.~~

d. The member requires a level of licensed care not provided at IVH.

ITEM 25. Amend paragraph **10.43(3)“c”** as follows:

c. A statement in not less than 12-point type which reads: “You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as “Commission”) within five (5) calendar days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held, and a decision rendered within ten (10) calendar days of the filing of the appeal. Provision may be made for extension of the ten (10) day requirement upon request to the Commission designee. If you lose the hearing, you will not be discharged or transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five (5) days following final decision of such hearing. To request a hearing or receive further information, call the Commission or write to the Commission to the attention of: Chairperson, Commission of Veterans Affairs.”

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 26. Amend subrule 10.43(7) as follows:

10.43(7) Any involuntary discharge by the commandant or designee under this rule shall comply with the rules adopted by the commission and by the department of inspections and appeals pursuant to 2009 Iowa Acts, Senate File 407, section 2.

ITEM 27. Amend rule 801—10.45(35A,35D), introductory paragraph, as follows:

801—10.45(35A,35D) Applicant appeal process. An applicant who believes that any of the provisions of ~~801—Chapter 10~~ this chapter have not been upheld, or have been upheld unfairly, may file an appeal directly with the commandant or designee containing a statement of the grievance and requested action. The commandant or designee shall investigate and may hold an informal hearing with the applicant and other involved individuals. Subrules 10.46(4) to 10.46(8) apply subsequently. The commandant or designee shall notify the applicant of the decision in writing within ten working days of receipt of the grievance.

ITEM 28. Amend subrules 10.46(1), 10.46(2) and 10.46(3) as follows:

10.46(1) A member shall discuss the problem and action desired with the assigned social worker within five working days of the incident which caused the problem. The social worker shall investigate the situation and attempt to resolve the problem within five working days of the discussion with the member. If the assigned social worker has allegedly caused the grievance, the member may file the grievance directly with the ~~director of resident and family services~~ supervising unit manager.

10.46(2) If unable to resolve the problem, or if the member is dissatisfied with the solution, the social worker shall assist the member with filing a formal grievance and shall submit a report of the facts and recommendations to the ~~director of resident and family services~~ administrator of nursing within five working days of the discussion with the member. The ~~director of resident and family services~~ administrator of nursing shall inform the member of the decision in writing within five working days of receipt of the social worker's report.

10.46(3) If the member is not satisfied with the decision of the ~~director of resident and family services~~ administrator of nursing, or if no decision is given within the time specified in subrule 10.46(2), the member may appeal to the commandant or designee within ten working days of the decision of the ~~director of resident and family services~~ administrator of nursing or, if no decision is given, within ten working days of the time limit specified in subrule 10.46(2). The grievance shall be submitted in writing and contain a statement of the cause of the grievance and requested action. A copy of the decision of the ~~director of resident and family services~~ administrator of nursing shall be attached to the grievance statement, if applicable. The commandant or designee shall investigate the grievance and may hold an informal hearing with the member, ~~director of resident and family services~~ administrator of nursing, and other involved individuals. The commandant or designee shall notify the member and the ~~director of resident and family services~~ administrator of nursing of the decision in writing within ten working days of receipt of the grievance.

ITEM 29. Amend subrule 10.50(4) as follows:

10.50(4) ~~Firearms, drugs, Weapons, illegal substances~~ Firearms, drugs, Weapons, illegal substances or alcoholic beverages are not permitted on IVH grounds ~~only with the permission of the commandant or designee~~.

ITEM 30. Amend subrule 10.51(2) as follows:

10.51(2) Each competent member shall be allowed to handle that member's business mail to the degree of responsibility chosen by the member. A member may:

a. Elect to receive all business mail personally and provide the ~~admissions~~ resident finance office with financial documentation, or

b. Designate that the member shall receive personal mail items, but business mail received at IVH from entitlement sources or concerning assets shall be routed to the ~~director of admissions or designee~~ resident finance office.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 31. Amend subrule 10.52(2) as follows:

10.52(2) Interviews of members within IVH by the news media or other outside groups are permitted only with the prior ~~written~~ consent of the member to be interviewed or the member's legal representative. At the request of the person or group who wishes to conduct an interview, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

ITEM 32. Amend rule 801—10.53(35D), introductory paragraph, as follows:

801—10.53(35D) Donations. Donations of money, new clothing, books, games, recreational equipment or other gifts shall be made directly to the commandant or designee. The commandant or designee shall evaluate the donation in terms of the nature of the contribution to the facility program. The commandant or designee shall be responsible for accepting the donation and reporting the gift to the commission. All monetary gifts shall be acknowledged in writing to the donor.

ITEM 33. Amend subrule 10.54(1) as follows:

10.54(1) Photographs and recordings of members within IVH by news media or other outside groups are permitted only with the prior ~~written~~ consent of the member to be photographed or recorded, or the member's legal representative. At the request of the person or group who wishes to make photographs or recordings, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

ITEM 34. Amend subrule 10.55(2) as follows:

10.55(2) ~~Members of outside~~ Outside organizations permitted to use facilities or grounds shall observe the same rules as visitors to the facility.

ITEM 35. Amend rule 801—10.56(35D) as follows:

801—10.56(35D) Nonmember use of cottages. Cottages may be made available to ~~persons on the staff~~ of IVH staff or to other members of the public with the commandant's or designee's approval and at the established rate.

10.56(1) Expenses incurred as a result of damage or need for exceptional cleaning/sanitizing procedures, or both, may result in additional charges ~~to the visitor~~ as determined by IVH.

10.56(2) Posted occupancy capacities shall not be exceeded and may be grounds for denial of use.

10.56(3) Pets are not allowed inside the cottages. ~~Visitors~~ Occupants who bring pets must comply with IVH rules regarding pet health and safety. ~~Visiting pets~~ Pets will be housed in a portable pet kennel outside the cottage and kept on a leash while on the IVH grounds. The kennel shall be provided by the pet owner.

ARC 0896C

HISTORICAL DIVISION[223]**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs hereby amends Chapter 48, "Historic Preservation and Cultural and Entertainment District Tax Credits," Iowa Administrative Code.

The amendments to Chapter 48 clarify definitions of commercial and noncommercial properties; change the threshold for commercial projects; change the cap for small projects; and allow for a 12-month extension for a project that reaches 60 months and is not complete but has already expended at least 50 percent of the project's qualified rehabilitation expenses in accordance with 2013 Iowa Acts, Senate File 436.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable because of the immediate need for the amendments to implement the provisions of 2013 Iowa Acts, Senate File 436. The application filing window begins July 1. The standard rule-making process would delay this requirement by approximately six months, making it more difficult for projects to meet their project commencement requirements, as stipulated by the Iowa Code.

In compliance with 2013 Iowa Acts, House File 586, section 1, the Administrative Rules Review Committee at its July 9, 2013, meeting reviewed the Department's findings and the amendments and approved the Emergency adoption.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective on July 9, 2013, as they confer a benefit on constituents.

These amendments are also published herein under Notice of Intended Action as **ARC 0897C** to allow for public comment. This emergency filing permits the Department to implement the new provisions of the law.

The rule making will have no fiscal impact.

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

These amendments are intended to implement Iowa Code chapter 303 and chapter 404A as amended by 2013 Iowa Acts, Senate File 436.

These amendments became effective July 9, 2013.

The following amendments are adopted.

ITEM 1. Amend rule **223—48.2(303,404A)**, definitions of "Barn," "Commercial property" and "Substantial rehabilitation," as follows:

"*Barn*" means an agricultural building or structure, in whatever shape or design, which is was originally used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

"*Commercial property*" means a building ~~used for retail, office, or other uses not otherwise defined in this rule~~ used in a trade or business or held for the production of income.

"*Substantial rehabilitation*" means qualified rehabilitation costs that meet or exceed the following: (1) in the case of commercial property, costs totaling at least 50 percent of the assessed value of the property, excluding the land, prior to the rehabilitation or at least \$50,000, whichever is less; or (2) in the case of ~~residential~~ noncommercial property ~~or barns~~, costs totaling at least \$25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

ITEM 2. Adopt the following new definition in rule **223—48.2(303,404A)**:

"*Noncommercial property*" means a building not used for a commercial purpose as defined herein.

HISTORICAL DIVISION[223](cont'd)

ITEM 3. Amend rule 223—48.4(303,404A) as follows:

223—48.4(303,404A) Qualified and nonqualified rehabilitation costs.

48.4(1) No change.

48.4(2) Any submission of a part three of the application with qualified rehabilitation costs of more than ~~\$500,000~~ \$750,000 shall include a certified statement by a certified public accountant verifying that the expenses statement includes only qualified rehabilitation costs incurred in the time period established in subrule 48.5(2).

ITEM 4. Amend rule 223—48.5(303,404A) as follows:

223—48.5(303,404A) Rehabilitation cost limits and amount of credit.

48.5(1) to 48.5(5) No change.

48.5(6) For applicants receiving credits through the small projects fund, the cumulative total for multiple applications for a single building shall not exceed ~~\$500,000~~ \$750,000 in qualified rehabilitation costs. The SHPO will not accept an application by the same owner for a building previously receiving credits through the small projects fund that causes the cumulative total to exceed ~~\$500,000~~ \$750,000. The applicant may either:

a. No change.

b. Apply for only the qualified rehabilitation costs up to a cumulative total of ~~\$500,000~~ \$750,000. If the applicant has already received and claimed a tax credit certificate on the applicant's annual tax return, the applicant shall select this option.

ITEM 5. Amend rule 223—48.6(303,404A) as follows:

223—48.6(303,404A) Application and review process.

48.6(1) to 48.6(7) No change.

48.6(8) Approval of part three of the application. Upon approval of part three of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the qualified rehabilitation costs as estimated in part two of the application for the tax credit year originally reserved for the project upon approval of part two of the application, unless the qualified rehabilitation costs in part three of the application differ from the estimated qualified rehabilitation costs in part two of the application.

a. No change.

b. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs of ~~\$500,000~~ \$750,000 or less: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

c. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs over ~~\$500,000~~ \$750,000: The SHPO shall notify the applicant that the applicant may either:

(1) Apply for the cumulative total of qualified rehabilitation costs under any other fund for which the project is eligible. If the applicant receives a tax credit reservation from another fund, the applicant shall abandon the entirety of the applicant's tax credit reservation in the small projects fund in accordance with rule 223—48.12(303,404A); or

(2) Claim only the final qualified rehabilitation costs up to ~~\$500,000~~ \$750,000. If the applicant chooses this option, the SHPO shall issue tax credit certificates totaling no more than ~~\$125,000~~ \$187,500 for the project, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

d. No change.

HISTORICAL DIVISION[223](cont'd)

48.6(9) and **48.6(10)** No change.

ITEM 6. Amend rule 223—48.7(303,404A) as follows:

223—48.7(303,404A) Tax credit funds.

48.7(1) *The small projects fund.* The SHPO shall reserve 10 percent of the tax credit allocation for any tax credit year in a small projects fund for projects with final qualified rehabilitation costs totaling ~~\$500,000~~ \$750,000 or less.

a. At the end of each state fiscal year, any credits in the small projects fund that have not been reserved for small projects shall be available for small projects in subsequent fiscal years.

b. If the small projects fund is fully reserved, any applications for small projects received after full reservation of the small projects fund may be eligible for the statewide fund.

48.7(2) to **48.7(7)** No change.

ITEM 7. Amend rule 223—48.8(303,404A) as follows:

223—48.8(303,404A) Sequencing of applications for review.

48.8(1) *Order of review.* The SHPO anticipates the receipt of a large number of applications for historic tax credits for projects with qualified rehabilitation costs in excess of ~~\$500,000~~ \$750,000 at the beginning of each state fiscal year. At the start of each state fiscal year, the SHPO will utilize a project review sequencing and prioritization system to establish the order in which applications will be reviewed.

a. Applications for projects with qualified rehabilitation costs of ~~\$500,000~~ \$750,000 or less applying for credits from the small projects fund will be accepted and reviewed throughout the calendar year until all available credits from that fund are reserved. When all available credits are reserved from the small projects fund, subsequent applications will be accepted utilizing the procedures in subrules 48.8(2) to 48.8(7).

b. No change.

48.8(2) *Filing window.* Part two applications for state historic tax credits received during the first ten working days of the state fiscal year shall be included in a project review sequencing system to determine the order in which they will be reviewed. ~~The filing window for applications submitted in July 2011 will be extended to August 5, 2011.~~ The filing window for applications submitted in July 2013 will be extended to July 31, 2013.

48.8(3) *Initial sequencing process.* An initial sorting process based on the status of the project application at the start of the state fiscal year will be used to associate applications with the appropriate initial sequencing category. Following initial sorting into a category and subcategory, each application within the assigned category and subcategory will be sequenced in accordance with subrule 48.8(4).

a. Category A projects do not need to be resubmitted during the filing window and are comprised of two subcategories in the following order:

(1) Projects reviewed in the previous year's sequencing and review process that did not receive a reservation for the full 25 percent of their qualified rehabilitation costs.

(2) Projects with final qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) ~~“b”~~ “d” and which could not be otherwise reserved from available credits in the appropriate fund.

b. and *c.* No change.

48.8(4) to **48.8(7)** No change.

ITEM 8. Amend rule 223—48.11(303,404A) as follows:

223—48.11(303,404A) Project completion and eligible property placed in service.

48.11(1) Once a tax credit reservation is made for a project, construction must be completed and the eligible property must be placed in service as follows:

a. No change.

b. For projects for which part two of the application was approved and tax credits were reserved on or after July 1, 2009: The project shall be completed and the eligible property shall be placed in

HISTORICAL DIVISION[223](cont'd)

service within 60 months of the date on which part two of the application was approved or 72 months of the date on which part two of the application was approved if more than 50 percent of the qualified rehabilitation costs are incurred within 60 months of the date on which part two of the application was approved and the applicant requests the 12-month extension in writing from the SHPO.

(1) If the applicant requests the 12-month extension from the SHPO to complete the project and place the building in service, the applicant must complete a qualified rehabilitation costs schedule and cover letter documenting the expenditure of more than 50 percent of the qualified rehabilitation costs estimated in part two of the application. This report and cover letter are due within 30 days of the end of the 60-month period. Information about the qualified rehabilitation costs schedule is available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. The qualified rehabilitation costs schedule may be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

(2) If the applicant does not request the additional 12 months from the SHPO, the applicant will be held to the requirement that the building be placed in service within 60 months of the date on which part two of the application was approved.

48.11(2) No change.

ITEM 9. Amend rule 223—48.14(303,404A) as follows:

223—48.14(303,404A) Redemption of tax credit certificate. The tax credit holder shall attach the tax credit certificate and a copy of the signed part three of the application to the taxpayer's state income tax return and submit these documents to the department of revenue in the tax year for which the tax credit certificate is valid or the tax year in which the rehabilitation project was completed, whichever is the later.

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

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.

ARC 0893C

PHARMACY BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 124.201, the Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment temporarily classifies as Schedule I controlled substances three synthetic cannabinoids in conformance with recent control of these same substances by the U. S. Department of Justice, Drug Enforcement Administration. The substances, UR-144, XLR11, and AKB48, have a high potential for abuse, have no currently accepted medical use in treatment in the United States, and lack accepted safety for use under medical supervision.

The provisions of this rule are not subject to waiver or variance.

The amendment was approved during the June 26, 2013, meeting of the Board of Pharmacy.

The Board finds, pursuant to Iowa Code section 17A.4(3), that notice and public participation are unnecessary and impracticable due to the immediate need for this amendment in order to avoid an imminent hazard to the public safety. Products laced with these synthetic substances are being abused mainly by smoking for their psychoactive properties. The products are being marketed as "legal" alternatives to marijuana but these synthetic cannabinoids have been shown to display higher potency in scientific studies when compared to THC. Smoking mixtures of these substances for the purpose of achieving intoxication has been identified as a reason for numerous emergency room visits and calls to poison control centers. Abuse of these synthetic cannabinoids and their combination products result in both acute and long term public health and safety issues.

PHARMACY BOARD[657](cont'd)

In compliance with 2013 Iowa Acts, House File 586, section 1, the Administrative Rules Review Committee at its July 9, 2013, meeting reviewed the Board's findings and the amendment and approved the Emergency adoption.

The Board finds, pursuant to Iowa Code subsection 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on July 9, 2013. This amendment confers a benefit on the public health and safety by removing these substances and the products laced with these substances from the licit marketplace and ensuring the possession, distribution, manufacture, and use of these products and substances are subject to the controls and penalties applicable to Schedule I controlled substances in Iowa.

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

This amendment is intended to implement Iowa Code subsection 124.201(4) and section 124.301.

This amendment became effective July 9, 2013.

The following amendment is adopted.

Adopt the following **new** subrule 10.38(1):

10.38(1) Amend Iowa Code section 124.204 by adding the following new subsection 9:

9. Temporary listing of substances subject to Schedule I. Any material, compound, mixture, or preparation which contains any quantity of the following substances:

a. (1-pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: UR-144, 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole.

b. [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: 5-fluoro-UR-144, 5-F-UR-144, XLR11, 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole.

c. N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers. Other names: APINACA, AKB48.

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

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.

ARC 0895C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2013 Iowa Acts, House File 355, the Iowa Department of Transportation, on July 9, 2013, adopted amendments to Chapter 601, "Application for License," Chapter 604, "License Examination," Chapter 605, "License Issuance," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

2013 Iowa Acts, House File 355, section 1, amends Iowa Code section 321.196 and allows the Department to excuse certain persons from a vision screen or submission of a vision report in order to allow for electronic (online) renewals.

These amendments will allow the Department to implement electronic renewal of driver's licenses for persons between the ages of 18 and 70 and nonoperator's identification cards for persons 18 and older on an every-other-renewal basis.

Item 1 provides that a person who renews a driver's license electronically shall destroy the previous driver's license upon receipt of the renewed license.

Item 2 provides an exception for persons to electronically renew their driver's licenses. A person is not required to complete a vision screen or submit an acceptable vision report.

TRANSPORTATION DEPARTMENT[761](cont'd)

Item 3 provides that the Department may determine means or methods for renewing a driver's license electronically and sets forth the criteria a person must meet to be eligible to renew a driver's license electronically.

Item 4 provides that the Department may determine means or methods for renewing a nonoperator's identification card electronically and sets forth the criteria a person must meet to be eligible to renew a nonoperator's identification card electronically. The amendment also confirms in rule existing practice regarding surrender of prior driver's licenses or nonoperator's identification cards and provides that a person who renews a nonoperator's identification card electronically shall destroy the previous nonoperator's identification card upon receipt of the renewed nonoperator's identification card.

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.

Pursuant to Iowa Code section 17A.4(3) and the emergency rule-making authority granted to the Department pursuant to 2013 Iowa Acts, House File 355, section 3, these amendments are filed emergency.

The Department further finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on July 9, 2013, because 2013 Iowa Acts, House File 355, section 3, allows for the amendments to be effective upon filing.

These amendments are also published herein under Notice of Intended Action as **ARC 0894C** to allow public comment.

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

These amendments are intended to implement Iowa Code section 321.196 as amended by 2013 Iowa Acts, House File 355, section 1.

These amendments became effective July 9, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 761—601.2(321) as follows:

761—601.2(321) Surrender of license and nonoperator's identification card. An applicant for a driver's license shall surrender all other driver's licenses and nonoperator's identification cards. This includes those issued by jurisdictions other than Iowa. An applicant who renews a driver's license electronically pursuant to 761—subrule 605.25(7) shall destroy the previous driver's license upon receipt of the renewed driver's license.

This rule is intended to implement Iowa Code section 321.182.

ITEM 2. Amend rule 761—604.10(321) as follows:

761—604.10(321) Vision screening.

604.10(1) to 604.10(3) No change.

604.10(4) *Exception for persons renewing electronically.* An applicant renewing a driver's license electronically pursuant to 761—subrule 605.25(7) is not required to complete a vision screen or submit a vision report to complete the renewal. This subrule does not preclude the department from requiring a vision screen or vision report of a person who has renewed a driver's license electronically when the department has reason to believe that the person is not capable of operating a motor vehicle safely.

This rule is intended to implement Iowa Code sections 321.186, 321.186A and 321.196 as amended by 2013 Iowa Acts, House File 355, section 1.

ITEM 3. Amend rule 761—605.25(321) as follows:

761—605.25(321) License renewal.

605.25(1) to 605.25(6) No change.

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

TRANSPORTATION DEPARTMENT[761](cont'd)

- a. An applicant who meets the following criteria may apply for electronic renewal:
- (1) The applicant must be at least 18 years of age but not yet 71 years of age.
 - (2) The applicant completed a satisfactory vision screen or submitted a satisfactory vision report under 761—subrules 604.10(1) to 604.10(3) and updated the applicant’s photo at the applicant’s last issuance or renewal.
 - (3) The applicant’s driver’s license has not been expired for more than one year.
 - (4) The department’s records show the applicant is a U.S. citizen.
 - (5) The applicant’s driver’s license is not marked “valid without photo.”
 - (6) The applicant is not seeking to change any of the following information as it appears on the applicant’s driver’s license:
 1. Name.
 2. Date of birth.
 3. Sex.
 - (7) The applicant’s driver’s license is a Class C noncommercial driver’s license, a Class D noncommercial driver’s license (chauffeur), or Class M noncommercial driver’s license (motorcycle) that is not a special license or permit, a temporary restricted license, or a two-year license.
 - (8) The applicant is not subject to a pending request for reexamination.
 - (9) The applicant does not wish to change any of the following:
 1. Class of license.
 2. License endorsements.
 3. License restrictions.
 - (10) The applicant is not subject to any of the following restrictions:
 - G—No driving when headlights required
 - J—Restrictions on the back of card
 - T—Medical report required at renewal
 - P—Special instruction permit
 - Q—No interstate or freeway driving
 - R—Maximum speed of 35 mph

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

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

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

ITEM 4. Amend rule 761—630.2(321) as follows:

761—630.2(321) Application and issuance.

630.2(1) to 630.2(9) No change.

630.2(10) The department may determine means or methods for electronic renewal of a nonoperator’s identification card.

- a. An applicant who meets the following criteria may apply for electronic renewal:
- (1) The applicant must be at least 18 years old.
 - (2) The applicant updated the applicant’s photo at the applicant’s last issuance or renewal.
 - (3) The applicant’s nonoperator’s identification card has not been expired for more than one year.
 - (4) The department’s records show the applicant is a U.S. citizen.
 - (5) The applicant’s nonoperator’s identification card is not marked “valid without photo.”
 - (6) The applicant is not seeking to change any of the following as it appears on the applicant’s nonoperator’s identification card:

TRANSPORTATION DEPARTMENT[761](cont'd)

1. Name.
2. Date of birth.
3. Sex.

b. An applicant who has not previously been issued a REAL ID nonoperator's identification card may not request a REAL ID nonoperator's identification card by electronic renewal.

630.2(11) An applicant for a nonoperator's identification card shall surrender all other driver's licenses and nonoperator's identification cards, other than a temporary permit held under Iowa Code section 321.181. This includes any driver's licenses or nonoperator's identification cards issued by jurisdictions other than Iowa. An applicant who renews a nonoperator's identification card electronically pursuant to 630.2(10) shall destroy the previous nonoperator's identification card upon receipt of a renewed nonoperator's identification card.

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

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.

ARC 0938C

CREDIT UNION DIVISION[189]

Adopted and Filed

Pursuant to the authority of Iowa Code section 533.107, the Credit Union Division amends Chapter 3, "Conversion of an Iowa-Chartered Credit Union to Another Charter Type"; rescinds Chapter 12, "Bylaw Amendment Voting Procedure—Mailed Ballot," and adopts a new Chapter 12, "Votes of the Membership"; and rescinds Chapter 16, "Director Election—Absentee Ballot Voting Procedure," and Chapter 19, "Amend, Modify or Reverse Acts of the Board of Directors—Mailed Ballot Voting Procedure," Iowa Administrative Code.

These provisions detail certain voting procedures for specific types of credit union membership votes and reflect the recent change in Iowa Code section 533.203 that permits the use of multiple methods of voting by credit unions. The statutory changes are reflected in an amended Chapter 3 and a new Chapter 12.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 29, 2013, as **ARC 0769C**.

Public comments were received by the Division at a public hearing held on June 18, 2013, and also through written submissions. The comments received included an objection to the required use of a nominating committee for director elections and to the time periods related to the close of balloting, requests for clarifications on the use of the petition process and the use of the term "close of balloting," and requests to include an informal waiver provision rather than use of the uniform waiver process in Chapter 23.

Upon consideration of the public comments, the Division has made clarifying changes to certain uses of the term "close of balloting" and certain references to the petition process for submitting nominations for director elections. Certain minor technical edits were also made for consistency.

These amendments were adopted by the Credit Union Review Board on July 18, 2013.

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

These amendments are intended to implement Iowa Code sections 533.201(7), 533.201(8), 533.203, 533.203A, 533.208(3), 533.401(1), 533.401(3), 533.403(1), 533.405(1), 533.405(2), and 533.405(6).

These amendments shall become effective September 15, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 3.2(3) as follows:

3.2(3) Disclosure to members.

a. No credit union shall convert to a federal credit union without full disclosure to its members of the intents and purposes of conversion.

b. If the intent to undertake a second conversion to a mutual savings bank or a savings association is among the purposes for conversion to a federal credit union, those facts and all related information shall be fully disclosed to members.

c. If a further conversion to a stock institution is among the possible outcomes from the conversion, the converting Iowa-chartered credit union ~~must~~ shall fully and accurately disclose this possibility to its members.

ITEM 2. Amend subrules 3.3(1) to 3.3(4) as follows:

3.3(1) Any conversion proposal may be approved by the board of directors only upon the affirmative vote of a majority of the board. The board ~~must~~ shall then set a date for a vote on the proposal by the members of the credit union and select the method of voting by a favorable vote of a majority of the board, according to the provisions of Iowa Code section 533.203.

3.3(2) The membership ~~must~~ shall approve the proposal to convert by the affirmative vote of a majority of those members who vote on such proposal. Each eligible member shall have one vote regarding the conversion proposal.

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~~3.3(3) The vote of the members to convert must be at a special meeting called for that purpose, must shall be in the manner prescribed in the bylaws and this chapter, and must satisfy the number of members necessary to constitute a quorum to convene a meeting of the members as prescribed in the bylaws.~~

~~3.3(4) The board of directors must shall notify the superintendent of any proposed conversion and within three days of an affirmative vote by the board on a conversion proposal. The board shall also notify the superintendent of any abandonment or disapproval of the conversion by the members or by the recipient chartering authority, the National Credit Union Administration, or applicable federal deposit insurer within seven days of a membership vote to abandon or disapprove the conversion, receipt of disapproval by a chartering authority, or other decision to abandon the conversion.~~

ITEM 3. Rescind rule 189—3.4(533) and adopt the following new rule in lieu thereof:

189—3.4(533) Notice to members and voting procedures.

3.4(1) Requirements. All conversion plans shall be submitted to the superintendent in accordance with 189—3.5(533). The members may not vote on the proposal until the credit union has received preliminary approval from the superintendent under 189—3.5(533), as well as the preliminary determination from the National Credit Union Administration on the proposition for conversion.

3.4(2) Vote by board of directors. The board of directors shall, by majority vote, select the method of voting for the membership vote on the conversion proposal in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

3.4(3) Election committee. The board shall appoint an election committee of not fewer than seven members, none of whom may be from the board of directors or be a member of a director's immediate family or be an employee of the credit union or a member of an employee's immediate family.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

3.4(4) Notice of balloting. The secretary shall set forth the conversion issue in a notice mailed to all members eligible to vote at least 90 calendar days, 60 calendar days, and 30 calendar days prior to the closing date of balloting.

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a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting except for votes cast in person during voting at a meeting held for the purpose of voting.

(1) The close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate, in bold-faced type, that members have the right to vote on the proposed amendment through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice shall do all of the following:

(1) Adequately describe the purpose and the subject matter of the vote.

(2) Accurately disclose the reasons for the conversion, stated in specific terms and not as generalities. If a purpose of conversion is to become a mutual savings bank, a savings association that is in mutual form, or a stock institution, the notice shall clearly inform the member of all of the following:

1. That the conversion, if approved, could lead to members' losing their ownership interest in the credit union.

2. That a credit union member has no more than one vote regardless of the number of shares held, but that in a mutual savings bank or savings association, voting may be based on the amount in the member's deposit accounts, commonly one vote granted for each \$100 on deposit.

3. That if the mutual savings bank or association converts to a stock institution, members will lose their ownership interests and voting rights automatically received as a member.

4. The method that will be used to provide for a pro-rata distribution of all unencumbered credit union retained and undivided earnings in excess of regulatory required reserves, as calculated pursuant to Iowa Code section 533.303, or in excess of a well-capitalized net worth level, calculated pursuant to the Federal Credit Union Act, 12 U.S.C. §1790d, whichever amount is greater. The pro-rata distribution shall occur on all shares of record as of the date of first notice to members under this rule and shall be based upon the member's share balance less any amount pledged to share-secured loans.

(3) Specify the costs of the conversion, such as changing the credit union name, examination and operating fees, attorney and consulting fees, tax liability, and any change or increase in compensation or economic benefit to directors or senior management officials, pursuant to subrule 3.10(2).

(4) Include an affirmative statement that, at the time of conversion to a federal credit union and for a period of five years thereafter, the credit union does or does not intend to do each of the following:

1. Convert to a mutual savings bank or savings association or a stock institution.

2. Provide any compensation to previously uncompensated members of the board of directors, or increase compensation or other conversion-related economic benefit, including stock options, special prices on stock, or first rights of refusal, to directors, senior management officials, or their agents, brokers, family members or other closely related parties.

3. Base member voting rights on account balances.

c. The notice shall not be included as part of any general mailing to members.

d. The notice may be sent electronically to those members who have opted to receive notices electronically.

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e. The notice shall be posted in each credit union office 90 calendar days, 60 calendar days, and 30 calendar days before the close of balloting.

f. A member who joins the credit union subsequent to the 30-calendar-day notice and prior to the close of balloting and who is eligible to vote on the conversion shall be provided a copy of the 30-calendar-day notice and any balloting materials.

3.4(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the 30-calendar-day notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall have postage prepaid and be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

3.4(6) Electronic voting. If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

3.4(7) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

b. The secretary shall mail the balloting materials specified in paragraph 3.4(5) "a" to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

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c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

3.4(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

3.4(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by 189—subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

3.4(10) *Certification of vote by board of directors.* The board of directors shall certify to the superintendent the results of the membership vote and the written materials provided to members according to the requirements of 189—3.6(533).

3.4(11) *Publication of results.* The board shall inform the membership of the results of the vote, and of the superintendent's approval or disapproval, by conspicuously posting notice in each credit union office for a period of 60 days following receipt of the superintendent's decision under 189—3.7(533). In addition to posting the results in each credit union office, the board shall also communicate the results to the membership by at least one of the following methods:

- a. Include the results in the next mailing of the member's statement of account.
- b. Include the results in the credit union newsletter.
- c. Include the results in the sponsor's newsletter.
- d. Post a notice on the credit union's Web site.
- e. Place a notice in a newspaper of general circulation within the geographic area of operation of the credit union.

3.4(12) *Effective date of conversion.* The board shall notify the superintendent of the effective date of the conversion and shall file evidence of federal regulatory approval for the conversion pursuant to 189—3.9(533).

3.4(13) *Certificate of conversion.* Upon receipt of the certificate of conversion from the superintendent, the credit union shall file the certificate pursuant to 189—3.9(533).

3.4(14) *Termination of conversion proceedings.* At any time prior to completion of a conversion to a federal credit union, the board or the members as provided in the bylaws may call for a special meeting of the members to be held to terminate the conversion proceedings. The membership shall approve the proposal to terminate the conversion proceedings by the affirmative vote of a majority of those members who vote on the proposal.

ITEM 4. Amend subrules 3.5(1) to 3.5(3) as follows:

3.5(1) The credit union ~~must~~ shall provide the superintendent with notice of its intent to convert and a plan of conversion no less than 30 calendar days prior to the 90-calendar-day period preceding the ~~date of the membership vote on the conversion~~ close of balloting under 189—3.4(533).

3.5(2) The credit union ~~must~~ shall give notice to the superintendent and provide a plan of conversion describing the material features of the conversion, along with a copy of the filing the credit union has

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made with the federal regulatory agency by which the credit union seeks that agency's approval of the conversion. The credit union ~~must~~ shall include with the notice to the superintendent a copy of the notice the credit union ~~provides~~ proposes to provide to members under 189—3.4(533), as well as the proposed ballot form and related instructions and envelopes, all written materials the credit union has distributed or intends to distribute to its members, ~~a copy of the return envelope addressed to the election committee marked "ballot" provided with the ballot form~~, and the procedures the election committee will follow in its receipt and counting of the ballots.

3.5(3) Superintendent's preliminary determination.

a. The superintendent ~~will~~ shall make a preliminary determination regarding the methods and procedures applicable to the membership vote.

b. The superintendent ~~will~~ shall notify the credit union within 30 calendar days of receipt of the credit union's notice of intent to convert if the superintendent disapproves of the proposed methods and procedures applicable to the membership vote.

c. The credit union's submission of the notice of intent and plan of conversion does not relieve the credit union of its obligation to certify the results of the membership vote required by 189—3.6(533) or certify compliance with these rules as required by 189—3.3(533) or eliminate the right of the superintendent to disapprove the actual methods and procedures applicable to the membership vote if the credit union fails to conduct the membership vote in a fair and legal manner.

ITEM 5. Amend rule 189—3.6(533) as follows:

189—3.6(533) Certification of vote on conversion proposal.

3.6(1) The board of directors of the converting credit union ~~must~~ shall certify the results of the membership vote to the superintendent within ten calendar days after the vote is taken.

3.6(2) The board of directors ~~must~~ shall also certify at the same time that the notice, ballot and other written materials provided to members were identical to those submitted pursuant to 189—3.5(533) or provide copies of any new or revised materials and an explanation of the reasons for the changes.

ITEM 6. Amend subrule 3.7(1) as follows:

3.7(1) The superintendent ~~will~~ shall issue a determination that the methods and procedures applicable to the membership vote are approved or disapproved within ten calendar days of receipt from the credit union of the certification of the result of the membership vote required under 189—3.6(533).

ITEM 7. Amend subrules 3.9(2) to 3.9(6) as follows:

3.9(2) Submission of evidence of approval and effective date.

a. The board of directors of the credit union ~~must~~ shall file with the superintendent appropriate evidence of approval of the conversion by the appropriate federal agency having jurisdiction over the financial institution after conversion and from the federal agency providing deposit insurance to the converted financial institution, and, if applicable, a copy of the notice from the National Credit Union Administration canceling the credit union insurance certificate.

b. The board of directors of the credit union ~~must~~ shall also notify the superintendent of the actual date on which the conversion is to be effective.

3.9(3) Upon receipt of satisfactory proof that the Iowa-chartered credit union has complied with all applicable laws and regulations of this state and of the United States, the superintendent ~~will~~ shall cancel the charter of the credit union and issue a certificate of conversion ~~which must that shall~~ be filed and recorded in the county in which the credit union has its principal place of business and in the county in which its original articles of incorporation or certification of organization ~~were~~ was filed and recorded, if different.

3.9(4) Violations of law or intent to deceive or mislead.

a. In the event it is subsequently determined the conversion was accomplished contrary to applicable law, regulation or the requirements of this chapter, in whole or in part, or with the intent to deceive or mislead the members of the credit union or the superintendent, the superintendent ~~will~~ shall take immediate action to cause the conversion to be declared null and void, and to request from the appropriate regulatory authority that the converted institution be ordered to surrender its charter

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and be ~~thereupon~~ returned to the authority of the superintendent for reinstatement as a state charter, or other action.

b. The provisions of Iowa Code chapter 533 shall apply in the event it is determined that any director, officer, agent, employee or clerk of the credit union knowingly submitted, or made or exhibited false statements, papers or reports to the superintendent ~~or committed~~.

c. If during the conversion process any person commits any acts which might result in that person's being found to have engaged in act constituting a fraudulent practice under Iowa Code section 714.8, the matter shall be referred to the attorney general.

3.9(5) If the superintendent finds a material deviation from the provisions of this chapter, or from Iowa Code chapter 533, that would invalidate any steps taken in the conversion, the superintendent ~~will~~ shall promptly notify the credit union and the National Credit Union Administration of the nature of the adverse findings.

3.9(6) The conversion of the Iowa credit union to a federal credit union ~~will~~ shall not be effective and completed until final approval is given by the superintendent, any improper actions are cured, and corrective steps have been accomplished, if applicable.

ITEM 8. Amend rule 189—3.10(533) as follows:

189—3.10(533) Limit on compensation of officials.

3.10(1) No director or senior management official of an Iowa credit union ~~may~~ shall receive any economic benefit in connection with a plan of conversion or the actual conversion of the credit union, other than regular compensation and other usual benefits paid to directors or senior management officials in the ordinary course of business.

3.10(2) In connection with the notices to members required by this chapter, the converting credit union ~~must~~ shall disclose to the members the cost of the conversion, including any change or increase in compensation or economic benefit to directors or senior management officials of the credit union in the event the conversion process is accomplished.

ITEM 9. Amend **189—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 533.203 and 533.403.

ITEM 10. Rescind 189—Chapter 12 and adopt the following new chapter in lieu thereof:

CHAPTER 12
VOTES OF THE MEMBERSHIP

189—12.1(533) Voting requirements and eligibility.

12.1(1) All elections are determined by plurality vote.

12.1(2) A member shall have one vote regardless of the number of or class of shares held by the member. Jointly held ownership shares are entitled to one vote, and joint tenants shall not be permitted to cast more than one vote per ownership share jointly held.

12.1(3) Members shall not vote by proxy.

12.1(4) A member other than a natural person may cast a single vote through a delegated agent.

12.1(5) Members shall be at least 16 years of age by the date of the meeting in order to vote, sign nominating petitions, or sign petitions requesting special meetings.

12.1(6) Members shall be at least 18 years of age by the date of the meeting where the election or appointment will occur in order to hold an elected or appointed position.

189—12.2(533) Nomination procedures for the board of directors.

12.2(1) *Nominating committee.* If the board has determined that voting for directors at the annual meeting will be conducted via one or more methods other than only in-person voting at the meeting, then at least 120 days before each annual meeting, the chairperson of the board shall appoint a nominating committee of three or more members, none of whom are directors currently eligible for reelection or their immediate family members.

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a. It is the duty of the nominating committee to nominate at least one member for each vacancy, including for any unexpired-term vacancy, for which elections are being held and to obtain a signed certificate from the members nominated that they are agreeable to the placing of their names in nomination, will accept office if elected, and will cooperate with any background check required by the credit union.

b. The nominating committee shall file its nominations with the secretary of the credit union board at least 90 days before the annual meeting.

c. Nominations made by the nominating committee are not subject to the petition process in subrule 12.2(2).

12.2(2) *Nominations by petition.* If the board of directors determines pursuant to subrule 12.3(1) that voting for directors will be conducted in whole or in part by mail or electronic ballots prior to the annual meeting, then nominations shall not be taken from the floor at the annual meeting and the nominating committee shall accept additional nominations by petition.

a. At least 90 days before the annual meeting, the secretary shall notify in writing all members eligible to vote that nominations for vacancies may be made by petition signed by at least 1 percent of the members, subject to a minimum of 20 members and a maximum of 200 members.

(1) The notice shall indicate that there will be no nominations from the floor at the annual meeting.

(2) The notice shall include a list of the nominating committee's nominees and a brief statement of the nominees' qualifications and biographical data in a form approved by the board of directors. Each nominee by petition shall submit a similar statement of qualifications and biographical data with the petition.

(3) Nominations by petition shall be accompanied by a signed certificate from the nominee stating that the nominee is agreeable to nomination, will serve if elected to office, and will cooperate with any background check required by the credit union.

(4) The period for receiving nominations by petition shall extend at least 30 days from the date that the notice is sent. Petitions shall be filed with the secretary of the credit union at least 60 days before the annual meeting.

(5) Nominations by petition which are received after the closing date, or which are otherwise incomplete because they do not include a statement of qualifications and biographical data, or certification agreeing to the nomination and indicating a willingness to serve, shall be disqualified by the board secretary. The secretary shall immediately notify the nominee of the disqualification and of the reason. A petition for a disqualified nominee may be refiled provided that all requirements, including the closing date for receiving nominations by petition, are met.

b. The notice may be included with the notice of annual meeting, in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The secretary may use electronic mail to notify members who have opted to receive notices or statements electronically.

12.2(3) *Posting of nominations.* The secretary shall ensure that all nominations are posted in a conspicuous place in each credit union office at least 30 days but no more than 60 days before the annual meeting.

12.2(4) *Alternative schedule—voting only in person at annual meeting.* If the board of directors determines that voting at the annual meeting shall only be conducted in person, and nominations will be taken from the floor at the annual meeting, the chairperson of the board shall appoint a nominating committee of three or more members, none of whom are directors currently eligible for reelection or their immediate family members, at least 60 days before the annual meeting. The nominating committee shall not solicit additional nominations by petition pursuant to subrule 12.2(2). Nominations shall be posted according to subrule 12.2(3).

189—12.3(533) Election procedures for the board of directors.

12.3(1) *Vote by board of directors.* The board of directors shall, by majority vote, select the method of voting for the membership vote for the election of directors, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote.

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The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at the annual meeting, pursuant to the requirements of this rule.

12.3(2) Election committee. The board of directors shall appoint an election committee of not fewer than five members, none of whom may be a current director or nominee for office or an immediate family member of any director or nominee for office.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. The chairperson of the election committee shall announce the results of the election at the annual meeting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.3(3) Notice of balloting. At least 20 days but not more than 30 days prior to the close of balloting, the secretary shall produce a notice of balloting.

a. The notice of balloting shall state the names of the candidates for the board of directors. The name of each candidate shall be followed by a brief statement of the candidate's qualifications and biographical data in a form approved by the board of directors.

b. If the board of directors elected to accept additional nominations by petition, then the notice of balloting shall state that additional nominations shall not be taken from the floor at the annual meeting. In this event, the board may vote to conduct the election in any form permitted by Iowa Code section 533.203.

c. If the board of directors did not elect to accept additional nominations by petition, then the notice of balloting shall state that additional nominations will be taken from the floor at the annual meeting. In this event, the board may only vote to conduct the election in person at the annual meeting, and not by mail-in ballot, electronic voting, absentee voting, or any combination permitted by Iowa Code section 533.203.

d. The notice shall set forth the rules and procedures for voting and the date of the close of balloting for ballots submitted other than in person during voting at the annual meeting.

(1) The close of balloting for ballots submitted other than in person during voting at the annual meeting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes for ballots submitted other than in person during voting at the annual meeting in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting for ballots submitted other than in person during voting at the annual meeting and received within five

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business days after the closing date of balloting for ballots submitted other than in person during voting at the annual meeting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting for ballots submitted other than in person during voting at the annual meeting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

e. The notice may be included with notice of the annual meeting and in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

f. Electronic mail may be used to provide the notice of balloting to members who have opted to receive notices or statements electronically.

12.3(4) Mailed ballots. If the board of directors, by majority vote, has elected to conduct the election in whole or in part by mailed ballot, then the secretary shall send with the notice of balloting a mail-in ballot.

a. The secretary shall include the following materials for balloting:

(1) One ballot, clearly identified as the ballot, on which the names of the candidates for the board of directors are printed in random order.

(2) One ballot envelope clearly marked “ballot” with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed “ballot” envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If voting will also occur at the annual meeting, the ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the annual meeting. If voting is not scheduled to occur at the annual meeting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the close of balloting for ballots submitted other than in person during voting at the annual meeting.

12.3(5) Electronic voting. If the board of directors, by majority vote, has elected to conduct the election in whole or in part by electronic voting, then the secretary shall include with the notice of balloting specific instructions for electronic voting.

a. The instruction sheet for electronic voting shall contain specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions for electronic voting required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee. If voting will also occur at the annual meeting, then the results shall be verified at the meeting.

d. If voting is not scheduled to occur at the annual meeting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the close of balloting for ballots submitted other than in person during voting at the annual meeting.

12.3(6) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the election only in person at the annual meeting, the board may also, by majority vote, utilize absentee ballots when no additional nominations will be taken from the

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floor at the annual meeting and when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of annual meeting a notification that members may vote either in person at the annual meeting or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting for ballots submitted other than in person during voting at the annual meeting.

b. The secretary shall mail the balloting materials specified in paragraph 12.3(4) “*a*” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the annual meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.3(7) *Nominations from the floor—subsequent in-person vote at meeting.* If the board of directors did not elect to accept additional nominations by petition, then additional nominations shall be taken from the floor at the annual meeting, provided that no electronic, mail-in, or absentee balloting has occurred.

a. At the annual meeting, printed ballots shall be distributed to those in attendance after additional nominations are taken from the floor, or the ballots shall also have blank spaces to write in the additional names. The ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting.

b. After members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee.

c. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the annual meeting.

12.3(8) *In-person vote at meeting.* If the board of directors elected to accept additional nominations by petition, and if the board of directors also chose to conduct the vote in whole or in part by in-person voting at the annual meeting, printed ballots shall be distributed to those in attendance at the annual meeting who have not voted.

a. The ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting.

b. After those members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots.

c. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the annual meeting.

12.3(9) *Preservation of ballots.* Ballots shall be preserved according to the provisions of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.3(10) *Publication of results.* Results of the election shall be reported to members according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.4(533) *Vote to amend bylaws or articles of incorporation.*

12.4(1) *Requirements.* Voting on amendments of bylaws and articles of incorporation shall be conducted in accordance with Iowa Code section 533.201. All amendments shall be approved by the superintendent before the amendments become effective.

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12.4(2) *Vote by board of directors.* If the board of directors has elected upon a favorable vote of the majority that the board of directors shall vote on the amendment, then the amendment is adopted by a favorable vote of the majority of the board.

12.4(3) *Membership vote.* The board of directors may vote to conduct the vote on the amendment by a method other than a majority vote of the board of directors, as provided in Iowa Code section 533.201. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

12.4(4) *Election committee.* If the board of directors votes to conduct the vote on the amendment by a method other than a majority vote of the board of directors, as provided in Iowa Code section 533.201, then the board shall appoint an election committee of not fewer than five members, none of whom may be directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. The chairperson of the election committee shall announce the results of the vote at the annual meeting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.201.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.4(5) *Notice of balloting.* The secretary shall set forth the proposed amendment in its entirety in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting for ballots submitted other than in person at a meeting held for the purpose of voting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting except for votes cast in person at a meeting held for the purpose of voting. The notice shall also contain a summary of the board's reasons for recommending the amendment.

(1) The close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting and

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received within five business days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed amendment through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.4(6) Mailed ballots. If the board of directors has elected, upon a favorable vote of the majority, to conduct a vote on the proposed amendment in whole or in part via mailed ballot:

a. The secretary shall include the following materials for balloting with the notice of balloting:

(1) One ballot, clearly identified as the ballot, on which the proposed amendment is printed in full.

(2) One ballot envelope clearly marked “ballot” with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed “ballot” envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If voting is not scheduled to occur at a meeting, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.4(7) Electronic voting. If the board of directors, by majority vote, has elected to conduct the vote in whole or in part by electronic voting, then the secretary shall include with the notice of balloting specific instructions for electronic voting to each member eligible to vote.

a. The instruction sheet for electronic voting shall contain specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee. If voting will also occur at a meeting, then the results shall be verified at the meeting.

d. If voting is not scheduled to occur at a meeting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.4(8) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

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a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

b. The secretary shall mail the balloting materials specified in paragraph 12.4(6) “*a*” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.4(9) *In-person voting at meeting.* If the board of directors has elected, upon a favorable vote of the majority, to present the proposed amendment for a vote in whole or in part at a meeting of members, printed ballots shall be given at the meeting to those members who have not voted by another method.

a. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting.

b. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots.

c. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.4(10) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date of final approval or denial of the amendment by the superintendent.

12.4(11) *Submission to superintendent.* The board of directors shall submit the amendment to the superintendent for approval before the amendment becomes effective. The board shall submit the following documentation in support of its request for approval:

a. A certified copy of the board minutes which contain the recommendation to submit the amendment to a vote of the membership.

b. A certified copy of the notices provided to members.

c. A certified copy of any ballots provided to members.

d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed amendment.

12.4(12) *Publication of results.* The board shall inform the membership of the results of the vote and whether the amendment received the approval of the superintendent, according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date of final approval or denial of the amendment by the superintendent.

189—12.5(533) Vote to modify, amend, or reverse an act of the board of directors or to instruct the board to take action.

12.5(1) *Vote of members at meeting.* The majority of members present at any meeting may vote to modify, amend, or reverse any act of the board of directors or instruct the board to take action not inconsistent with the articles of incorporation, the bylaws, or the Iowa credit union Act or administrative rules.

12.5(2) *Subsequent vote of membership.* In order to be binding upon the board of directors, any action taken by the membership to modify, amend, or reverse an act of the board, or to instruct the board

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to take action, requires an affirmative vote of a majority of all eligible members obtained by submitting the modification, amendment, reversal, or instruction to the members for a vote.

a. After a majority of members present at a meeting have voted to modify, amend, or reverse any act of the board of directors, or to instruct the board to take action not inconsistent with the articles, the bylaws, or the Iowa credit union Act or administrative rules, the board of directors shall meet to determine the method of voting for the membership vote and shall, within 60 days of the date of the meeting where the majority of members voted to modify, amend, or reverse an act of the board of directors, or to instruct the board to take action, submit the issue to all eligible voters of record as of the date of the meeting.

b. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

c. If a simple majority of all eligible members vote in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting shall be considered affirmed, and the board of directors shall take immediate action to comply with the directions of the membership. However, if a simple majority of all eligible members failed to vote in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting is not affirmed, and the prior action of the board of directors shall be considered upheld.

12.5(3) Election committee. The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.5(4) Notice of balloting. The secretary shall set forth the proposed amendment, modification, reversal or instruction to take action in its entirety in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other

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vote on the subject shall be taken after the closing date of balloting except for votes cast in person during voting at a meeting held for the purpose of voting. The notice shall also contain a summary of the board's reasons for its action or inaction, as well as a summary of the reasons, if known, for the vote to amend, modify, or reverse the board action, or to instruct the board to take action.

(1) The close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting and received within five business days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.5(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot, on which the proposed amendment, modification, or reversal, or instruction to the board to take action, is printed in full.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.5(6) Electronic voting. If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

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b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.5(7) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

b. The secretary shall mail the balloting materials specified in paragraph 12.5(5) “a” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.5(8) In-person vote at meeting. If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots on which the proposed amendment, modification, or reversal, or instruction to the board to take action, is printed in full shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.5(9) Preservation of ballots. Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.5(10) Publication of results. The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.6(533) Vote on merger.

12.6(1) Vote by board of directors. A state credit union that seeks to merge with another credit union shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors.

12.6(2) Subsequent vote of the membership. Following a vote by the board of directors to merge with another credit union, the board shall submit the merger to a vote of the membership of the merging credit union unless the superintendent finds that an emergency exists justifying the waiver of the membership vote.

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a. The board of the continuing credit union shall, within three days of voting to merge, notify the superintendent of the merger vote.

b. After the superintendent has given preliminary approval to the merger, the board of the merging credit union shall submit the issue within 30 days to all eligible voters of record as of the date of the vote by the board of directors. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

c. The approval of the merger is not final until approved by the superintendent after the membership vote of the merging credit union.

12.6(3) Election committee. The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the vote at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.6(4) Notice of balloting. The secretary shall set forth the proposed merger in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting except for votes cast in person during voting at a meeting held for the purpose of voting. The notice shall also contain a summary of the board's reasons for voting to merge.

(1) The close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

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(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting and received within five business days after the closing date of balloting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed merger through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.6(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.6(6) Electronic voting. If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.6(7) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

CREDIT UNION DIVISION[189](cont'd)

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

b. The secretary shall mail the balloting materials specified in paragraph 12.6(5) “*a*” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.6(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.6(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.6(10) *Submission to superintendent.* The board of directors shall submit the merger to the superintendent for approval before the merger becomes effective. The board shall submit the following documentation in support of its request for approval:

a. A certified copy of the board minutes which contain the vote of the board of directors to approve the merger and to submit the merger to a vote of the membership.

b. A certified copy of the notices provided to members.

c. A certified copy of any ballots provided to members.

d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed merger.

12.6(11) *Publication of results.* The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.7(533) Vote on voluntary dissolution.

12.7(1) *Vote of board of directors.* A state credit union that seeks to dissolve shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors. Within three days of the vote and prior to sending notice of the membership vote, the board of directors shall notify the superintendent of the intention to dissolve.

12.7(2) *Subsequent vote of the membership.* Following a vote by the board of directors to dissolve, the board shall submit the dissolution to a vote of the membership.

a. The board shall submit the issue to the membership within 30 days of voting to dissolve.

b. The board shall submit the issue to all eligible voters of record as of the date of the vote by the board of directors.

CREDIT UNION DIVISION[189](cont'd)

c. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

d. The approval of the dissolution is not final until the superintendent issues a certificate of dissolution.

12.7(3) Election committee. The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.7(4) Notice of balloting. The secretary shall set forth the proposed dissolution in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting except for votes cast in person during voting at a meeting held for the purpose of voting. The notice shall also contain a summary of the board's reasons for voting for the voluntary dissolution.

(1) The close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting and received within five business days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

CREDIT UNION DIVISION[189](cont'd)

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed dissolution through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.7(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked “ballot” with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed “ballot” envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.7(6) Electronic voting. If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.7(7) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

CREDIT UNION DIVISION[189](cont'd)

b. The secretary shall mail the balloting materials specified in paragraph 12.7(5)“a” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.7(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.7(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.7(10) *Submission to superintendent.* The board of directors shall submit the dissolution to the superintendent for review before the dissolution becomes effective. The state credit union shall cease existence when the superintendent issues a certificate of dissolution. The board shall submit the following documentation:

a. A certified copy of the board minutes which contain the vote of the board of directors to approve the plan and to submit the dissolution to a vote of the membership.

b. A certified copy of the notices provided to members.

c. A certified copy of any ballots provided to members.

d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed dissolution.

e. Proof that is satisfactory to the superintendent that all assets have been liquidated from which there is a reasonable expectation of realization, that the liabilities of the state credit union have been discharged and distribution made to its members, and that the liquidation has been completed.

12.7(11) *Publication of results.* The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.8(533) Vote to remove or reinstate an officer, director, or member of the auditing committee.

12.8(1) *Auditing committee vote.* If the auditing committee deems the action to be necessary to the proper conduct of the state credit union, the auditing committee may suspend, by majority vote, any officer, director, or member of the auditing committee.

12.8(2) *Subsequent vote of membership.* Following a vote by the auditing committee to suspend an officer, director, or member of the auditing committee, the suspension shall be put to a vote of the membership.

a. The members may vote to sustain the suspension and remove the officer, director, or auditing committee member permanently or may vote to reinstate the officer, director, or auditing committee member.

CREDIT UNION DIVISION[189](cont'd)

b. The board of directors shall meet to determine the method of voting for the membership vote and shall, within 30 days of the date of the auditing committee's vote, submit the issue to all eligible voters of record as of the date of the auditing committee's meeting. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. If the number of members who have opted to receive notices electronically is less than all members, the board may provide access to an electronic device in each credit union office for the members to vote electronically in order to satisfy the access requirement. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

12.8(3) Election committee. The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors and none of whom may be from the auditing committee.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.8(4) Notice of balloting. The secretary shall set forth the suspension and proposed removal in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting except for votes cast in person during voting at a meeting held for the purpose of voting. The notice shall also contain a summary of the auditing committee's reasons for voting to suspend the officer, director, or member of the auditing committee, as well as a summary of the reasons, if known, that the officer, director, or member of the auditing committee believes that the officer, director, or member should be reinstated.

(1) The close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting shall be at least five days prior to any meeting where voting will occur.

(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

CREDIT UNION DIVISION[189](cont'd)

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting and received within five business days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed removal through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters, on the credit union Web site, or on signs posted in the credit union.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.8(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.8(6) Electronic voting. If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.8(7) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

CREDIT UNION DIVISION[189](cont'd)

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

b. The secretary shall mail the balloting materials specified in paragraph 12.8(5)“*a*” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.8(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.8(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.8(10) *Publication of results.* The board shall inform the membership of the results of the vote according to the provisions of 189—12.10(533). The 60-day posting period required by subrule 12.10(1) shall run from the date the results are certified to the board by the election committee.

189—12.9(533) Preservation of ballots.

12.9(1) Immediately upon certification of the results of the vote by the election committee, any written ballots shall be sealed and appropriately labeled. Electronic vote results shall be saved electronically.

12.9(2) All ballots and voting results shall be retained by the credit union for at least 60 days, and until any disputes are resolved.

189—12.10(533) Reporting the results of the vote to the membership.

12.10(1) *Posting of results.* Except as otherwise provided for a membership vote, the board shall inform the membership of the results of the vote by conspicuously posting notice in each credit union office for a period of 60 days.

12.10(2) *Publication of results.* Except as otherwise provided for a membership vote, in addition to posting the results in each credit union office, the board shall also communicate the results to the membership by at least one of the following methods:

- a.* Include the results in the next mailing of the member’s statement of account.
- b.* Include the results in the credit union newsletter.
- c.* Include the results in the sponsor’s newsletter.
- d.* Post a notice on the credit union’s Web site.
- e.* Place a notice in a newspaper of general circulation within the geographic area of operation of the credit union.

CREDIT UNION DIVISION[189](cont'd)

189—12.11(533) Vote on sale of assets by corporate central credit union.

12.11(1) *Board of directors' vote.* A corporate central credit union that seeks to sell all of its assets to another corporate credit union shall proceed pursuant to a plan agreed upon by a favorable vote of a majority of directors. The board shall notify the superintendent within three days.

12.11(2) *Subsequent vote of the membership.* Following a vote by the board of directors to approve a plan to sell all of the corporate central credit union's assets to another corporate credit union, the board shall submit the plan to a vote of the membership.

a. The board shall submit the issue within 30 days of voting to approve the plan to all eligible voters of record as of the date of the vote by the board of directors.

b. The board of directors shall, by majority vote, select the method of voting for the membership vote, in accordance with Iowa Code section 533.203. Each credit union member shall have a meaningful opportunity to vote in a membership vote. The board of directors shall vote to conduct the vote in whole by electronic voting only if all members have access to an electronic voting device. Otherwise, the board shall also conduct the vote in part by mail-in ballot or in person at a meeting held for the purpose of voting, pursuant to the requirements of this rule.

c. The approval of the sale is not final until approved by the superintendent after the membership vote.

12.11(3) *Election committee.* The board shall appoint an election committee of not fewer than five members, no more than two of whom may be from the board of directors.

a. It is the duty of the election committee to oversee balloting, to tabulate votes, and to ensure that each member shall only be allowed to vote once and that multiple ballots submitted by the same member are disqualified.

b. The election committee shall elect a chairperson from among the committee members. If the balloting includes a vote taken at a meeting of members, the chairperson of the election committee shall announce the results of the election at the meeting; otherwise, the chairperson shall certify the vote to the board within five days of the close of balloting.

c. No member or agent of the election committee shall reveal the manner in which any member voted.

d. If the board of directors, by majority vote, has elected to utilize electronic voting, the election committee shall test the integrity of the electronic voting system at regular intervals during the election period. In the event of a malfunction of the electronic voting system, the board may in its discretion order the election to be held in another form, consistent with Iowa Code section 533.203.

e. For electronic ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as registered in the electronic voting system.

f. For mail-in ballots, including absentee ballots, it is the duty of the election committee to verify, or cause to be verified, the name and credit union account number of the voter as they appear on the identification form, to place the verified identification form and the sealed ballot envelope in a place of safekeeping pending the count of the vote, and, in the case of a questionable or challenged identification form, to retain the identification form and sealed ballot envelope together until the verification or challenge has been resolved.

12.11(4) *Notice of balloting.* The secretary shall set forth the proposed sale in a notice to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting.

a. The notice shall set forth the rules and procedures for voting, the date of the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting, that balloting is subject to an affirmative vote of a majority of all members eligible to vote, and that no other vote on the subject shall be taken after the closing date of balloting except for votes cast in person during voting at a meeting held for the purpose of voting. The notice shall also contain a summary of the board's reasons for selling the assets.

(1) The close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting shall be at least five days prior to any meeting where voting will occur.

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(2) Electronic ballots shall be submitted no later than midnight on the date balloting closes for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(3) Ballots mailed to the credit union shall be postmarked no later than the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting and received within five business days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(4) Ballots hand-delivered to the credit union shall be received prior to the close of normal credit union business hours on the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting in order to be considered valid.

(5) If more than one method of voting will be used, the notice shall also communicate that members have the right to vote on the proposed sale through any of the methods of voting designated by the board, but that members will only be allowed to vote once.

b. The notice may be included in statements or newsletters or on the credit union Web site.

c. The notice may be sent electronically to those members who have opted to receive notices electronically.

12.11(5) Mailed ballots. If the board voted by majority vote to conduct the vote in whole or in part by mailed ballot:

a. The secretary shall include the following balloting materials with the notice of balloting:

(1) One ballot, clearly identified as the ballot.

(2) One ballot envelope clearly marked "ballot" with instructions that the completed ballot shall be placed in that envelope and sealed.

(3) One identification form to be completed so as to include the name, address, signature, and credit union account number of the voter.

(4) One mailing envelope in which the voter, following instructions provided, shall insert the sealed "ballot" envelope and the identification form. The mailing envelope shall be preaddressed for return to the election committee.

b. If the credit union will also be conducting electronic voting, the mail-in ballot is not required for members who have opted to receive notices or statements electronically, and electronic mail may be used to provide the instructions and notices for the electronic voting procedure.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and placed in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee.

d. If additional voting will be conducted at a meeting of members, the tallies shall be placed in the ballot boxes, and the ballot boxes shall be resealed to be taken to the meeting. If no other voting is scheduled to occur, the election committee shall tally the total votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.11(6) Electronic voting. If the board voted by majority vote to conduct the vote in whole or in part by electronic voting:

a. The secretary shall include with the notice of balloting specific instructions for electronic voting, including how to access and use the electronic voting system, and the period of time in which votes will be taken.

b. For those members who have opted to receive notices or statements electronically, the instructions required under this subrule may be communicated electronically.

c. The electronic voting shall be tallied by the election committee prior to any meeting where voting is also scheduled to take place, and the committee shall take the tallies to the meeting. If no meeting is scheduled for voting, the election committee shall tally the votes and certify the vote count to the board no later than five days after the closing date of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

12.11(7) Absentee ballots—subsequent in-person vote at meeting. If the board of directors, by majority vote, has elected to conduct the vote only in person at a meeting of members, the board may

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also, by majority vote, utilize absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

a. The secretary shall include with the notice of balloting a statement that members may vote either in person at the meeting of members or by absentee ballot if the member submits a written or electronic request for an absentee ballot and returns the ballot prior to the close of balloting for ballots submitted other than in person during voting at a meeting held for the purpose of voting.

b. The secretary shall mail the balloting materials specified in paragraph 12.11(5) “*a*” to each member who is eligible to vote and who has submitted a written or electronic request for an absentee ballot.

c. Ballots mailed to the election committee or hand-delivered to the credit union shall be received unopened and deposited in ballot boxes. The ballot boxes shall be opened by and the vote tallied by the election committee, the tallies placed in the ballot boxes, and the ballot boxes resealed to be taken to the meeting.

d. At the meeting of members, printed ballots shall be given to those members who have not voted. The completed ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee before the meeting. After the members have been given an opportunity to vote, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of absentee ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.11(8) *In-person vote at meeting.* If the board voted by majority vote to conduct the vote in whole or in part at a meeting of members, then printed ballots shall be distributed to those in attendance at the meeting who have not voted by another method, and the ballots shall be deposited in ballot boxes placed in conspicuous locations by the election committee. After those members have been given an opportunity to vote at the meeting, balloting shall be closed, the ballot boxes opened and the vote tallied by the election committee and added to any previous count of mailed or electronic ballots. The election committee shall immediately certify the vote count to the board. The chairperson of the election committee shall announce the result of the vote at the meeting.

12.11(9) *Preservation of ballots.* Ballots shall be preserved according to the requirements of 189—12.9(533). The 60-day retention period required by subrule 12.9(2) shall run from the date the results are certified to the board by the election committee.

12.11(10) *Submission to superintendent.* The board of directors shall submit the plan to the superintendent for approval before the plan to sell all of the assets of the corporate central credit union becomes effective. The board shall submit the following documentation in support of its request for approval:

a. A certified copy of the board minutes which contain the vote of the board of directors to approve the plan and to submit the sale to a vote of the membership.

b. A certified copy of the notices provided to members.

c. A certified copy of any ballots provided to members.

d. A certified statement, including the vote count, that a majority of the eligible members voted in favor of the proposed sale.

12.11(11) *Publication of results.* The board shall inform the membership of the results of the vote within ten days of certification of the results of the vote by the election committee. The board shall communicate the results to the membership by at least two of the following methods:

a. By mail.

b. By e-mail.

c. By posting a notice on the corporate central credit union’s Web site.

189—12.12(533) *Vote on conversion of an Iowa-chartered credit union to another charter type.* An Iowa-chartered credit union that seeks to convert to another charter type shall comply with the conversion procedures, including a vote of the membership, as provided in 189—Chapter 3.

These rules are intended to implement Iowa Code sections 533.201, 533.203, 533.203A, 533.204, 533.208, 533.213, 533.401, 533.403, and 533.405.

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ITEM 11. Rescind and reserve **189—Chapter 16**.ITEM 12. Rescind and reserve **189—Chapter 19**.

[Filed 7/18/13, effective 9/15/13]

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.

ARC 0944C**ECONOMIC DEVELOPMENT AUTHORITY[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 15.106A, the Economic Development Authority amends Chapter 65, "Brownfield and Grayfield Redevelopment," Iowa Administrative Code.

The amendments adopted herein are intended to prevent a project from receiving brownfield or grayfield redevelopment tax credits more than once for the same site. These amendments define the conditions under which a project is deemed to be receiving tax credits for the same site more than once and thus deemed ineligible to receive tax credits.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 17, 2013, as **ARC 0686C**. No public comment was received on the amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Economic Development Authority Board on July 19, 2013.

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

These amendments are intended to implement Iowa Code sections 15.291, 15.292, 15.293A and 15.293B.

These amendments shall become effective September 11, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions of "Affiliate" and "Previously remediated or redeveloped" in rule **261—65.2(15)**:

"*Affiliate*" or "*affiliated entity*" means any entity to which one or more of the following applies:

1. The entity directly, indirectly, or constructively controls another entity.
2. The entity is directly, indirectly or constructively controlled by another entity.
3. The entity is subject to the control of a common entity. A common entity is one which owns directly or individually more than 10 percent of the voting securities of the entity.

"*Previously remediated or redeveloped*" means any prior remediation or redevelopment at a brownfield or grayfield site, including development for which an application for or an award of brownfield or grayfield tax credits has been made.

ITEM 2. Amend rule **261—65.2(15)**, definition of "Qualifying redevelopment project," as follows:

"*Qualifying redevelopment project*" means a brownfield or grayfield site being redeveloped or improved by the property owner. "Qualifying redevelopment project" does not include a previously remediated or redeveloped brownfield or grayfield site.

ITEM 3. Adopt the following **new** subrule 65.3(3):

65.3(3) *Phased projects ineligible for tax credits.* Tax credits for brownfield and grayfield redevelopment are only available for qualifying redevelopment projects. Because a qualifying redevelopment project does not include a previously remediated or redeveloped site, a project for subsequent redevelopment at the same site for which tax credits have already been awarded is not eligible for additional tax credits on redevelopment at that site. The authority and the council will determine whether a project constitutes subsequent redevelopment at the same site by considering the following factors:

- a. Whether the redevelopment described in multiple proposed projects is planned for a single parcel.

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- b.* Whether the redevelopment described in multiple proposed projects is planned for adjacent or contiguous parcels or parcels in very close physical proximity.
- c.* Whether all involved parcels are owned by the same entity, different entities, or affiliated entities.
- d.* Whether a proposed project is the result of the same planning process as another project.
- e.* Whether the proposed projects are being developed by the same entity, different entities, or affiliated entities.
- f.* Whether the development of one proposed project reflects a temporal connection to another proposed project.

[Filed 7/19/13, effective 9/11/13]

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.

ARC 0903C

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 50, "Health Care Facilities Administration," Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons With Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for Persons With Mental Illness (ICF/PMI)," Iowa Administrative Code.

The adopted amendments implement legislative changes, including those in 2013 Iowa Acts, Senate File 347, to Iowa Code section 135C.33, which requires criminal record checks and child and dependent adult abuse record checks of prospective employees of health care facilities and of students of certified nurse aide training programs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 29, 2013, as **ARC 0776C**. No comments were received; no changes were made to the amendments published under Notice of Intended Action.

The State Board of Health initially reviewed the amendments at its May 8, 2013, meeting, and subsequently approved them at the Board's July 10, 2013, meeting.

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

These amendments are intended to implement Iowa Code section 135C.14 and section 135C.33 as amended by 2013 Iowa Acts, Senate File 347.

These amendments shall become effective September 11, 2013.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [50.9, 57.12(3), 58.11(3), 62.9(5), 63.11(3), 64.34, 65.9(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 0776C**, IAB 5/29/13.

[Filed 7/16/13, effective 9/11/13]

[Published 8/7/13]

[For replacement pages for IAC, see IAC Supplement 8/7/13.]

ARC 0906C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 10A.104(5), 135C.2(3)“d” and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” Iowa Administrative Code.

Iowa Code section 135C.2(3)“d” requires the Department to cause the Interpretive Guidelines to be published in the Iowa Administrative Bulletin and the Iowa Administrative Code. The section further states that the publication of the guidelines is not subject to the rule-making provisions of Iowa Code sections 17A.4 and 17A.5. The current guidelines were first published in 1989 and have not been updated since; therefore, this amendment adopts the updated version of the guidelines.

This rule making was reviewed and approved by the State Board of Health at its July 10, 2013, meeting.

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

This amendment is intended to implement Iowa Code sections 10A.104(5), 135C.2(3)“d” and 135C.14.

This amendment shall become effective on November 6, 2013.

The following amendment is adopted.

Rescind the “Interpretive Guidelines” Appendix in **481—Chapter 64** and adopt the following **new** Appendix in lieu thereof:

INTERPRETIVE GUIDELINES

These guidelines are included in the Iowa Administrative Code pursuant to Iowa Code section 135C.2(3)“d” and are not subject to the rule-making provisions in Iowa Code sections 17A.4 and 17A.5.

440.150(c) The statutory and regulatory use of the word “institution” includes settings that serve four or more people with mental retardation and/or related conditions.

See §435.1009 for definition of “persons with related conditions.”

The presence or absence of an individual requiring a medical care plan, as defined at W320, is not salient in the determination of whether a facility is eligible to participate in the ICF/MR program.

483.410(a)(1) The responsibility for direction includes areas such as health, safety, sanitation, maintenance and repair, and utilization and management of staff, especially when problems in these areas are of a serious or recurrent nature. Condition level deficiencies (other than the Governing Body Condition) or repeat, pervasive patterns of deficiencies at the Standard level may be an indication that the governing body is not providing sufficient operating direction over the facility. When a pattern of serious or repeated deficiencies is identified during the survey, interview the administrator or review the minutes of governing body meetings, if available, to determine whether or not the governing body has identified and addressed the problem.

Staff who have been trained, but are not implementing programs or are inappropriately deployed (e.g., there are enough staff but they are assigned to duties like record keeping which prevents them from delivering needed services), may indicate a failure of the governing body to adequately direct the staff’s activities.

483.410(b) Licenses, permits, and approvals of the facility must be available to you upon request. Current reports of inspections by State and/or local health authorities are on file, and notations are made of action taken by the facility to correct deficiencies.

Some State or local laws are more stringent or prescriptive than the Federal Medicaid requirement on the same issue. Failure of the facility to meet a Federal (i.e., non- Medicare or Medicaid), State or local law may be cited only when the authority having jurisdiction (AHJ) has both made a determination of non-compliance and has taken a final adverse action.

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An adverse action is defined as any procedure that goes beyond the approval of a plan of correction, such as a civil money penalty, ban on admissions, denial of payment, or loss of license, and is not under appeal by the provider. The AHJ is the public official(s) having authority to make a determination of noncompliance, and is responsible for signing correspondence notifying the facility of the adverse action.

If you believe you have identified a situation indicating the provider may not be in compliance with a Federal, State or local law, refer that information to the AHJ for follow-up action. If a final adverse action results, then the facility could be found to not meet §483.410(b).

483.410(c)(1) The structure and content of the individual's record must be an accurate, functional representation of the actual experience of the individual in the facility. This should be identified through interviews with staff and, when possible, with individuals being served, as well as through observations.

The regulations do not specify that all information about an individual be located in the individual program plan (IPP) document, only that information explicitly identified in the regulations. The regulations do not prescribe the manner, form or where in the individual's record this information is to be recorded.

483.410(c)(2) "Keep confidential" means safeguarding the content of information including video, audio, and/or computer stored information from unauthorized disclosure without the specific informed consent of the individual, parent of a minor child, or legal guardian, and consistent with the advocate's right of access, as required in the Developmental Disabilities Act. Facility staff and consultants, hired to provide services to the individual, should have access to only that portion of information that is necessary to provide effective responsive services to the individual.

Confidentiality applies to both central records and information kept at dispersed locations. If there is information considered too confidential to place in the record used by all staff (e.g., identification of the family's financial assets, sensitive medical data), it may be retained in a secure place in the facility (e.g., social worker's locked desk). A notation must be made in the record of the location of confidential information (e.g., "Family information is available from the social worker").

The sharing of individual specific information with members of the "specially constituted committee" required by §483.450(f)(3), who are not affiliated with the agency, does not violate an individual's right to have information about him or her kept confidential. The committee needs to know relevant information to function properly.

The facility is allowed the flexibility to work out arrangements with its members to maintain confidentiality.

483.410(c)(3) Although one facet of the requirement is that the facility must decide how this is to be accomplished (i.e., policies and procedures), the surveyor's primary focus should be on the second part of the requirement, i.e., the facility's implementation or "outcome" that consent is obtained prior to the release of any individual information (e.g., records, photographs, interviews, or other means of exposure to public view or identification).

The following guidance is provided to assist in determining whether informed consent for release of information is adequate:

1. Was the confidential information to be released specifically identified?
2. Was the person or agency to whom the information was to be released identified to the consenting party?
3. Was the consent time-limited (i.e., include the date the consent was given, and the date which the specific consent would be invalid)?
4. Was the person giving consent legally able to give consent?

Information regarding an individual's HIV status may not be released without specific consent and may not be in the record if that consent has not been given. Staff are expected to use universal precautions when dealing with all individuals, therefore, it is unnecessary to routinely share information about HIV status with all staff. Under some conditions, knowledge may be shared with those directly involved in the care of infected persons. Surveyors should be familiar with State law requirements.

483.410(c)(4) In cases in which facilities have created the option for an individual's record to be maintained by computer, rather than hard copy, electronic signatures are acceptable.

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Given the large number of entries that are made in individual's records, this requirement is cited only when a systemic problem is identified.

483.410(c)(6) "Appropriate" means those parts of each individual's record most likely (or known) to be needed by the residential staff to carry out the individual's active treatment program in the unit, to alert staff to health risks and other aspects of medical treatment, to support the psychosocial needs of the individual, and anything else necessary to the staff's ability to work on behalf of the individual.

483.410(d)(1) Federal statute (P.L. 94-142) requires all school-aged children to receive a free and appropriate school education. Therefore, a written agreement between ICFs/MR and public schools is not necessary.

483.410(d)(2)(ii) Outside providers of day services would not have to meet certain requirements relating to physical environment under §§483.470 (a)-(g), (j), and (k) unless that source also provides living quarters for ICF/MR individuals. Outside sources must, of course, meet any applicable State and local requirements.

The facility's responsibility includes assuring that any restrictive techniques proposed for use by outside service providers are used only when warranted and with the required safeguards and approvals.

483.410(d)(3) "Assure" means that the facility's staff actively participate with staff in outside programs in the assessment process and in development of objectives and intervention strategies. For example, if a public school is implementing a manual communication system with an individual, the direct care staff in the individual's living unit should have instructions to implement the program in the residential environment. Likewise, if the facility is implementing a behavior management program for the individual, it should be shared with and implemented as needed by the outside program. This communication is often difficult, but nevertheless essential to the provision of active treatment.

483.410(d)(4) Even though the facility's premises may be rented from a landlord, the facility must ensure that the requirements for physical environment are met, either through arrangement with the landlord or through the facility's own services.

483.420 A citation of W127 or W150, which require that individuals are not subjected to verbal, sexual, or psychological abuse or punishment, is sufficient justification that the facility has failed to comply with the most fundamental of protections and, therefore, does not comply with this Condition of Participation.

483.420(a) "Ensure" means that the facility actively asserts the individual's rights and does not wait for him or her to claim a right. This obligation exists even when the individual is less than fully competent and requires that the facility is actively engaged in activities which result in the pro-active assertion of the individual's rights, e.g., guardianship, advocacy, training programs, use of specially constituted committee, etc.

483.420(a)(1) The obligation to inform requires that the facility present information in a manner and form which can be understood, e.g., use of print materials, specialized programs to inform individuals who are deaf or blind, use of interpreters, etc.

483.420(a)(2) The term "attendant risks of treatment" refers to all treatment, including medical treatment. An individual who refuses a particular treatment (e.g., a behavior control, seizure control medication or a particular intervention strategy) must be offered information about acceptable alternatives to the treatment being refused, if acceptable alternatives are available. The individual's preference about alternatives should be elicited and considered in deciding on the course of treatment. If the individual also refuses the alternative treatment, or if no alternative exists to the treatment refused, the facility must consider the effect this refusal may have on other individuals, the individual himself or herself and the facility, and if it can continue to treat the individual consistent with these regulations. Thus, every effort must be made to assist the individual to understand and cooperate in the legitimate exercise of the IPP.

An individual being considered for participation in experimental research must be fully informed of the nature of the experiment (e.g., medication, treatment) and understand the possible consequences of participating or not participating. The individual's written consent must be received prior to participation. For an individual who is a minor or who has been adjudicated as incompetent, the written informed consent of parents of the minor or the legal guardian is required.

The determination as to whether the individual was sufficiently "informed" is based on the following:

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1. Was the individual aware of the proposed program or treatment, the procedures to be followed, and the identification of the person who will perform the treatment activity?
2. Was the individual aware of the intended outcome or benefits of the proposed program or treatment?
3. Was the individual aware of the possible risks, including side effects and attendant discomfort of the proposed program or treatment, and the steps to be taken to minimize risk?
4. Was the individual aware of the ramifications if he or she decided not to participate, and of the alternatives to the proposed activity, particularly alternatives offering less risk or adverse effects?
5. Did the individual participate voluntarily? Did the individual have the opportunity to have questions about the activity answered?
6. Was the information about the activity presented in language that could be readily understood by the individual?

Additionally, for experimental, invasive or potentially harmful treatment, activities or procedures for which written informed consent is recommended, if not otherwise required by State or Federal law:

1. Was the consent time-limited (i.e., include the date the consent was signed and the date it becomes invalid)?
2. Did the individual realize that consent to participate could be withdrawn at any time without risk of punitive action?
3. Was the person who gave consent the legally appropriate party to do so for the individual?

483.420(a)(3) The facility must ensure protection of the individual from any form of reprisal or intimidation as a result of a complaint or grievance reported by an individual.

As long as there are no decisions or circumstances which require action by a legally-appointed surrogate, a spokesperson or advocate could assist the individual in exercising his or her rights as a citizen of the United States and as a person residing in the facility. Some examples might include assisting the individual to express his/her needs, wants and interests, to utilize community resources or to file a complaint. A spokesperson might also express opinions regarding situations in which consent by the beneficiary, parent of a minor, or legal guardian is required in order to bring to the attention of the facility potential concerns or problems.

The extent to which any person can act on behalf of another individual who has been assessed as needing a guardian, however, is entirely dependent upon the needs of the individual client and upon the laws and regulations of the State in which that individual resides. The facility and surveyor must be familiar with the laws and regulations of the State in which the facility is located. It is inappropriate for the facility to unofficially delegate the individual's rights to others (e.g., parents, family, advocacy groups, etc.). To the extent that the individual is able to make decisions for himself or herself, it is inappropriate to delegate the person's rights to others.

Individuals who need guardianship or advocacy, and do not have this need addressed, are not prepared to exercise their rights as citizens of the United States. The facility's failure to ensure guardianship or advocacy for those who need it should be cited. Further deficiencies may also be cited under W123, W124, W143, and W263, depending upon the survey findings.

483.420(a)(4) Since the use of money is a right, determine if the facility demonstrated, based on objective data, that the individual was unable to be taught how to use money before the decision was made to restrict that right.

483.420(a)(5) The facility is responsible to organize itself in such a manner that it proactively assures individuals are free from serious and immediate threat to their physical and psychological health and safety. Citing of this requirement indicates that there is a high probability that abuse to individuals could occur at any time, or already has occurred and may well occur again, if the individuals are not effectively protected from the serious physical or psychological harm or injury, or if the threat is not removed. A citation of this requirement, therefore, must result in a determination of Condition level non-compliance due to immediate and serious threat. Cross reference W122 for additional guidance.

"Threat," as used in this guideline, is any condition/situation which could cause or result in severe, temporary or permanent injury or harm to the mental or physical condition of individuals, or in their death.

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“Abuse” refers to the ill-treatment, violation, revilement, malignment, exploitation and/or otherwise disregard of an individual, whether purposeful, or due to carelessness, inattentiveness, or omission of the perpetrator.

“Physical abuse” refers to any physical motion or action, (e.g., hitting, slapping, punching, kicking, pinching, etc.) by which bodily harm or trauma occurs. It includes use of corporal punishment as well as the use of any restrictive, intrusive procedure to control inappropriate behavior for purposes of punishment. Observe individuals to see if they are bruised, cut, burned (cigarettes, etc.).

“Verbal abuse” refers to any use of oral, written or gestured language by which abuse occurs. This includes pejorative and derogatory terms to describe persons with disabilities.

“Psychological abuse” includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation, sexual coercion, intimidation, whereby individuals suffer psychological harm or trauma.

Individuals must not be subjected to abuse by anyone (including, but not limited to, facility staff, consultants or volunteers, staff of other agencies serving the individual, family members or legal guardians, friends, other individuals, or themselves).

Since many individuals residing in ICFs/MR are unable to communicate feelings of fear, humiliation, etc., the assumption must be made that any actions that would usually be viewed as psychologically or verbally abusive by a member of the general public, is also viewed as abusive by the individual residing in the ICF/MR, regardless of that individual’s perceived ability to comprehend the nature of the incident.

The facility must take whatever action is necessary to protect the individuals residing there. For example, if a facility is forced by court order or arbitration rulings to retain or reinstate an employee believed to be abusive, the facility may need to take other measures (such as assigning the employee to an area where there is no contact with beneficiaries, providing increased supervision and additional training for the employee, appealing the arbitration or court decision or pursuing formal criminal charges) in order to ensure beneficiary safety.

483.420(a)(6) The chronic use of restraints may indicate one or more of the following: the individual’s developmental and/or behavioral needs are not being met and the appropriateness of placement should be questioned; staff behavior may be prompting behaviors in individuals which result in the chronic use of physical restraints and drugs to control behavior; staff may have inadequate training and/or experience to provide active treatment and employ preventive measures that reduce the levels of behaviors judged to require physical restraints and drugs to control behavior; and restraints may be applied to behaviors which are, in fact, not threatening to the health and welfare of the individual or other individuals and staff.

483.420(a)(7) The facility must have a method of arranging for privacy of visits between individuals with significant relationships, if they do not both reside at the facility.

483.420(a)(7) The facility must examine and treat individuals in a manner that maintains the privacy of their bodies. Only employees directly involved in the treatment are present when treatments are given. Some method or mechanism which ensures privacy (such as a closed door, a drawn curtain or systematically implemented training for an individual to use their own methods) must be employed to shield the individual from passers-by. People not involved in the care of the individual should not be present without their consent while they are being examined or treated.

If an individual requires assistance during toileting, bathing, and other personal hygiene activities, staff should assist, giving utmost attention to the individual’s need for privacy. There is no prohibition, however, on staff to work with individuals of the opposite sex.

Exercise special attention to ensure that your behavior, during onsite observations in the individual’s home, does not violate an individual’s right to privacy during treatment and care of personal needs.

483.420(a)(8) “Work,” as used in the regulation, means any directed activity, or series of related activities which results in benefit to the economy of the facility or in a contribution to its maintenance, or in the production of a salable product. In deciding whether a particular activity constitutes “work” as defined above, the key determinant is if an individual was unavailable to perform the particular activity or function, would the facility be required to hire additional full or part-time staff (or pay overtime

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to existing staff) in order to properly maintain the facility or to provide necessary care services to individuals, in order to carry out its assigned mission?

Individuals are not to be used to provide a source of labor for a facility against their will or in opposition to the objectives of the IPP.

Seriously question any situation in which an individual is observed or reported to be "volunteering" to do real work that benefits the facility, or its maintenance without compensation. Interview such individuals to determine if they have given informed consent to such practices and understand that by providing employable services they are able to be compensated. This does not preclude an individual from helping out a friend or being kind to others. Self-care activities related to the care of one's own person are not considered "work" for purposes of compensation.

Regular participation in the domiciliary activities of maintaining one's own immediate household or residential living unit which can lead to the individual's greater functional ability to perform independent household tasks is also not considered "work" for the facility. Shared duties are common and appropriate. Included in, but not limited to, these domiciliary tasks are:

- Meal planning, food purchasing, food preparation, table setting, serving, dishwashing, etc.;
- Household cleaning, laundry;
- Clothes repair;
- Light yard and house maintenance (painting, simple carpentry, etc.); and
- General household shopping, including clothing.

In general, participation in any household task which promotes greater independent functioning (and which the individual has not yet learned) is permitted as long as tasks are included in the IPP in written behavioral and measurable terms. This participation must be supervised, and indices of performance should be available. No task may be performed for the convenience of staff (e.g., supervising individuals, running personal errands) or which has no relationship to the individual's IPP.

As individuals become widely competent and independent in household tasks, they must not be used in those capacities and represented as "in training" and serious consideration should be given to the individual's potential for even less restrictive residential environments. (See also §§483.440(a)(2) and (b)(1).) However, it is acceptable for individuals to engage in household tasks which are in common with other individuals, all sharing the total household tasks commonly shared in nuclear family units. The test in this regard is:

The expectation is that tasks are the general responsibility of the individual, and that the duties rotate to the maximum extent possible; and/or

The individual can assume control in performing the responsibility given (e.g., John has until Thursday at 8 p.m. to clean the living and dining rooms), thereby adding to the development of internal controls and assumption of responsibility by individuals.

Work performed by the individual which no other individual is required or expected to do, or is not a regular part of running the household, must be compensated.

"Compensated" means the receipt of money or other forms of negotiable compensation for work (including work performed in an occupational training program) which is available to the individual, to be used at his or her discretion in determining the benefits to be derived therefrom.

"Prevailing wage" refers to the wage paid to non-disabled workers in nearby industry or the surrounding community for essentially the same type, quality and quantity of work or work requiring comparable skills.

A working individual must be paid at least the prevailing minimum wage except when an appropriate certificate has been obtained by the facility in accordance with current regulations and guidelines issued under the Fair Labor Standards Act, as amended.

Any individual performing work, as defined above, must be compensated in direct proportion to his or her productivity as measured in work equivalents of a regular employee's output. For example, if an individual's productivity for a particular work activity or function is determined to be 30 percent of normal output for an average non-disabled worker, and the prevailing wage is \$4.00 an hour, then the individual should be compensated in money at a rate of one dollar and twenty cents per hour (.30 x \$4.00 = \$1.20). If a piece rate can be determined for a particular job, an individual is paid based on the number

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of pieces he or she produces. An individual's pay is not dependent on the production of other individuals when he or she works in a group.

When the individual's active treatment program includes assignment to occupational or vocational training or work, specific work objectives of anticipated progress should be included in the IPP along with reasons for the assignments. If the training of individuals on particular occupational activities or functions involves "real work" to be accomplished for the facility, the individuals must be compensated based on ability. For example, if in the process of work training activities involved with learning to clean a floor, the floor for a particular building is cleaned and does not require further janitorial cleanup, then the individual must be compensated for this activity.

483.420(a)(9) Space must be provided for individuals to receive visitors in reasonable comfort and privacy.

483.420(a)(9) Assistance must be provided to individuals who require help in reading or sending mail. Refer to W145.

483.420(a)(11) Outdoor and out of home activities are planned for all individuals on a regular basis.

483.420(a)(12) All individual possessions regardless of their apparent value to others must be treated with respect, for what they are and for what they may represent to the individual. The facility should encourage individuals to use or display possessions of his or her choice in a culturally normative manner. Appropriate personal possessions includes personal care and hygiene items. Individuals should not be without personal possessions because of the behavior of others with whom they live. If a method for identifying personal effects is used, it should be inconspicuous and in a manner that will assist the individual to identify them.

"Appropriate" clothing means a supply of clothing that is sufficient, in good repair, accounts for a variety of occasions and seasons, and appropriate to age, size, gender, and level of activity. Modification or adaptation of clothing fasteners should be considered based on the needs of an individual with a physical disability to be independent.

As appropriate, each individual's active treatment program maximizes opportunities for choice and self-direction with regard to choosing and shopping for clothing which enhances his or her appearance, and selecting daily clothing in accordance with age, sex and cultural norms. Individuals are permitted to keep personal clothing and possessions for their use while in the facility. Determine how the facility both ensures the safety of personal possessions while at the same time providing individual access to them when the individual chooses

Individuals are provided the opportunity, encouraged, and trained to use age-appropriate materials. The term "age-appropriate" refers to anything that reinforces recognition of the individual as a person of a certain chronological age. The facility's environment must be furnished with materials and activities that will enhance opportunities for growth. Determine whether the failure of an individual to achieve functional, adaptive skills, or to have opportunities to make informed choices, or to achieve any positive outcomes is a result of the constant use of materials or participation in activities that are age-inappropriate.

483.420(b)(1)(i) A "full and complete accounting for personal funds" does not need to document accounting for incidental expenses or "pocket money," funds a capable individual handles without assistance, funds dispensed to an individual under a program to train the individual in money management, and funds that are not entrusted to the facility (e.g., funds paid directly to the individual's representative payee).

483.420(b)(1)(ii) Although prudent to do so, there is no Federal requirement to maintain individuals' personal funds in financial institutions in interest bearing accounts, or in accounts separate from other individual accounts. However, if the facility elects to pool individuals' funds in an interest bearing account, including common trust accounts, it is expected to know the interest separately accrued by each individual, as part of its required accounting of funds. Interest accumulated to an individual's account belongs to the individual, not the facility.

483.420(b)(2) Parents or other family members should not have automatic access to the financial records of adult individuals. It is not necessary that a facility be required to furnish an annual financial statement to the individual or the individual's family, since the facility is already required to make the financial

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record available at any time upon request. The individual, in turn, is free to choose to make his or her financial record available to anyone else.

483.420(c)(1) “Unobtainable,” as used in this standard, means that the facility has made a bonafide effort to seek parental or guardian participation in the process, even though the effort may ultimately be unsuccessful (for example, the parent may be impossible to locate or may prove unwilling or unable to participate).

“Inappropriate” as used in this standard means that the parent or legal guardian’s behavior is so disruptive or uncooperative that others cannot effectively participate; the individual does not wish his or her parent to participate, and the individual is competent to make this decision; or there is strong evidence that the parent or guardian is not acting on the individual’s behalf or in the individual’s best interest. In the case of the latter, determine what the facility has done to bring effective resolution to the problem.

483.420(c)(2) Where possible, randomly select a family or guardian to validate the quality, nature and frequency of the communications between the facility and families or guardians (but only with their consent). There is no requirement that each contact with family and friends be documented.

483.420(c)(3) Any limitations of visitors are recorded by the interdisciplinary team with reason and time limits given. Decisions to restrict a visitor must be reviewed and re-evaluated each time the IPP is reviewed or at the individual’s request. If you find broad restrictions, review general facility access policies.

The facility should have arrangements available to provide privacy for families and others when visiting with individuals.

483.420(c)(5) It is not acceptable for a facility to sponsor or allow individuals to take a particular type of trip that is contraindicated. For example, in the situation of an individual subject to abuse by a parent, the facility obviously is not required to permit such a trip. However, as with any right that may need to be modified or limited, the individual should be provided with the least restrictive and most appropriate alternative available.

483.420(c)(6) “Significant” incidents or changes in the individual’s condition refers to any type of occurrence or event, that is perceived to have some level of importance to the individual, family or guardian. Examples include, but are not limited to, allegations of mistreatment, psychological trauma experienced by the individual, loss or change of a program service or staff person, entry or placement in new programs or agencies, day-to-day events on which family members express interest to be informed, etc.

483.420(d)(1) “Mistreatment” as used in this standard, includes behavior or facility practices that result in any type of individual exploitation such as financial, sexual, or criminal.

“Neglect” means failure to provide goods or services necessary to avoid physical or psychological harm.

See W127 for definitions related to “abuse.”

483.420(d)(1)(i) See W127, Facility Practices, as related specifically to staff of the facility.

A citation of this requirement indicates that abuse to an individual by staff of the facility is highly likely to occur or has already occurred and may well occur again if the individual is not effectively protected. A citation of this requirement, therefore, must result in Condition-level non-compliance due to immediate and serious threat. Cross reference W122 and W127.

483.420(d)(1)(ii) Cross-reference W465.

483.420(d)(1)(iii) This regulation applies to the hiring of new employees on or after October 3, 1988. The facility is required to screen potential employees for a prior employment history of child or client abuse, neglect or mistreatment, as well as for any conviction based on those offenses. The abuse, neglect or mistreatment must be directed toward a child or an individual who is a client (resident, patient) in order for the prohibition of employment to apply.

This requirement also applies to acts of abuse, neglect or mistreatment committed by a current ICF/MR employee outside the jurisdiction of the ICF/MR (e.g., in the community or in another health care facility). A substantiated allegation of abuse, neglect or mistreatment which occurred after October 3, 1988, (regardless of the date of the person’s employment in the ICF/MR), and which resulted in the termination of that person’s employment from another health care facility, becomes a part of the

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person's employment history and the ICF/MR is prohibited from continuing to employ the individual. For example, an individual who abused a resident in a nursing facility and as a result, is barred from employment in the nursing home setting would also be prohibited from employment in the ICF/MR. While facilities are not required to periodically screen existing employees, if the facility becomes aware that such action has been taken against an employee, the facility is required to prohibit continued employment. This is also true of any conviction in a court of law for child or client (resident, patient) abuse, neglect or mistreatment. Therefore, conviction for abusing one's own child is also a reason employment would be prohibited.

The definition of "mistreatment" under the guideline at W153 includes financial exploitation. Therefore, if an employee was convicted or had a prior employment history of theft of an individual's funds, that would also be a reason employment would be prohibited.

Access other information, as appropriate, including information contained in "closed" records, in order to adequately evaluate compliance.

483.420(d)(2) The facility is responsible for reporting any injuries of unknown origin and any allegations of mistreatment to an individual residing in the facility regardless of who is the perpetrator (e.g., facility staff, parents, legal guardians, volunteer staff from outside agencies serving the individual, neighbors, or other individuals, etc.).

483.420(d)(3) The facility is responsible for investigating all injuries of unknown origin and must prevent further potential abuse while the investigation is in progress.

483.420(d)(4) Some States require that allegations of abuse must be reported to the police. CMS cannot regulate the activities of the police. However, if the police take longer than five working days for their investigation, the facility is still required to complete an internal investigation report of findings within the five day timeframe. "Working days" means Monday through Friday, excluding State and Federal holidays.

483.420(d)(4) This requirement refers to corrective action taken based upon findings of investigations of incidents which have occurred within the jurisdiction of the facility. It requires that the seriousness of infractions be weighed in the determination of what action is necessary by the facility to correct the situation appropriately. In cases of abuse, neglect or mistreatment by staff, where extenuating circumstances exist and dependent on the nature of the infraction, a remedy that is consistent with appropriate progressive disciplinary measures may be acceptable. When the intentional action or inaction of a staff person has resulted in abuse, neglect or mistreatment which poses a serious and immediate threat to individuals' health and safety, termination of employment is the only acceptable corrective action.

Appropriate corrective action is also required for findings of abuse, neglect or mistreatment by other individuals residing in the facility, staff of outside agencies, parents or any other person, and for injuries to individuals resulting from controllable environmental factors.

Appropriate corrective action is defined as that action which is reasonably likely to prevent the abuse, neglect, mistreatment or injury from recurring.

When an employee appeals a finding of abuse by the facility, whether through arbitration or in a court of law, the decision of the arbitrator or the court of law is then considered the final finding. If the arbitrator found that the charges lacked substance, the allegation would be considered unsubstantiated. The facility, however, is still required to ensure that individuals residing in the facility are not subjected to physical, verbal, sexual or psychological abuse or punishment by W127.

An arbitrator may find that the allegation of abuse is substantiated, but impose a lesser penalty than that which was sought by the facility. For example, the facility may seek termination of employment as the appropriate corrective action but the arbitrator determines that a 10 day suspension is more appropriate. The facts of the situation will have to be evaluated by the surveyor and a judgment made regarding appropriateness. Therefore, while the facility is permitted by the regulation to exercise judgment regarding appropriate corrective action, the surveyor must also exercise judgment and may determine that the corrective action is NOT reasonably likely to prevent the abuse from recurring.

483.430(a) View the person serving in the QMRP role as pivotal to the adequacy of the program the individual receives, since it is this role that is intended to ensure that the individual receives those

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services and interventions necessary by competent persons capable of delivering them. The paramount importance of having persons competent to judge and supervise active treatment issues cannot be overstated.

An individual's IPP may be coordinated and monitored by more than one QMRP or by other staff persons who perform the QMRP duties. There must, however, be one QMRP who is assigned primary responsibility and accountability for the individual's IPP and the QMRP function.

The regulations do not specify if the person designated as QMRP must do the duties of a QMRP exclusively, or is allowed to perform other professional staff duties in addition. The facility has the flexibility to allocate staff resources in whatever manner it believes is necessary as long as it ensures that the QMRP function is performed effectively for each individual.

The test of whether the number of QMRPs is adequate rests with the ability of the facility to provide the services described in §483.430(a) in an effective manner. The number will vary depending on such factors as the number of individuals the facility serves, the complexity of needs manifested by these individuals, the number, qualifications and competencies of additional professional staff members, and whether or not other duties are assigned to the QMRP function.

483.430(b)(1) For an active treatment program to be responsive to the individual's unique needs, there must be a foundation of competent professional knowledge that can be drawn upon in the implementation of the interdisciplinary team process. Individuals with developmental deficits will require initial, temporary, or ongoing services from professional staff, knowledgeable about contemporary care practices associated with these areas. A special mention needs to be made that individuals should not be provided with services that are not needed (e.g., if an individual is basically healthy and not on medication, then the individual should not be provided extensive health and health-related services).

The needs identified in the initial comprehensive functional assessment, as required in §483.440(c)(3)(v), should guide the team in deciding if a particular professional's further involvement is necessary and, if so, to what extent professional involvement must continue on a direct or indirect basis.

Since such needed professional expertise may fall within the purview of multiple professional disciplines, based on overlapping training and experience, determine if the facility's delivery of professional services is adequate by the extent to which individuals' needs are aggressively and competently addressed. Some examples in which professional expertise may overlap include:

- Physical development and health: nurse (routine medical or nursing care needs that do not interfere with participation in other programs); physician, physician assistant, nurse practitioner (acute major medical intervention, or the treatment of chronic medical needs which will be dependent upon an individual's success or failure in other treatment programs).
- Nutritional status: nurse (routine nutritional needs that do not affect participation in other programs); nutritionist or dietitian (chronic health problems related to nutritional deficiencies, modified or special diets).
- Sensorimotor development: physical educators, adaptive physical educators, recreation therapists, (routine motor needs involving varying degrees of physical fitness or dexterity); special educators or other visual impairment specialists (specialized mobility training and orientation needs); occupational therapist, physical therapist, physiatrist (specialized fine and gross motor needs caused by muscular, neuromuscular, or physical limitations, and which may require the therapeutic use of adaptive equipment or adapted augmentative communication devices to increase functional independence); dietitians to increase specialized fine and gross motor skills in eating.
- Affective (emotional) development: special educators, social workers, psychologists, psychiatrists, mental health counselors, rehabilitation counselors, behavior therapists, behavior management specialists.
- Speech and language (communication) development: speech-language pathologists, special educators for people who are deaf or hearing impaired.
- Auditory functioning: audiologists (basic or comprehensive audiologic assessment and use of amplification equipment); speech-language pathologists (like audiologists, may perform aural rehabilitation); special educators for individuals who are hearing impaired.

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- Cognitive development: teacher (if required by law, i.e., school aged children, or if pursuit of GED is indicated), psychologist, speech-language pathologist.
- Vocational development: vocational educators, occupational educators, occupational therapists, vocational rehabilitation counselors, or other work specialists (if development of specific vocational skills or work placement is indicated).
- Social Development: teachers, professional recreation staff, social workers, psychologists (specialized training needs for social skill development).
- Adaptive behaviors or independent living skills: Special educators, occupational therapists.

483.430(b)(1) There are some individuals in ICFs/MR who can often have their needs effectively met without having direct contact with professional staff on a daily basis. The intent of the requirement is not to require that professionals work directly with individuals on a daily basis, but only as often as an individual's needs indicate that professional contact is necessary. The amount and degree of direct care that professionals must provide will depend on the needs of the individual and the ability of other staff to train and direct individuals on a day-to-day basis.

483.430(b)(2) If there is sufficient evidence that para- and non-professional staff demonstrate the needed competencies to carry through with intervention strategies, you may be satisfied there is sufficient professional staff to carry out the active treatment program. However, if the professional's expertise is not demonstrable at the para- and non-professional staff level, question both the numbers of professional staff and the effectiveness of the transdisciplinary training of para- and non-professional staff.

483.430(b)(3) "Participate" means providing input through whatever means is necessary to ensure that the individual's IPP is responsive to the individual's needs. The purpose of the interdisciplinary team process is to provide team members with the opportunity to review and discuss information and recommendations relevant to the individual's needs, and to reach decisions as a team, rather than individually, on how best to address those needs. Therefore, determine whether or not there is a pattern of active treatment based on professional participation in the process.

Without a negative outcome to demonstrate that professional involvement in any aspect of the active treatment process (e.g., comprehensive functional assessment, IPP development, program implementation, etc.) was insufficient or inaccurate, the facility is allowed the flexibility to use its resources in a manner that works in behalf of the client, in accordance with the regulations.

483.430(b)(4) "Participate" means both seeking out self-training and provision of training to others.

483.430(b)(5)(i)-(ix) The introductory phrase "to be designated as..." means that a provider is allowed to represent him or herself as a professional provider in that discipline, only if the provider meets State licensing requirements, or if the particular discipline does not fall under State licensure requirements, the provider meets the qualifications specified in §§483.430(b)(5)(i)-(ix). A person who is not qualified, for example, as a social worker, may not be referred to as a social worker per se. Nevertheless, such a person may be able to provide social services in an ICF/MR if there is no conflict with State law, and as long as the individuals' needs are met.

483.430(b)(5)(ix) The Commission on Dietetic Accreditation of the American Dietetic Association is the organization to whom the American Dietetic Association delegates this responsibility.

483.430(b)(5)(x) The intent for including a "human services professional" category is to expand the number and types of persons who could qualify as QMRPs, while still maintaining acceptable professional standards.

"Human services field" includes all the professional disciplines stipulated in §§483.430(a)(3)(i)(ii) and §§483.430(b)(5)(i)-(ix), as well as any related academic disciplines associated with the study of: human behavior (e.g., psychology, sociology, speech communication, gerontology etc.), human skill development (e.g., education, counseling, human development), humans and their cultural behavior (e.g., anthropology), or any other study of services related to basic human care needs (e.g., rehabilitation counseling), or the human condition (e.g., literature, the arts).

An individual with a "bachelors degree in a human services field" means an individual who has received: at least a bachelor's degree from a college or university (master and doctorate degrees are also acceptable) and has received academic credit for a major or minor coursework concentration in a human

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services field, as defined above. Although a variety of degrees may satisfy the requirements, majors such as geology and chemical engineering are not acceptable.

Taking into consideration a facility's needs, the types of training and coursework that a person has completed, and the intent of the regulation, the facility and you can exercise wide latitude of judgment to determine what constitutes an acceptable "human services" professional. Again, the key concern is the demonstrated competency to do the job.

483.430(c)(1) Volunteers may provide supplementary services. The facility may not rely on volunteers to fill required staff positions and perform direct care services.

Examine closely the adequacy of staffing when individuals served are engaged in the care, training, treatment or supervision of other individuals, either as part of training, "volunteer work," or normal daily routines. (See W131-W132 for additional interpretation of productive work done as a "volunteer" or as part of the individual's active treatment program.) The test of adequacy is whether or not there is sufficient staff to accomplish the job in the absence of the individual's work. Work done as part of an active treatment training program requires that the staff are monitoring and teaching new skills as part of the IPP.

483.430(c)(2) The test of adequacy about "awake" staffing is how well the facility has organized itself to detect and react to potential emergencies, such as fire, injuries, health emergencies described in the medical care plan (e.g., aspiration, cardiac or respiratory failure, uncontrolled seizures) and behavioral crises described in the IPP.

483.430(c)(3) The intent of the regulation is that at all times a staff person is in a position to help if individual needs arise. For purposes of this provision, "on duty" staff need not be awake during normal bedtime hours.

Facilities sending some or all of the individuals to out of home or off grounds active treatment programs for a majority of the day need not provide a full complement of direct care staff in the residence during their absence. However, a minimum of one staff person must be on duty, if even one individual is present.

483.430(c)(4) "Support staff" include all personnel hired by the facility that are not either direct care staff or professional staff. For example, support staff include, but are not limited to, secretaries, clerks, housekeepers, maintenance and laundry personnel.

Direct care staff should be utilized at their highest level of competence, but they may assume other roles as long as their ability to exercise their primary direct care duties is not diluted. For example, direct care staff may serve as aides in a training program during the hours individuals are away from the living unit.

483.430(d)(1) "Sufficient" direct care staff means the number of staff, over and above the ratios specified in §483.430(d)(3), necessary to implement active treatment, as dictated by the individual's active treatment needs.

Do not look at numbers alone. The facility is responsible for organizing and evaluating its individual appointments, programming schedules, activities, materials, equipment, grouping assignments and available staff in such a way that maximizes benefit to the individual. During the course of the onsite survey, you should be able to observe behavioral evidence of such organization. Evaluate this data in light of the success or failure observed relevant to providing active treatment, and come to a judgment about the adequacy of the facility's staffing.

483.430(d)(2) "Direct care staff" are those personnel whose daily responsibility it is to manage, supervise and provide direct care to individuals in their residential living units. This staff could include professional staff (e.g., registered nurses, social workers) or other support staff, if their primary assigned daily shift function is to provide management, supervision and direct care of individuals' daily needs (e.g., bathing, dressing, feeding, toileting, recreation and reinforcement of active treatment objectives) in their living units. However, professional staff who simply work with individuals in a living unit on a periodic basis cannot be included. Also, supervisors of direct care staff can be counted only if they share in the actual work of the direct care of individuals. Supervisors whose principal assigned function is to supervise other staff cannot be included.

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483.430(d)(3) The minimum ratios in this standard indicate the minimum number of direct-care staff that must be present and on duty, 24 hours a day, 365 days a year, for each discrete living unit. It does not include anyone functioning as direct care staff. For example, to calculate the minimum number of living unit staff that must be present and on duty in a discrete living unit serving 16 individuals with multiple disabilities: divide the number of individuals "16," by the number corresponding to the regulation "3.2," the result equals "5." Therefore, the facility must determine how many staff it must hire to ensure that at least 5 staff will be able to be present and on duty during the 24 hour period in which those individuals are present.

Using the living unit described above, "calculated over all shifts in a 24-hour period" means that there are present and on duty every day of the year: one direct care staff for each eight individuals on the first shift (1:8), one direct care staff for each eight individuals on the second shift (1:8), and one direct care staff for each 16 individuals on the third shift (1:16). Therefore, there are five (5) direct care staff present and on duty for each twenty-four hour day, for 16 individuals. The same calculations are made for the other ratios, whichever applies. Determine if absences of staff for breaks and meals results in a pattern of prolonged periods in which present and on-duty staff do not meet the ratios.

483.430(e)(2) View in-service training as a dynamic growth process. It is predicated on the view that all levels of staff can share competencies which enable the individual to benefit from the consistent, wide-spread application of the interventions required by the individual's particular needs.

In the final analysis, the adequacy of the in-service training program is measured in the demonstrated competencies of all levels of staff relevant to the individual's unique needs as well as in terms of the "affective" characteristics of the caregivers and the personal quality of their relationships with the individuals. Observe the staff's knowledge by observing the outcomes of good transdisciplinary staff development (i.e., in the principles of active treatment) in such recommended competencies as:

- Respect, dignity, and positive regard for individuals (e.g., how staff refers to individuals, refer to W150);
- Use of behavioral principles in training interactions between staff and individuals;
- Use of developmental programming principles and techniques, e.g., functional training techniques, task analysis, and effective data keeping procedures;
- Use of accurate procedures regarding abuse detection and prevention, restraints, medications, individual safety, emergencies, etc.;
- Use of adaptive mobility and augmentative communication devices and systems to help individuals achieve independence in basic self-help skills; and
- Use of positive behavior intervention programming.

483.430(e)(3) Observe staff interactions with individuals to see if the specific interventions, techniques and strategies to change inappropriate behavior outlined in the sampled individual's program plans are correctly implemented. In the absence of implementation, investigate further to determine if there was a justifiable reason for not implementing an intervention (e.g., the plan was revised, the specific situation demanded a different approach, the conditions for use of a particular technique were not present, etc.). When staff are unable to demonstrate how to correctly implement an intervention, or are unable to explain when and how the intervention is to be implemented, inadequate training is evident.

483.430(e)(4) Observe whether or not staff are competent and knowledgeable about the needs, programs and progress of each sampled individual with whom they are assigned to work. Staff should be able to demonstrate in practice the results of training for the individuals for whom they are responsible. See guidelines at §483.430(e)(3).

483.440(a)(1) "Continuous" is defined to mean the competent interaction of staff with individuals served at all times, whenever the need arises or opportunities present, in both formal and informal settings.

Verify that active treatment is identifiable during formal and informal interactions between staff and individuals served. The performance of the individual should reflect the success, if any, of interventions being applied or the need to alter the intervention procedures.

The ICF/MR ensures that each individual receives active treatment daily regardless of whether or not an outside resource(s) is used for programming (e.g., public school, day habilitation center, senior day services program, sheltered workshop, supported employment).

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Those “active” interventions necessary to prevent or decelerate regression are considered to be part of the overall active treatment program. For example, if the application of a specific stimulation technique to the area of the mouth of an individual with severe physical and medical disabilities, decelerates the individual’s rate of reliance on tube feedings, and helps the individual retain ability to take food by mouth, then this intervention is considered to be a component of active treatment for the individual.

Active treatment for elderly individuals may increasingly need to focus on interventions and activities which promote physical wellness and fitness, socialization and tasks that stress maintaining coordination skills and reducing the rate of loss of skills that accompanies the physical aspects of the aging process. Attending a senior center may be a justifiable part of an active treatment program for an elderly person.

Active treatment is the sum total of the major components of the active treatment process or loop which make up the requirements under this Condition of Participation (i.e., assessment, individual program planning, implementation, program documentation, program monitoring and change). It defines the primary nature of the services which must be provided by a facility (and received by its clients) in order to make it eligible under the law to be “certified” as an ICF/MR. Active treatment results in the positive outcomes identified by the Condition-level compliance principles. Surveyors must examine and evaluate all negative findings related to active treatment, and if determined to be significant, those findings should be cited at the salient tag numbers related to each of the components of the active treatment process. When review of those deficiencies leads to the conclusion that active treatment is not being received, then this standard and the explicit statutory requirement for active treatment at §1905(d)(2) of the Social Security Act are not met. A determination of noncompliance with this requirement, therefore, must also result in a determination of noncompliance at the Condition of Participation level for Active Treatment Services and at §440.150(c), tag number W100.

Although the active treatment process must be identifiable in documentation, it must be observable in daily practice. Determine how the ICF/MR accomplishes (or fails to accomplish) an environment of competence that enables active treatment to occur.

483.440(a)(2) The regulations define the target population eligible for the ICF/MR benefit, by defining the services that are required for a facility to provide in order for it to qualify as an ICF/MR and receive Federal Financial Participation (FFP). At the front end, one of the “required services” is training in basic fundamental skills. The type of skills described in W242, by their very nature, target a population who have significant deficits in growth and development.

The presence of any group of individuals (court-ordered or not), could call into question the overall nature of the services provided by the ICF/MR. Individuals displaying some or all of the characteristics described in the Interpretive Guideline at §483.440(b)(1), do not “need active treatment services” or ICF/MR level of care, and are not appropriately placed. Agencies which provide residential services to persons with mental retardation do not qualify automatically for participation in Medicaid as ICFs/MR. Although the facility may be providing services to meet the needs of these types of individuals, the services provided by the facility do not meet the regulatory definition of “active treatment.”

Furthermore, if the primary purpose of the facility is no longer to provide services to persons with mental retardation or related conditions who are in need of active treatment, then the facility does not meet the statutory requirement at §1905(d) of the Social Security Act and the regulatory definition of an ICF/MR, and therefore cannot be certified. A determination of noncompliance with this requirement, therefore, must result in a determination of noncompliance at the Condition of Participation level and at §440.150(c).

Conversely, if the overall facility meets the definition of an ICF/MR, the law does tolerate the presence of a few individuals for whom payment cannot be claimed. If an entity must serve both people who are generally independent and people who are in need of active treatment, then the entity may need to consider establishing a distinct part ICF/MR to serve those individuals who are in need of active treatment.

Negative findings about active treatment with regard to generally independent clients may be in conflict with level of care determinations made by State inspection of care (IOC) teams. Bring these negative active treatment findings to the attention of the IOC agency within the State for appropriate

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disposition of Medicaid ICF/MR certification. (See also W198, if the negative findings involve newly admitted individuals.)

There are some individuals who need the help of an ICF/MR to continue to function independently because they have learned to depend upon the programmatic structure it provides. The fact that they are not yet independent, even though they can be, makes it appropriate for them to receive active treatment services directed at achieving needed and possible independence.

483.440(b)(1) Individuals with the following characteristics do not necessarily require a continuous active treatment program in order to function or to achieve optimal independence. Review closely to what extent the ICF/MR serves individuals, who in the aggregate:

- Are independent without aggressive and consistent training;
- Are usually able to apply skills learned in training situations to other settings and environments;
- Are generally able to take care of most of their personal care needs, make known to others their basic needs and wants, and understand simple commands;
- Are capable of working at a competitive wage level without support, and to some extent, are able to engage appropriately in social interactions;
- Are engaged in productive work within the facility which is done at an acceptable level of independence (i.e., not done as part of a training program to teach the individual new skills);
- Are able usually, to conduct themselves appropriately when allowed to have time away from the facility's premises; and
- Do not require the range of professional services or interventions in order to make progress.

Based on the order of a court, the ICF/MR may be required to admit individuals who do not need active treatment. Although CMS has no jurisdiction to prevent the courts from ordering the placements of such individuals into institutions certified as ICFs/MR, the individuals, by definition, would be ineligible to be classified by Medicaid for the ICF/MR benefit. To the extent that the placement of these court-ordered individuals does not interfere with the ability of the ICF/MR to provide active treatment for its individuals, the facility's overall certification is not affected.

483.440(b)(2) No admission should be regarded as permanent. Readmission of an individual to the ICF/MR falls under the same requirements as initial admission.

In the absence of State regulations designating the person(s) authorized to approve admission (e.g., State or Regional Admissions Committees), the decision to admit an individual to the ICF/MR is based on the findings of an interdisciplinary team, including a QMRP.

Occasionally, emergency admissions of individuals may occur without benefit of a preliminary evaluation having been conducted prior to admission. For purposes of §483.440(b)(2) and consistent with §456.370(a), this requirement will be considered as "met" at such time that an evaluation is conducted which supports the need for an individual's placement in the ICF/MR. Refer to W210.

483.440(b)(3) The facility must decide, based on objective data, whether or not needs can be met. In some cases, the facility may be required to meet the "reasonable accommodation" requirement of the Americans with Disabilities Act. Failure to admit individuals merely because they have a particular medical condition may constitute a civil rights violation. All such instances should be reported to the Office of Civil Rights for investigation.

483.440(b)(4)(i) "Transfer" means the temporary movement of an individual between facilities, the temporary movement from the ICF/MR to a psychiatric or medical hospital for medical reasons, the permanent movement of an individual between living units of the same facility, or the permanent movement of an entire facility (including individuals served, staff and records) to a new location. "Discharge" means the permanent movement of an individual to another facility or setting which operates independently from the ICF/MR. Moving an individual for "good cause" means for any reason that is in the best interest of the individual.

483.440(b)(4)(ii) The family and the individual should be involved in any decision to move an individual, since this decision generally, should be part of a team process that includes the individual or guardian. If an individual has an advocate, the advocate should participate in the decision-making process.

483.440(b)(5)(ii) The discharge plan required by 42 CFR 456.380 and the post-discharge plan of care are the same. The regulations require only one discharge plan which meets the requirements.

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483.440(c)(1) There is no “correct” number of individuals who comprise the interdisciplinary team. The regulation also does not specify the professional disciplines which make up the interdisciplinary team. Based upon outcomes, assess whether the expertise available to the team was appropriate to meet the needs of the individual.

The facility must make every effort to coordinate the IEP or program plan from an outside day program with the IPP process. This may result in a single IEP/IPP document, but there is no requirement for the IPP to be one document. The “collective” IPP must contain the information required under the regulations, and observation should confirm integration of the IPP across the various settings.

Negative answers to the following probes may indicate a lack of input from appropriate team members. Evaluate findings for systemic lack of input by a particular team member, lack of communication among team members, or lack of team effort and cooperation.

483.440(c)(2) Meetings should be scheduled and conducted to facilitate the participation of all members of the team, but especially the individual, unless he or she is clearly unable or unwilling, the individual’s parents (except in the case of a competent adult who does not desire them to do so) or the individual’s guardian or legal representative. The ICF/MR is expected to pursue aggressively the attendance of all relevant participants at the team meeting, (e.g., a conference call with a consultant during deliberations meets this requirement). Question routine “unscheduled” absences by individuals, guardians and particular disciplines or consultants, and determine the impact on effectiveness and responsiveness of the IPP to meet the individual’s needs.

483.440(c)(3) “Accurate” assessments refer to assessment data that are current, relevant and valid, and that the skills, abilities, and training needs identified by the assessment correspond to the individual’s actual status. Additionally, for assessment data to be accurate, the cultural background and experience of the individual must be reflected in the choice, administration and interpretation of the evaluation(s) used. A few examples of appropriate adaptations might be: specialized equipment, use of an interpreter, use of manual communication, tests designed to measure performance in the presence of visual disability, etc.

The contents of assessments or the particular assessment which must be used are not specified. A nursing assessment, for example, would not need to reference all domains, or a psychiatric or psychological evaluation would not necessarily have to be based on a particular “tool.” Similarly, the results of the comprehensive assessment are not required to be written into a narrative report(s). Verify that the tests, evaluations, etc. that comprise the comprehensive functional assessment, yield data that are accurate, reflect the current status and needs of the individual, and can serve as a functional basis for an IPP to be developed.

483.440(c)(3) The active treatment assessment process should be sensitive to the behaviors of individuals throughout their life span. For example, infants and toddlers are expected to engage in more play-related, exploratory activities, adolescents are expected to engage in activities of increasingly greater responsibility in preparation for adulthood, adults are expected to support themselves or at least be engaged in training or education activities toward that end, and elderly citizens, are expected to choose whichever form of productive activity meets their needs and interests (employment, handiwork, pursuit of leisure, etc.) for as long as they are able.

483.440(c)(3)(i) In the presence of a diagnoses (medical or otherwise), evaluation data must be available to support the determination.

483.440(c)(3)(ii-iii) The comprehensive functional assessment (CFA) may be a report synthesizing the results of salient assessments or a series of reports. If individual reports are utilized, the complete diagnostic work-up or problem list identified by others is not required to be repeated unless it is relevant to the particular assessment. Findings are recorded in terms that facilitate clear communication across disciplines. Diagnoses or imprecise terms and phrases (including, but not limited to, “grade level,” “age level,” “developmental level,” “good attending skills,” and “poor motor ability”) in the absence of specific terms, are not acceptable.

Assessment of the behavior assumed to be maladaptive should include analyses of the potential causes, such as lack of exposure to positive models and teaching strategies, lack of ability to communicate needs and desires, lack of success experiences, a history of punishing experiences,

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presence of a physiological condition, or other environmental or social conditions which may elicit or sustain the behavior.

Specific “developmental” strengths and needs describe what the individual “can” and cannot do.

483.440(c)(3)(iv) In the presence of significant developmental deficits, it is not acceptable for the comprehensive evaluation to identify that a particular professional therapy or treatment is not needed. To meet the requirement for “need for service,” the assessment must identify the course of specific interventions recommended to meet the individual’s needs in lieu of direct professional therapy or treatment.

483.440(c)(3)(v) The facility must assess in developmental areas, but not by professional disciplines unless the functional assessment shows a need for a full professional evaluation. Findings relative to the domains required under §483.440(c)(3)(v) include, but are not limited to:

483.440(c)(3)(v) 1. Physical development and health. Physical development includes the individual’s developmental history, results of the physical examination conducted by a licensed physician, physician assistant, or nurse practitioner, health assessment data (including a medication and immunization history), which may be compiled by a nurse, and skills normally associated with the monitoring and supervision of one’s own health status, and administration and or scheduling of one’s own medical treatments. When indicated by physical examination results, consultations by specialists are provided or obtained. The need for advance directives or do not resuscitate (DNR) orders may be assessed on a case-by-case basis, as part of this area by individuals qualified to do so.

483.440(c)(3)(v) 2. Nutritional status. Nutritional status includes determination of appropriateness of diet, adequacy of total food intake, and the skills associated with eating, (including chewing, sucking and swallowing disorders), food service practices, and monitoring and supervision of one’s own nutritional status.

483.440(c)(3)(v) 3. Sensorimotor development. Sensory development includes the development of perceptual skills that are involved in observing the environment and making sense of it. Motor development includes those behaviors that primarily involve: muscular, neuromuscular, or physical skills and varying degrees of physical dexterity. Because sensory and motor development are intimately related, and because activities in these areas are functionally inseparable, attention to these two aspects of bodily activity is often combined in the concept of sensorimotor development. Assessment data identify the extent to which corrective, orthotic, prosthetic, or support devices would impact on functional status.

483.440(c)(3)(v) 4. Affective (Emotional) development. Affective or emotional development includes the development of behaviors that relate to one’s interests, attitudes, values, and emotional expressions.

483.440(c)(3)(v) 5. Speech and language (communication) development. Communication development refers to the development of both verbal and nonverbal and receptive and expressive communication skills. Assessment data identify the appropriate intervention strategy to be applied, and which, if any, augmentative or assistive devices will improve communication and functional status.

483.440(c)(3)(v) 6. Auditory functioning. Auditory functioning refers to the extent to which a person can hear and to the maximum use of residual hearing if a hearing loss exists and whether or not the individual will benefit from the use of amplification, including a hearing aid or a program of amplification. An individual’s treatment might need to include being desensitized to tolerate the use of a hearing aid or assistive listening device to prevent the device from being rejected or destroyed. Assessment may include teaching techniques for conducting the assessment or the use of electrophysiologic techniques.

483.440(c)(3)(v) 7. Cognitive development. Cognitive development refers to the development of those processes by which information received by the senses is stored, recovered, and used. It includes the development of the processes and abilities involved in memory, reasoning and problem solving.

483.440(c)(3)(v) 8. Social Development. Social development refers to the formation of those self-help, recreation and leisure, and interpersonal skills that enable an individual to establish and maintain appropriate roles and fulfilling relationships with others.

483.440(c)(3)(v) 9. Adaptive behaviors or independent living skills. Adaptive behavior refers to the effectiveness or degree with which individuals meet the standards of personal independence and social

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responsibility expected of their age and cultural group. Independent living skills include, but are not limited to, such things as meal preparation, doing laundry, bed-making, and budgeting. Assessment may be performed by anyone trained to do so. Standardized tests are not required. Standardized adaptive behavior scales which identify all or predominantly all “developmental needs” are not sufficient enough to meet this requirement, but can serve as a basis for screening.

483.440(c)(3)(v) 10. Vocational (prevocational) development, “as applicable.” Vocational development refers to work interests, work skills, work attitudes, work-related behaviors, and present and future employment options. The determination of whether or not a vocational assessment is “applicable” is typically based on age (adolescents or adults more than likely require this type of assessment).

483.440(c)(4) The presence of a comprehensive list of behaviorally stated needs is acceptable for this portion of the requirement. “Comprehensive” means that objectives are stated for the needs identified in each domain included in the comprehensive functional assessment.

Objectives may address services to be provided, learning/treatment needs, adaptive equipment, etc., §§483.440(c)(4)(i)-(v) regulate requirements for current IPP training objectives (as opposed to staff, service, or long term objectives).

Validate that the needs identified by the team are appropriate for the individual based upon review of the comprehensive functional assessment data, observations, and interviews with the individual and staff.

483.440(c)(4) To organize objectives into a planned sequence the ICF/MR must consider the outcomes it projects for the individual in the long term. For example, if the long term objective is for the individual to travel independently in the community, the planned sequence may involve training the individual to recognize traffic signs, cross a street safely, and to obtain help when needed if lost or an emergency arises. Interview staff to discover the purpose to be achieved upon completion of the objective. For example, does staff know why an individual is taught to stack rings?

483.440(c)(4)(i) “Single” behavioral outcome means that for each discrete behavior that the team intends the individual to learn a separate objective is assigned. (For example, “Mary will bake a cake and clean the oven” are two separate behaviors and, therefore, should be stated in two separate objectives.) Performance of a series of separate behaviors could constitute a single behavioral outcome when appropriate for the individual. For example, completing a hygiene routine of face washing, tooth-brushing and hair-combing is one behavioral outcome when the individual is able to perform each of those skills, but needs to learn to complete the entire routine each morning.

483.440(c)(4)(ii) The “projected date of completion” for an IPP objective is not the same as a “review” date. For each objective assigned priority, the team should assign a projected date (month and year) by which it believes the individual will have learned the new skill, based on all of the assessment data. This date triggers the team to evaluate continuously whether or not the individual’s progress or learning curve is sufficient to warrant a revision to the training program. There is no requirement to identify an implementation date for each objective in the plan.

483.440(c)(4)(iii) “Behavioral” terms include only those behaviors which are “individual” rather than “staff” oriented and those that any person would agree can be seen or heard. Determine if all staff who work with the individual can define the exact same outcome on which to measure the individual’s performance. “Measurable indices of performance” are the quantifiable criteria to use in determining successful achievement of the objective. Criteria include various measurements of intensity and duration. For example, “M. will walk ten feet, with her tripod walker, for 5 consecutive days.”

483.440(c)(4)(iv) To organize an objective in an appropriate progression, the ICF/MR must consider the person’s current functional abilities and project what steps, methods and strategies are likely to be effective in achieving the objective. Baseline data are one means of establishing an appropriate starting point for an objective. Objectives must be adapted based upon the person’s functional abilities. For example, if the objective is to learn to put on shoes independently and the person does not have the manual dexterity to tie shoe laces, then the objective could include the use of slip-on shoes or shoes with velcro closures in order to facilitate the person learning this skill.

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483.440(c)(4)(v) After all the training objectives have been established as required by W227, the IPP identifies those objectives which the team considers to be most important, or which need to be implemented before others can be accomplished, and then assigns them priority. Some examples of assigning priority include, but are not limited to, rank ordering (most important to least important), assignment of "priority" or "non-priority," etc.

483.440(c)(5) The written training program refers only to those objectives to which the team has assigned priority status for formal implementation.

483.440(c)(5)(iii) This may or may not be the same person who implements the program. There is no requirement to identify who implements the program.

483.440(c)(5)(iv) The facility must determine the type of data necessary to judge an individual's progress on an objective, and describe that data collection method in the written training program. The facility determines what data to collect, but the system chosen must yield accurate measurement of the criteria stated in the individual's IPP objectives. For example, if the criteria in the individual's IPP objective specified some behavior to be measured by "accuracy," or "successes out of opportunities," then it would not be acceptable for the prescribed data collection method to record "level of prompt."

Methods of data collection on IPP training programs should be based on the total (including direct care) facility's staff analysis and observations of an individual's behavior. Examples of a few data collection systems include, but are not limited to, level of prompt, successful trials completed out of opportunities given, frequency counts, frequency sampling, etc. The facility should collect data with enough frequency and enough content that it can measure appropriately the individual's performance toward the targeted IPP objective.

483.440(c)(6)(iii) The receipt of training targeted toward amelioration of these most basic skill deficit areas is a critical component of the active treatment program needed by individuals who are eligible for the ICF/MR benefit, and therefore, is a required ICF/MR service. Some ADL skills overlap with each other (e.g., personal hygiene, oral hygiene, grooming and bathing). It is acceptable for the interdisciplinary team to set priorities within these overlapping skills. It must be clear, however, that the facility has organized its services to emphasize training in these areas. This will be seen not only in the IPP, but also in the competent interaction of staff with individuals, in both formal and informal settings. This basic skill training defines the nature of ICF/MR services. To the extent that individuals demonstrate that they increasingly do not need the types of services described in this requirement, and increasingly correspond to the characteristics of clients described at W197 such that the "overall" nature of the facility services would not be required to provide the type of emphasis described at W242, question the appropriateness of the individual's placement in an ICF/MR and/or the certification of the facility as an ICF/MR (see W197 and W198).

"Training" as used in this regulation means:

Aggressive implementation of a systematic program of formal and informal techniques (competent interactions);

Continuously targeted toward the individual achieving the measurable behavioral level of skill competency specified in IPP objectives;

Conducted in all applicable settings; and

Conducted by all personnel involved with the client.

"Developmental incapability" is a decision to be made by the interdisciplinary team based on its assessment of the individual's developmental strengths and needs. For example, there is ample evidence that even individuals with the most severe physical and mental disabilities can be toilet trained. Recognition is given to the fact that some individuals, however, have insufficient sensory and neuromuscular control ever to be totally independent in toileting skills. For most of this group, there are intermediate steps which can be achieved, including toilet scheduling, in which the individual is able to be trained to a schedule of elimination with needed assistance from staff. The intent of the toileting part of this regulation is met if there is evidence that the individual has been provided an aggressive, well organized, and well executed toilet training program in the past and that the team determines the individual's "developmental incapability."

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483.440(c)(6)(iv) Mechanical devices used to support an individual's proper body position or alignment may be essential to prevent contractures and deformities, but the staff should be sensitive to the fact that mechanical supports may restrict movement and the individual should not be in the supports all the time or as a substitute for programs or therapy which may reduce the dependency on the support. Some supports allow movement and provide opportunity for more increased functioning. Some examples of devices used as mechanical supports include splints, wedges, bolsters, lap trays, etc.

Wheelchairs are not generally used to position or align the body and would not alone constitute a mechanical support. However, adaptations to wheelchairs which do position or align the body would have to be specified according to this requirement. Adaptations to a wheelchair which facilitate correct body alignment by inhibiting reflexive, involuntary motor activity are also mechanical supports.

483.440(c)(6)(v) With the exception of those individuals who are acutely ill (such as those who are hospitalized or incapacitated by a short term illness), all individuals should be out of bed and outside their bedroom area as long as possible each day, and in proper body alignment at all times. This is a necessity in order to prevent regression, contractures, and deformities and to provide sensory stimulation.

Question patterns of bed rest "orders" or "scheduled" bed rest as a routine part of an individual's program. A nap period of an hour, for example, is not "bed rest." However, if the ICF/MR, as a general pattern of scheduling, expects an individual to be one - two hours in bed in the morning, one - two hours in bed in the afternoon, and an 8:00 p.m. bedtime in the evening, for example, then the practice becomes "bed rest," and the intent of the regulation will more than likely not be met. Question seriously large amounts of time during which a resident is confined to bed.

483.440(c)(6)(vi) Due to the basic underlying importance "choice" plays in the quality of one's life, the ICF/MR should maximize daily activities for its individuals in such a way that varying degrees of decision-making can be practiced as skills are acquired. Examples of some activities leading toward responsibility for one's own self-management include, but are not limited to, choosing housing or roommates, choosing clothing to purchase or wear, choosing what to eat, making and keeping appointments, and choosing from an array of appropriate activities. Interview staff to determine how attitudes and activities of the team and consultants facilitate or impede individual choice.

Choices can be made by all individuals. The type of choices the person makes may vary from very simple to more complex, depending upon individual abilities. Look at choices in the context of the individuals served by the facility.

483.440(d)(1) For an individual newly admitted to the ICF/MR, the time period between admission and the 30 day interdisciplinary team meeting should be primarily for purposes of assisting the individual to become adjusted and acclimated to his or her new living environment and completing the functional assessment. During this time period the facility should also be providing those services and activities determined during the pre-admission assessment as essential to the individual's daily functioning. In order to be able to produce the comprehensive assessment, the facility must evaluate the individual's status in as many naturally occurring, functional environments as possible.

It must be clear that the active treatment program received by the individual is internally consistent and not simply a series of disconnected formal intervention applications within certain scheduled intervals.

The criteria of what constitutes a "sufficient number and frequency of interventions" are based on the individual's assessment and the progress the individual makes toward achieving IPP objectives.

Whether "structure" must be imposed by staff or whether the individual can direct his or her own activities for a period of time (without direct staff observation) is based on the individual's ability to engage in constructive, age-appropriate, adaptive behavior (without engaging in maladaptive behavior to self or others). Be certain that an individual's time in the home or living unit is maximized toward the further development and refinement (including self-initiation) of appropriate skills, including, but not limited to, leisure and recreation.

For the active treatment process to be effective, the overall pattern of interaction between staff and individuals must be accountable to the comprehensive functional assessment and the IPP process. During the overall observation of individuals, you should be able to track that: the individual's comprehensive assessment identified the specific developmental need or strength justifying the activity, technique or

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interaction; in the case of a “need,” the team projected a measurable objective or target to address it; and the technique, interaction, or activity which is observed, produced the desired target, produced a close approximation of the target, or was modified based on the individual’s response.

483.440(d)(2) The active treatment schedule directs the intensity of the daily work of the staff and the individuals in implementation of the IPP in both informal and formal training activities. To the extent possible, the schedule provides a range of options, rather than a fixed regimen. Individuals should have opportunities to choose activities and to engage in them as independently and freely as possible. Staff routines and schedules should be supportive of this goal and result in the presence of reasonable choices by individuals. Investigate any pattern of staff action or scheduling which results routinely in all or the majority of individuals engaging in the same activity or routine at the same time. For example, everyone is out of bed, awake and dressed before staff on the third shift go home, or everyone goes to bed before the third shift arrives.

The active treatment schedule is not required to be posted.

While the facility should have the individual’s schedule from the day program, there is no requirement that this schedule and the residential schedule be merged into one document.

483.440(d)(3) The facility is responsible for ensuring that during staff time spent with individuals, the staff member is able to provide needed interventions or reinforce acquired skills in accordance with the IPP. This is one of the ways the ICF/MR implements continuous active treatment. “All” staff includes direct care staff.

The activities of the ICF/MR are coordinated with other habilitative and training activities in which the individual may participate outside of the ICF/MR, and vice versa.

483.440(e)(1) Data collection is evidence of individual performance and should not be taken constantly as evidence for surveyors that “treatments” occurred. “Data” are defined to be performance information collected and reported in numerical or quantifiable form on training objectives assigned priority in the IPP.

Data are those performance measurements recorded at the time the treatment, procedure, intervention or interaction occurs with the individual. They should be located in a place accessible to staff who conduct training.

483.440(e)(2) See also §483.410(c) Client Records.

483.440(f)(1)(i) - (iv) The interval within which IPP reviews are conducted is determined by the facility. However, the facility’s review system must be sufficiently responsive to ensure that the IPP is reviewed whenever the conditions specified in §§483.440(f)(1)(i-iv) occur. Information relevant to IPP changes should be recorded as changes occur.

483.440(f)(2) For the “annual” review to meet the requirement, it must be completed by at least the 365th day after the last review. The ICF/MR may be required to conduct reviews at more frequent intervals by other, more stringent regulations (e.g., 90 day reviews required by §456.380(6)(c), State regulation, etc.). The facility’s failure to comply with these other, more stringent regulations would NOT be cited under this requirement. Refer cases of suspected non-compliance to the authority having jurisdiction for the regulations in question.

483.440(f)(2) The review of the CFA applies to all evaluations conducted for an individual, unless otherwise specified in the regulation (e.g., annual physical examination). It is not required that each assessment be completely redone each year. It is required that at least annually the assessment(s) be updated when changes occur so as to accurately reflect the individual’s current status. Systematic behaviorally stated data become part of the comprehensive functional evaluation of the individual.

483.440(f)(2) Look for IPPs that are unchanged from one year to the next, for priority skills and behaviors that are deferred or ignored for one reason or the other, and for informal, vague, and programmatically worthless statements in the review (such as “John did better this year - he wasn’t as upset most of the time like he used to be”). If the ICF/MR has not been providing the individual with a systematic, behaviorally-oriented active treatment program during the year, the review will be incapable of making systematic, behaviorally-oriented statements about progress and change. If you find problem behaviors which do not decrease significantly, relatively frequent usage of restraint or other intrusive restrictive procedures, a “plateauing” (e.g., reaches partial desired performance, but does not improve over time and

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staff does not reassess) of skills development, or any other signs of “sameness” year after year, questions should be raised about the extent to which the ICF/MR is providing active treatment, the adequacy of IPPs, staff training, etc., particularly, if many individuals’ annual reviews reveal these characteristics.

483.440(f)(3) Depending on its size, complexity and available resources, the ICF/MR may establish one multi-purpose committee to serve it for all advisory functions, or it may establish separate single-purpose committees. The facility’s human rights committee may be shared among other agencies or the ICF/MR may utilize a human rights committee established by another governing body, e.g., a county or a statewide group, as long as all pertinent regulatory requirements are met.

The regulation does not specify the professional credentials of the “qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior.” There is no requirement that any specific disciplines, such as nurse, physician or pharmacist be members of the committee.

The intent of including “persons with no ownership or controlling interest” on the committee is to assure that, in addition to having no financial interest in the facility, at least one member is an impartial outsider in that he/she would not have an “interest” represented by any other of the required members or the facility itself. Staff and consultants employed by the facility or at another facility under the same governing body cannot fulfill this role.

Although occasional absences from committee meetings are understandable, patterns of absence by the required membership of the committee is not acceptable. At least a quorum of committee members must review, approve and monitor the programs which involve risk to client rights and protections. Depending upon the size of the facility and the number of individuals who need intrusive or restrictive techniques as a part of active treatment programs, more than one specially constituted committee may be needed to effectively meet the intent of the regulation. The facility is responsible to organize itself in a manner which permits the timely review of proposed programs.

483.440(f)(3)(i) Each individual program developed to decrease inappropriate behavior and which involves potential risk to rights and protections must be reviewed and approved by the committee prior to the program’s implementation. Some examples of programs requiring review include, but are not limited to, programs incorporating usage of restraints, aversive conditioning, any medication used to modify behavior, contingent denial of any right or “earning” of a right as part of a behavior shaping strategy, and behavioral consequences involving issues of client dignity. There is no requirement for the committee to function as a peer review for technical or clinical adequacy of plans submitted for approval. The purpose is to assure that each individual’s rights are protected through use of a group of outside individuals who are not invested in the maintenance of facility practices. The committee reviews the context by which each program is recommended, and then evaluates whether the program’s level of intrusiveness is warranted. The committee should consider factors such as whether less intrusive methods have been attempted and whether the severity of behavior outweighs the risks of the proposed program.

The committee need not reapprove a program when revisions are made, as long as those revisions are in accordance with the approved plan. For example, if the physician changes the dosage of a medication in accordance with the drug treatment component of the active treatment plan to which the legally authorized person has given consent and which has already been approved by the committee, then there is no need for the committee or the legally authorized person to reapprove the plan. (See also W263.) Generally, this would also apply if the medication was changed to another within the same therapeutic class or family. Reapproval would be needed, however, if the reason for the change was the individual’s strong untoward response to the original medication. Due to the differences in side effects and potential adverse response between drugs of a different class, reapproval would also be required if the new medication was from a different therapeutic class or family of drugs.

483.440(f)(3)(ii) Informed consent consists of permission by the legally responsible party after having been informed of the specific issue, treatment or procedure; the individual’s specific status with regard to the issue, treatment or procedure; the attendant risks and benefits; alternative forms of treatment; the right to refuse treatment and the consequences of that refusal. Informed consent implies that the person who is to give consent is competent to evaluate the decision requiring consent.

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For children up to the age of 18 the parent (natural guardian) or legally appointed guardian must give consent for him or her. At the age of 18, however, children become adults and are assumed to be competent unless otherwise determined by a court.

For individuals who are minors or who are clearly incompetent, but have no appointed legal guardian, informed consent for use of restrictive programs, practices or procedures must be obtained from the legal guardian, parent or someone or some agency designated by the State, in accordance with State law, to act as the representative of the individual's interests. Become familiar with the statutes of the State in which the ICF/MR is located to determine who or what mechanism is designated to give informed consent in such circumstances. Verify whether or not consent was obtained in accordance with law. Additionally, under these circumstances, the facility is required to identify those individuals, and expected to advocate for them by demonstrating continuing efforts to obtain timely adjudication of the individual's legal status.

The committee must ensure that the informed and voluntary consent of the individual, parent of a minor, legal guardian, or the person or organization designated by the State is obtained prior to each of the following circumstances: the involvement of the individual in research activities, or implementation of programs or practices that could abridge or involve risks to individual protections or rights.

Informed consent should be specific, separate ("blanket" consents are not allowed), and in writing. In case of unplanned events requiring immediate action, verbal consent may be obtained, however, it should be authenticated in writing as soon as reasonably possible.

483.440(f)(3)(iii) The function of the committee is not limited to the review, approval and monitoring of restrictive behavior management practices. Examples of individual rights issues that might be reviewed by the committee, in addition to behavior management, include, but are not limited to, research proposals involving individuals, abuse, neglect and mistreatment of individuals, allegations dealing with theft of an individual's personal property or funds, damage to an individual's goods or denial of other individual rights, individual grievances, visitation procedures, guardianship/advocacy issues, rights training programs, confidentiality issues, advance directives/DNR orders, etc.

483.450(a)(1) "Conduct between staff and clients" refers to the language, actions, discipline, rules, order, and other types of interactions exchanged between staff and individuals or imposed upon individuals by staff during an individual's daily experiences and which affect the quality of an individual's life.

While the regulation requires the development of written policies and procedures, the primary survey emphasis should be placed on the latter aspect of the regulation, i.e., implementation of those policies and procedures. Observations of interactions between staff and individuals should confirm that, to the maximum extent possible, individuals are provided with opportunities for growth and self-determination.

Individual's dignity is respected by staff and their behavior is within the context of any rules of conduct which have been established.

483.450(a)(1)(iii) "Client conduct" refers to any behavior, choice, action, or activity in which an individual may choose to engage alone or with others. The policy or "house rules" include(s), for example: allowable individual conduct (e.g., swearing or cursing, freedom of choice in religion, consumption of alcohol, smoking, sexual relations), reasonable locations where this conduct may or may not occur, and parameters for decision-making when an individual's choice conflicts with the group's choice (e.g., consensus, voting, taking turns, negotiation of differences).

"House rules" on the other hand, may not authorize staff or other individuals served to use a "laundry list" of discipline techniques to control an individual's inappropriate behavior, without regard to individualized need. If it is determined that staff must use a technique or intervention, then its use must be incorporated into an individual program plan that meets all applicable requirements specified in §483.450(b)-(e). Refer to W123.

483.450(b)(1) Use of items, procedures, or systems which are potentially stigmatizing to the individual or otherwise would represent a substantial departure from the behavior of comparable peers without disabilities, to control or prevent inappropriate behavior, falls under this requirement as well. (For example, requiring an individual to live in a locked residence and not providing the individual with a key, using a high crib with bedrails for an adult who gets out of bed at night and wanders or upsets other individuals, requiring an individual who strips off his clothes at inappropriate times to wear a jumpsuit turned backwards, or other odd usages of fashion.)

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483.450(b)(1)(iii) You should see clear evidence to justify the use of a more restrictive technique. This requirement does not take away the team's discretion to use technology which represents reasonable standards of good practice, but it does require that there be evidence that justifies any decision not to use a positive or less restrictive technique first. Based on extraordinary circumstances resulting in an emergency, a facility may need to use a more restrictive method of intervention to protect the individual and others from harm than is consistent with the hierarchy it has established. This regulation does not prohibit a facility from using good judgment in this situation.

The surveyor should assess the use of emergency restrictive interventions to assure that the facility could not have reasonably anticipated the behavior, and verify that the team has reviewed the individual program plan for its adequate attention to the problem precipitating the emergency measure.

The facility is not required to justify discontinuing the use of a more restrictive technique before initiating a less restrictive technique, since the intent of the regulation is to use the most positive, least intrusive technique possible.

483.450(b)(5) Ongoing authorization for "programs" or "programmatic usages" of restrictive techniques, in the absence of evidence to justify such usage, constitutes a "standing" or "as needed program" to control inappropriate behavior, and are therefore not permitted.

483.450(c)(1) The use of time-out rooms is effective only if the individual does not like to be removed from an activity or from people. Look for patterns of frequent, lengthy time-out usage which often indicates that the environment is not reinforcing to the individual (i.e., the activities in and of themselves are not engaging, and/or the scheduled activities are potentially engaging yet the schedule is not implemented). If the individual who is in a time-out room engages in self-abuse, becomes incontinent or shows other signs of illness, staff should immediately discontinue the procedure and intervene.

Verify whether or not anyone standing or lying in any position, in any part of the time-out room can be seen.

Key locks, latch locks, and doors that open inward without an inside doorknob are not devices or mechanisms which require constant physical pressure from a staff member to keep a door shut, and, therefore, are not permitted by the regulations.

Pressure sensitive mechanisms must allow staff to enter the room at the moment the need arises.

483.450(c)(3) A door that opens inward can potentially be held closed, either intentionally or inadvertently, by the individual in the room, thereby denying staff immediate access to the room.

483.450(d)(1)(ii) "Emergency measure" is defined as use of the least restrictive procedures and for the briefest time necessary to control severely aggressive or destructive behaviors that place the individual or others in imminent danger when those behaviors reasonably could not have been anticipated, and only as they are necessary within the context of positive behavioral programming. Examine closely how frequently "emergency measures" are employed. Repeated applications of such measures within short intervals of time, without subsequent incorporation into a written active treatment program, as required by §483.440(c), raises serious questions about the individual's receipt of active treatment and the individual's right to be free from unnecessary restraint.

483.450(d)(2) The facility determines who may authorize use of emergency restraints.

483.450(d)(2)(i) The specific 12-hour authorization and re-authorization to use or extend usage of physical restraints does not apply to restraints used as an integral part of the individual program plan or to those that qualify as a health-related protection, as defined in the regulation.

483.450(d)(2)(ii) This refers to the reporting and retrospective authorization of the emergency measure when no prior use authorization could be obtained due to the seriousness and immediacy of the event.

483.450(d)(4) The frequency of monitoring will vary according to the type and design of the device and the psychological and physical well-being of the individual. For example, an individual in four-point restraints might require constant monitoring while someone in soft mittens may require less frequent monitoring. It is also true that for some individuals, constant visual supervision would serve to reinforce the inappropriate behavior and thereby reduce the clinical effectiveness of using the restraint. However, in no case may the 30 minute time limit be extended.

"As quickly as possible" means as soon as the individual is calm or no longer a danger to self or others.

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483.450(D)(6) “Motion and exercise” includes an opportunity for liquid intake and toileting, if needed by the individual.

483.450(d)(6) In the presence of a restraint being worn during sleeping hours, surveyors must determine whether it is truly the nature of the individual’s behavior which warrants this significant level of intrusion, or whether it in fact is a substitute for lower staffing during night time hours. The “motion and exercise” requirement applies to all restraints which restrict the range of motion of a limb or joint. Therefore, for example, if a helmet is applied to protect a head wound during sleeping hours, and the individual’s range of motion in the neck has not been affected, then this requirement does not apply.

This requirement also does not apply to cases of medical restraints that are specifically ordered for the immobilization of bones and joints during the physical healing process involved with fractures, sprains, etc. (e.g., a broken bone immobilized by a cast or splint). However, if a physical restraint was applied to an extremity to prevent an individual from removing post-operative sutures, the restraint would be required to be released every two hours for a period of not less than 10 minutes.

Even though usage of mechanical supports, defined at §483.440(c)(6)(vi), may confine the movement of an individual, W306 does not apply to such usage.

483.450(e)(1) Section 483.450(e)(1) applies to all medications, including medications prescribed to control inappropriate behavior.

Overmedication occurs for many reasons. For medications prescribed to control maladaptive behavior, the most common reasons are: the individual’s maladaptive behavior may not be responsive to drugs (e.g., if an individual has a non-drug-responsive form of self injury, then use of psychotropics may simply lead up to maximum drug doses without suppressing the behavior), drug therapy may be exacerbating the behavior (e.g., if a drug-induced side effect is mistaken for agitation, then the physician may mistakenly believe that the individual is undermedicated and increase the dose), presence of polypharmacy within the same drug class may result in a drug dose that would exceed the maximum daily limit for any one drug, the individual may be receiving too frequent injections which may result in significant drug accumulation over time, and the use of daily medication plus PRN or stat (one time) doses may result in greater than the recommended daily doses being prescribed (especially since intramuscular administration may be up to four times as potent). Overmedication may also occur as a result of the interaction between drugs, whether these drugs were prescribed for control of inappropriate behavior, or for a physical or medical condition.

Administration of PRN or stat doses for periods greater than a few weeks may indicate that the individual’s daily dose is sub-therapeutic, the problem will not respond to the prescribed drug or the drug is exacerbating the problem. In such instances, the surveyor should verify whether or not the drug regimen has been reassessed.

483.450(e)(2) For drugs to be an effective therapeutic tool, they must be prescribed only to the extent that they are necessary for normal medical management of the individual.

In an emergency, a physician may authorize the use of a drug to control an inappropriate behavior. However, orders for continued emergency drug usage cannot continue until the team gives approval and the drug’s usage has been included in the plan. Psychotropic drug therapy may not be used outside of an active treatment program targeted to eliminate the specific behaviors which are thought to be drug responsive.

Although only a physician can prescribe medication, the decision to use medication for control of behavior must be based on input from other team members. W329 and W330 address the physician’s participation in the person’s individual program plan as part of the interdisciplinary team. The interdisciplinary team involvement in this decision-making process is inextricably linked to an obligation to develop and implement effective non-drug interventions that address the targeted behavior. This obligation requires constant monitoring of the non-drug interventions to determine its efficacy, and to determine whether the judicious use of drug therapy may at times be appropriate.

Individuals who receive psychoactive drugs for behaviors associated with a diagnosed mental disorder, require an active treatment program designed to reduce, ameliorate, compensate or eliminate the psychiatric symptoms. The psychiatric diagnosis must be based on a comprehensive psychiatric

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evaluation in which the evidence supports the conclusion of a psychiatric diagnosis as required by W212. The focus of active treatment, in this instance, would be on the mental health of the individual.

Drugs from categories other than the principle drug classes that have behavior controlling properties (e.g., antipsychotic, antianxiety, and antidepressants) are sometimes used to control inappropriate behavior. Examples include the use of propranolol (Inderal), which is classified as an antihypertensive and antianginal drug, for self-injurious behavior, and carbamazepine (Tegretol), which is an anticonvulsant, for aggression. The regulation was written to encompass any drug when its use is for purposes of controlling inappropriate behavior. This requirement does not apply to drugs, such as propranolol, when they are used to treat medical conditions. However, if their use (e.g. dose, duration, etc.) indicates that they are being used to control inappropriate behavior, the interdisciplinary team must be involved in the decision to use them, and they must be incorporated into the active treatment program plan.

In order for an individual to receive dental or medical treatment, the physician may need to prescribe a sedative as part of the normal medical management for that individual. This situation, occurring rarely, would not require an active treatment program targeted toward elimination of the behavior. The decision to use sedation for medical appointments must be made on an individual basis, and with input from the interdisciplinary team. When the individual is regularly exhibiting behaviors that are interfering with the ability to receive routine medical and dental treatment, then use of the sedative is required to be incorporated into a specific active treatment program.

483.450(e)(4)(i) Unless the physician regularly evaluates the individual and meets with those who work most closely with the individual to review treatment progress, it will be difficult to assess whether the individual responded positively to the treatment.

Since each drug has a specific profile of side effects, potential reactions should be looked for by direct examination and questioning. It is important that everyone who works with the individual be aware of the conclusion drawn from these drug reviews.

In addition to monitoring at regular intervals, the individual should be assessed at the time the medication is changed, as well. Individuals receiving long term antipsychotic drug therapy should be examined regularly for motor restlessness, such as Parkinsonian symptoms or tardive dyskinesia.

483.450(e)(4)(ii) Planned drug withdrawals must be carefully instituted. For example, usage of antipsychotic drug therapy may not only cause tardive dyskinesia but may mask the clinical manifestations of tardive dyskinesia during treatment. This requirement applies only to drugs prescribed to modify behavior; therefore, if Thorazine is prescribed to decrease aggressive behavior, the annual drug withdrawal requirement applies. However, if Phenobarbital is prescribed to prevent seizures, or Insulin is prescribed to control diabetes, then this requirement does not apply.

In determining whether there is clinical contraindication to the annual drug withdrawal, the physician and interdisciplinary team should consider the individual's clinical history, diagnostic/behavioral status, previous reduction/discontinuation attempts, and current regimen effectiveness. The individual's current clinical status or the nature of a psychiatric illness may indicate that gradual withdrawal of the drug is unwise at this time. It is not acceptable, however, to preclude a gradual drug withdrawal for a person, including a person with a psychiatric impairment, merely because of the possibility that his or her behavior may be exacerbated. Data which shows a direct relationship between past attempts at withdrawal, and an increase in the targeted behavior or symptoms should be available to support the decision not to attempt a gradual withdrawal. This data should reflect the programmatic interventions utilized to respond to the behavior prior to determining that gradual withdrawal is contraindicated. The team should periodically re-evaluate the decision not to attempt a gradual withdrawal based on the individual's progress or other changes in clinical status.

483.460(a)(2) The use of a medical care plan is intended only for those who are so ill or so at medical risk that 24-hour licensed nursing care is essential. A medical care plan need not be developed unless the individual requires licensed nursing care around the clock. Thus, individuals with chronic, but stable health problems such as controlled epilepsy, diabetes, etc. do not require a medical care plan.

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It is not required that an individual have a health deficit and/or a medical care plan in order to receive ICF/MR services. The regulation is sufficiently flexible that the entire range of individuals, from those in good physical health to those who are very medically fragile, may be served.

A medical care plan may be temporary, in that it may be established to address acute health problems and then discontinued when those problems are resolved.

483.460(a)(3) Medical services are provided as necessary to maintain an optimum level of health for each individual and to prevent disability. Medical services include evaluation, diagnosis and treatment, as needed, by individuals.

Medical services, including sources for laboratory, radiology, and other medical and remedial services available to the individual must be provided if not provided in-house. There must be a written agreement that specifies the responsibilities of the facility and outside provider. (See §483.410(a).)

483.460(a)(3)(i) This standard is intended to be an annual screening so that individuals who need further indepth examination can be identified. If hearing screens are conducted annually by speech-language pathologists or audiologists the physical exam does not need to repeat this information.

Information relevant to knowing if the individual can see or hear, and how well, is tantamount for designing an appropriate active treatment strategy responsive to need.

If an individual's vision or hearing can only be assessed through examinations conducted by specialists (e.g., comprehensive ophthalmological examinations and evoked response audiometry (ERA)), these tests need not be conducted yearly, but rather upon specialist's recommendations. In such situations determine if yearly, the team evaluates the individual's vision and hearing response behaviors for change, and makes referrals, if necessary.

483.460(a)(3)(ii) These immunization guides can be obtained from the American Academy of Pediatrics, Elk Grove, IL, telephone: (708) 228-5005, or from the Centers for Disease Control, Division of Immunization Center for Preventive Services, telephone: (404) 639-8215.

483.460(a)(3)(iii) This does not preclude screening tests available to the general public such as tests for urine sugar.

483.460(a)(3)(iv) These recommendations can be obtained from the American Academy of Pediatrics, Elk Grove Village, IL, telephone: (708) 228-5005, or the American College of Chest Physicians, Northbrook, IL, telephone: (708) 498-1400.

The American College of Chest Physicians and the American Academy of Pediatrics endorse the recommendations of the Center for Disease Control and Prevention, Guidelines for Preventing the Transmission of Tuberculosis in Health Care Facilities, (most recent edition). The facility should have in place a system appropriate to its population for the identification, reporting, investigation, and control of TB in order to prevent its transmission within the facility. This system should include policies and procedures for screening new employees, new clients, and other people who interact on a consistent basis with individuals residing in the facility; for reporting positive TB test results to the appropriate State authorities; for the investigative procedures that would be put in place should an individual or staff person test positive for TB; and for the evaluation of the effectiveness of the entire system. There should be arrangements with outside service providers, when needed, to ensure that any individual who tests positive for TB will receive appropriate medical treatment. Also, the system should address the issue of any staff member who tests positive for TB. The Occupational Health and Safety Administration (OSHA) requirements regarding exposure control plans and activities may also apply.

483.460(b)(1) During the admission process, which extends from the time the individual is admitted to the time the initial IPP is completed, a physician is required to ensure that an assessment of the individual's medical status is thoroughly considered and addressed by the team as it develops the IPP. The physician's input may be by means of written reports, evaluations, and recommendations.

42 CFR 456.380 requires that a physician must establish a written plan of care for each applicant or recipient before admission to an ICF. This is done in conjunction with the interdisciplinary team. (See §483.440(c).) The written plan of care required by §456.380 and the IPP required by §483.440(c) may be the same document, which can fulfill both requirements.

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483.460(b)(2) The need for physician participation is determined by the medical needs of the individual. How the participation (whether through written report, telephone consultation, attendance at the meeting, etc.) is to be accomplished is left to the discretion of the facility.

483.460(c)(1) Unless the individual is on a medical care plan, this participation may be through a written report.

483.460(c)(2) See also W416.

483.460(c)(3)(i) A direct physical examination means a visual review of the body as well as examination of body systems that might be necessary. This includes observing for any clues (including visual, tactile, nonverbal gestures, grimaces, etc.) to detect if there is a potential for needed follow-up and monitoring. A paper review of the individual's medical record and health statistics is not a direct physical examination.

If an individual is on a medical care plan, it is not necessary to perform the quarterly direct nursing physical examination.

483.460(c)(3)(ii) The term "licensed nurse" for purposes of this requirement means a registered nurse, a licensed practical nurse or a licensed vocational nurse. A facility is allowed to use a physician, in place of a licensed nurse, although this is certainly not required.

483.460(c)(3)(iii) "On a quarterly basis" means that the examination must be performed within the month in which the end of the quarter falls. If during the course of a year, there were three examinations conducted by a licensed nurse and one annual examination performed by a physician, each of which is performed within the month in which the end of the quarter or year falls, the intent of this requirement is met.

483.460(c)(3)(iv) The record includes the date of the exam.

483.460(c)(3)(v) Some physical findings discovered by the nurse while conducting the physical exam will not necessarily result in referral to the physician. This practice is acceptable if the nurse is acting within the scope of the Nurse Practice Act of the State in which he or she is licensed.

483.460(c)(4) This includes nursing care for individuals without a medical care plan.

483.460(c)(5)(i) Facility staff need to know what the limits of their responsibilities are with medically involved individuals, and how to teach individuals on a continuing basis how to take care of minor accidents until further care can be provided.

483.460(d)(2) In evaluating whether or not there is sufficient licensed nursing staff, evaluate the need for licensed nursing care represented by the health characteristics of the individuals served (as described in physical exam results, IPPs, and medical care plans) in relation to the competency and qualifications represented by the staff who provide care (through the onsite survey). Make a judgment about the sufficiency of nursing staff to care for this particular population.

483.460(f)(1) A "month" is defined as the interval between the date of admission and close of business of the corresponding day in the following month.

483.460(f)(2) The requirement applies to all individuals (including those without teeth), and more frequently as dictated by the individual's needs.

483.460(g) Comprehensive dental treatment might include, but is not limited to:

1. Periodic examination and diagnosis, including radiographs, when indicated and detection of all manifestations of systemic disease;
2. Elimination of infection or life hazardous oral conditions, oral cancer, or cellulitis;
3. Treatment of injuries;
4. Restoration of decayed or fractured teeth;
5. Retention or recovery of space between teeth in children, when indicated;
6. Replacement of missing permanent teeth, when indicated; and
7. Appropriate pain control procedures for optimal care of the patient.

483.460(h)(1) A "dental summary" means a brief written report of each visit to the dentist and includes any care instructions to be followed-up by facility staff as a result of treatment.

483.460(i) Emphasis is placed on the provision of the service, and not on its method of delivery. Whether the facility utilizes the unit dose, individual prescription or a combination of these systems, or whether the

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facility has its own pharmacy or provides the service through arrangement with a community pharmacy, the emphasis is on the accuracy of the drug distribution system and the effectiveness of the drug therapy.

483.460(j)(1) The pharmacist should review on a more frequent basis the drug regimen of individuals whose response indicates problems with drug therapy. Refer to the “Indicators for Surveyor Assessment of the Performance of Drug Regimen Reviews” as stated in Appendix N to the State Operations Manual (Pharmaceutical Service Requirements in Long Term Care Facilities) to evaluate the drug regimen review done by the pharmacist.

483.460(j)(2) The physician and interdisciplinary team must consider the report of the pharmacist and determine whether to accept or reject the recommendations in the report. The pharmacist is not required to repeatedly report the same minor irregularities which have already been considered by the physician and the interdisciplinary team, but were rejected based upon the individual’s specific condition.

483.460(j)(4) Each dose of medication, whether self-administered or not, shall be properly recorded in the individual’s record. The intent of this requirement is to maintain a record of drugs administered.

483.460(j)(5) This regulation does not exclude the pharmacist from the evaluation process, but the pharmacist can best determine how to expend his/her efforts most productively in service to individuals at the facility.

483.460(k)(2) A medication “error” is a discrepancy between what the physician has ordered, and what you observe during the drug pass observation. The regulation does not allow for any medication errors.

“Self administered” means administration of medications by the individual, independent of a staff person obtaining, selecting, and preparing the medications for the individual. This includes all usage forms (oral, injections and suppositories).

The individual should be trained until he/she can perform this function without error.

483.460(k)(3) “Unlicensed personnel” of the facility does not refer to the situation of individuals administering their own medication. Unlicensed personnel administer only those forms of medication which State law permits.

483.460(k)(6) Do not expect individuals served to be more knowledgeable than members of the general public in order to self-administer medication. There is no requirement for the individual to be able to state both the generic and brand names of the medication being taken, nor is it expected that the individual be able to list all potential side effects of the medication. The test of competency to self-administer is whether the individual can take the correct medication, in the correct dosage, at the correct time.

483.460(k)(7) When individuals go out of a facility for home visits, or to attend workshops or school, drugs they are taking must be packaged and labeled in accordance with State law by a responsible person approved to administer medications. Be aware whether or not there are applicable State laws which may allow packaging by someone other than the pharmacist.

The test of adequacy of packaging and labeling is whether or not other persons administering medications are able to identify the individual’s medication, method of administration, contraindications, if appropriate, and administration schedule.

483.460(l)(2) “Authorized persons” must be restricted to those who administer the drugs and nursing supervisors (if any). No other personnel should have access to these keys.

483.460(l)(2) Drugs that are self-administered do not have to be double locked. The purpose for the double locking is to limit access to scheduled drugs. Since the individual is generally the only one who has access to his/her drug supply (with perhaps the exception of a facility’s Director of Nursing Services, who may have access to all of the facility’s drug supplies), there is no need to further limit access.

483.460(l)(3) The facility may also use the medication administration record for purposes of documenting receipt and disposition of controlled drugs. By recording the amount received, a record of the receipt and disposition, can be realized.

483.460(l)(4) Reconciliation of receipt and disposition of controlled drugs need not be done on each shift. If periodic (e.g., weekly or monthly) reconciliations indicate losses, more frequent reconciliation (daily or by shift) may need to be performed to identify and stop losses.

483.460(m)(3) If a physician discontinues a drug for a particular individual, that particular drug supply should be removed from its usual storage area. This precludes that drug from being administered to the individual in error.

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483.460(n) A “laboratory service or test” is defined as any examination or analysis of materials derived from the human body for purposes of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of human beings.

483.460(n)(2) A facility performing any laboratory service or test must have applied to CMS, and received either a certificate of waiver or a certificate of registration. An application for a certificate of waiver may be made if the facility performs only those tests on the waiver list. Those tests are:

- Dipstick or Tablet Reagent Urinalysis (non-automated) for the following:
 - Bilirubin;
 - Glucose;
 - Hemoglobin;
 - Ketone;
 - Leukocytes;
 - Nitrite;
 - pH;
 - Protein;
 - Specific gravity; and
 - Urobilinogen.
- Fecal Occult blood;
- Ovulation tests - visual color comparison tests for human luteinizing hormone;
- Urine pregnancy tests - visual color comparison tests;
- Erythrocyte sedimentation rate (non-automated);
- Hemoglobin - copper sulfate (non-automated);
- Blood glucose by glucose monitoring devices cleared by the FDA specifically for home use;
- Spun microhematocrit; and
- Hemoglobin by single analyte instruments with self-contained or component features to perform specimen/reagent interaction, providing direct measurement and readout.

If the facility performs tests, other than those on the waiver list, a certificate of registration is required. These certificates are required regardless of the frequency with which the laboratory services or tests are conducted. When no tests are performed, a certificate is not needed. Facilities only collecting specimens and not performing testing do not need a certificate.

A not-for-profit or a State or local government organization may have one certificate covering all the facilities it operates (i.e., all the separately certified residences which fall under its governing body), if no more than a total of 15 types of waived or moderately complex laboratory tests are used.

483.470(a)(1) Individuals should live in the least restrictive grouping in keeping with their level of functioning. Prime consideration in the grouping of individuals is made according to social and intellectual development, friendship patterns, and commonality of interests.

The use of “grossly different ages” is intended to ensure, for example, that very young children are not inappropriately housed together with much older individuals. Extreme differences may in some instances actually impede appropriate training and may pose a threat to the safety of younger, more vulnerable individuals.

483.470(a)(2) The surveyor should determine if the individuals’ skill level, rather than the individuals’ physical, sensory or medical disability, justifies the housing pattern.

483.470(b)(I)(v) An “initially certified” facility includes any facility or portion thereof that is certified for participation in Medicaid after a period of non-participation (e.g., if its certification has been terminated or voluntarily withdrawn).

Each of the three criteria specified below must exist in order for a facility to qualify as undergoing “major renovations or conversions”:

- Individuals must vacate the building during the period of renovation or construction;
- No Medicaid billing takes place during the period of renovation or construction; and
- A resurvey of the building is required before individuals may return to live in the building.

Facilities with buildings which were undergoing major renovations and were not reoccupied prior to October 3, 1988, are expected to meet the floor to ceiling wall requirements. This also applies to those

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facilities with buildings that had plans for renovation approved prior to October 3. There is no provision in the regulation for granting waivers of this requirement.

In a facility certified prior to October 3, 1988, if the conditions which define “major renovation or conversion” are avoided during installation of walls to divide “open bay sleeping areas,” it is allowable for the walls not to extend from floor to ceiling.

483.470(b)(2) The intent of the regulation is to prohibit the housing of individuals in basements that are entirely below grade. Individuals may be housed on the lower level of housing (e.g., a bi-level house), provided the window height requirements are met.

483.470(b)(3) The only acceptable reason for individuals to be housed in bedrooms serving more than four people is because the individual is in very fragile health and needs extensive life support services, such as posturing for clearing the airways, or monitoring for uncontrolled seizures. If more than four people are housed together in the same room, the number should remain small, and each individual placed in the grouping must have a high level of medical monitoring need.

Most extensive life support services, by their very nature are able to be provided by licensed personnel alone, or only under the direct visual supervision of licensed personnel. The presence of a medical care plan is not required because all such life threatening possibilities are difficult to predict. However, the greatest majority of individuals who might qualify for this variance will be on a medical care plan.

See §2140 for the documentation required for a medical variance.

483.470(b)(4)(iii) A single bedspread may be used year round, if it is appropriate for all seasons.

483.470(b)(4)(iv) “Furniture” is to be distinguished from “furnishings” (such as plants, pictures, etc.), which though encouraged as being an appropriate and desirable aspect of a normalized living environment, cannot serve as a substitute for appropriate individual furniture that can be used by the individual alone.

The facility is permitted either to provide the individual with an individualized closet or with a designated area in a shared closet. The use of central clothing bins in a facility clothing room, in the absence of required individual closet space in the bedroom, is not an acceptable practice.

483.470(c)(2) For a storage space to be determined as “suitable,” it must assure the safekeeping of the individual’s possessions among other things being stored.

Use of the term “accessible” does not require unrestricted access in situations where this is precluded by an active treatment program designed to eliminate inappropriate behavior, or in which the individual’s interdisciplinary team determines that unrestricted access would endanger the individual or others. The surveyor should determine whether or not there is a pattern of restricted access not because of the behavior of the individual, but because of the behavior of others with whom the individual lives. This could also raise the question of inappropriate grouping of individuals due to different functioning abilities.

483.470(d)(1) “Bathing facilities appropriate in . . . design” must include provisions for a mirror and sink/tooth-brushing area.

483.470(d)(2) Gang showers and open toilets are inappropriate to the quality of life, privacy, and personal dignity of the individuals served in the facility.

Individual privacy does not preclude the assistance provided by facility staff, when necessitated by the individual’s condition.

483.470(d)(3) Individuals must be under the direct supervision of staff while being trained to operate hot water temperature controls.

483.470(e)(1)(i) Since a door serves primarily to provide egress rather than to perform the ventilation and aesthetic functions of an outside window, it may not be used for room ventilation in place of a window.

483.470(e)(2)(i) A “normal comfort range” in most instances is defined as not going below a temperature of 68 degrees Fahrenheit or exceeding a temperature of 81 degrees Fahrenheit for facilities in most geographic areas of the country (primarily at the Northernmost latitudes) where that temperature is exceeded only during rare, brief episodes of unseasonably hot weather.

483.470(f)(1) “Slip-resistant” is to be distinguished from “slip-free.” There is a presumption made that floors will ordinarily be dry, and when wet, appropriate precautions will be taken.

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483.470(g)(2) The term “furnish” means that the facility is responsible for obtaining or purchasing these items and is responsible for making any necessary arrangements to enable the individual actually to receive them. However, if an item is available free of charge the facility would satisfy the requirement simply by making the necessary arrangements for the individual to receive them. Individuals’ personal funds should not be used for these items since this is a covered service under the ICF/MR benefit.

The term “maintain in good repair” means that the facility is responsible for ensuring that these items are kept in good working order.

483.470(g)(3) A bedroom hamper can be an acceptable dirty linen storage “area” if kept odor free, consistent with the infection control requirements at §483.470(l).

483.470(i)(2)(i) All facilities, regardless of their size require actual evacuation. “Actually evacuate,” as used in this standard, applies to all individuals. The drills are conducted not only to rehearse the individuals and staff for fire (see §483.470(i)(2)(v)), but for other disasters such as hurricanes, tornadoes, floods, etc. Such disasters would require the entire occupancy to be evacuated, and, therefore, the actual evacuation must be practiced, as required.

483.470(i)(3) Since live-in staff and their relief personnel are generally the same staff who work with the individuals on a round-the-clock basis, they must conduct a minimum of 4 drills a year, each of which must occur at different times within the day (24-hour period) (i.e., morning, afternoon, and night (sleep time)), and generally when individuals are at different locations within the house. If the facility has large numbers of relief personnel, more drills may be needed to meet the intent of this requirement.

483.470(j) These standards are covered by the Life Safety Code (LSC) survey. The facility must meet the appropriate chapter of the Life Safety Code, 1985 edition.

483.470(l)(1) An “active program” includes such observable practices as: the direct care staff routinely washing their hands or changing gloves after working with an individual who has an infectious disease or working with each individual during mealtimes; the use of aseptic technique, when appropriate; an ongoing program of communicable disease control and investigation of infections; and an active training program that ensures the individuals served receive adequate prevention of transmission information and skills, according to needs.

Procedures must be followed to prevent cross-contamination, including hand washing or changing gloves at mealtimes, after providing personal care to more than one individual, or when performing other tasks among individuals which provide the opportunity for cross-contamination to occur. Facilities for hand washing must exist and be available to staff. Toothbrushes and other personal hygiene items must be stored and used in such a manner to prevent cross-contamination.

Both the OSHA and the CDC have specific requirements regarding human immunodeficiency virus (HIV), TB, and hepatitis precautions. These requirements should be incorporated into the facility’s practices when relevant to the individuals residing in the facility. Concerns about OSHA violations should be referred to OSHA.

483.470(l)(3) This regulation does not require the recording or tracking of specific groups of symptoms, if a record of incidents and corrective actions related to infections is maintained. This regulation does not address the form or location of this record or direct that it be separate from the documentation required by CFR 483.410(c)(1).

483.470(l)(4) The facility should use the Recommendations for Prevention of Communicable Disease Transmission in Health Care Settings (such as preventing HIV) issued by the Centers for Disease Control, Atlanta, Georgia 30333, as well as OSHA guidelines in these areas.

A facility participating in the Medicaid program may not discriminate against individuals who are HIV-infected so long as these individuals do not (on a case-by-case basis) pose a substantial health and safety risk to others, or pose a performance problem, and are “otherwise qualified.”

483.480(a)(1) “Modified and specially-prescribed” diets are defined as diets that are altered in any way to enable the individual to eat (for example, food that is chopped, pureed, etc.) or diets that are intended to correct or prevent a nutritional deficiency or health problem.

483.480(a)(5) Since the main purpose of food is to support and maintain the health of an individual, it is important that the use of food as a behavior reinforcing device (primary reinforcement) not be abused. Foods are selected to provide essential nutrients. When these foods are routinely removed and denied

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during the meals, without comparable replacements, the individual is at risk of consuming a diet that is not adequate to meet nutritional needs, and in violation of §483.420(d)(1)(ii), which does not allow food contributing to a nutritionally adequate diet to be used as “punishment.” Likewise, the addition of high caloric reinforcers must be coordinated into the total daily diet intake.

483.480(a)(6) For suggested guidelines write to:

1. U.S. Department of Agriculture
Human Nutrition Information Services
Washington, D.C. 20250
2. The National Dairy Council
Rosemont, Illinois 60028-42334

483.480(b)(1)(i) A “substantial evening meal” is defined as offering of three or more menu items at one time, one of which includes a high-quality protein such as meat, fish, eggs, or cheese. The meal represents no less than 20 percent of the day’s total nutritional requirements.

483.480(b)(1)(i) A “nourishing snack” is an offering of items, single or in combination, from the daily food guide.

483.480(b)(2)(iii) The term “form,” as used in this requirement, refers to food consistency (i.e., pureed, chopped, ground, etc.).

483.480(b)(3) This standard does not apply to food served in family-style dishes, unless the length of time the food is on the table or other considerations (such as individuals fingering or drooling in the food) compromise the safety and nutritive value for reuse of the food.

483.480(d)(1) For purposes of this standard, “dining areas” mean discrete eating areas located outside of bedrooms, established, furnished, and equipped for the purpose of eating meals. For purposes of this standard, provision of meals in dining areas outside of the home (such as restaurants, food vendors, etc.) may also be included.

To the maximum extent possible, individuals should be afforded the opportunity to eat routine meals (like breakfast and dinner) in dining areas that approximate those afforded to their peers without disabilities (e.g., dining areas that are a part of the living unit, rather than eating all meals in buildings exclusively established for eating purposes).

483.480(d)(2) The intent of this regulation is to afford individuals the opportunity to participate in the social experience of dining with their companions. Observe whether or not facility staff model and reinforce appropriate communication and social behavior between dining companions seated at the same table.

483.480(d)(3) Single service eating devices must be discarded after each use.

Determine if the following types of adaptive devices are made available when needed:

- Double suction cups or other devices to anchor dishes on a table or tray for individuals with major coordination problems;
- Rocking one-handed knife-fork or knife-spoon for an individual with the use of only one hand;
- Built up or extended handles or silverware for those with problems of grasp or range of motion;
- Plate guards or plates with raised rims to provide a surface against which the individual with a physical disability can push food onto a fork or a spoon;
- Flexible drinking straws;
- Spoon bent to a 90 degree angle at the bowl or a swivel spoon to assist an individual without normal wrist motions.
- Any other adaptive device deemed by the team as needed by the individual to eat more independently.

483.480(d)(4) To the maximum extent possible, staff should model appropriate mealtime behavior and conversation by sitting at the table with individuals, and, when possible, eating meals with individuals.

Mastery of the social skills involved in eating in a variety of dining areas and settings is another step to the individual’s independence beyond the health aspects of nutrition and the basic skills involved in eating independently. Achieving independence will further help the individual to live in less restrictive environments. Determine to what extent individuals are exposed to out-of-the-home

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dining environments available to the general public (e.g., restaurants, fast-food establishments, picnics, parties, cafeterias, etc.).

Depending on the needs of the individuals and the available space it may be more effective for meals to be conducted in two different seatings or groupings.

483.480(d)(5) This applies to all individuals, including those fed by nasogastric tube or gastrostomy tube. The IPP should identify the most appropriate position for the individual to be positioned during mealtime, in relation to the placement of the food contents.

[Filed Without Notice 7/16/13, effective 11/6/13]

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.

ARC 0898C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby amends Chapter 10, "General Industry Safety and Health Rules," and Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

The amendments adopt by reference changes to federal occupational safety and health standards concerning cranes and derricks in construction and hazard communication in general industry. The changes supplement previous changes to the standards.

In 2010, the prior standard concerning cranes and derricks in construction was replaced for most construction activities. However, the new standard did not apply to cranes and derricks used in demolition and underground construction. Thus, since 2010, one standard has applied to cranes and derricks in demolition and underground construction, while a different standard has applied to cranes and derricks used in other construction activities. The federal changes apply the same standard to all cranes and derricks used in construction.

The federal changes also correct inadvertent errors made during adoption of the 2010 changes to the cranes and derricks standard and the 2012 changes to the general industry hazard communication standard.

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

Notice of Intended Action was published in the May 29, 2013, Iowa Administrative Bulletin as **ARC 0752C**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

No variance procedures are included in these rules. Variance procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

These amendments are intended to implement Iowa Code section 88.5 and 29 CFR 1953.5.

These amendments shall become effective on September 11, 2013.

The following amendments are adopted.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:
78 Fed. Reg. 9313 (February 8, 2013)

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ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:
78 Fed. Reg. 23841 (April 23, 2013)

[Filed 7/10/13, effective 9/11/13]

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.

ARC 0899C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry hereby amends Chapter 180, "Licensure of Optometrists," Chapter 181, "Continuing Education for Optometrists," and Chapter 182, "Practice of Optometrists," Iowa Administrative Code.

The amendments update requirements for optometry licensure to be consistent with Iowa Code chapters 147 and 154 and remove outdated language.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 3, 2013, as **ARC 0680C**. A public hearing was held on April 23, 2013, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice.

These amendments were adopted by the Iowa Board of Optometry on July 11, 2013.

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

These amendments are intended to implement Iowa Code sections 147.34, 147.49, 154.1, 154.3, 154.10 and 272C.2.

These amendments will become effective on September 11, 2013.

The following amendments are adopted.

ITEM 1. Rescind the definitions of "Diagnostically certified optometrist," "DPA" and "Reciprocal license" in rule **645—180.1(154)**.

ITEM 2. Amend rule **645—180.1(154)**, definition of "Therapeutically certified optometrist," as follows:

"~~Therapeutically certified optometrist~~ Optometrist" means an optometrist who is licensed to practice optometry in Iowa and who is certified by the board of optometry to ~~use~~ employ all diagnostic and therapeutic pharmaceutical agents for the purpose of diagnosis and treatment of the conditions of the human eye and adnexa, excluding the use of injections other than to counteract an anaphylactic reaction, and notwithstanding Iowa Code section 147.107, may without charge supply any of the above pharmaceuticals to commence a course of therapy, with the exclusions cited in Iowa Code chapter 154.

ITEM 3. Rescind and reserve subrule **180.2(2)**.

ITEM 4. Amend rule 645—180.3(154), introductory paragraph, as follows:

645—180.3(154) Licensure by endorsement. An applicant who has been a licensed optometrist under laws of another jurisdiction for three years or more shall file an application for licensure by endorsement with the board office. ~~An applicant for licensure to practice optometry in Iowa may only apply to be a therapeutically certified optometrist.~~ The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

ITEM 5. Amend subrule 180.3(3) as follows:

180.3(3) Provides an official copy of the transcript sent directly from the school to the board office. The transcript shall show a doctor of optometry degree from an accredited school. In the case of foreign graduates, applicants shall provide evidence of adherence to the current requirements of the NBEO to sit for the NBEO examination;

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ITEM 6. Amend subparagraph **181.3(2)“c”(2)**, paragraph **“1,”** as follows:

1. ~~Twenty~~ A combined total of 40 hours required from COPE Category B (Ocular Disease and Management) and 20 hours required from COPE Category C (Related Systemic Disease) with a minimum of 14 hours in each category; and

ITEM 7. Amend rule 645—182.4(155A), introductory paragraph, as follows:

645—182.4(155A) Prescription drug orders. Each prescription drug order furnished by a ~~therapeutically certified~~ an optometrist in this state shall meet the following requirements:

[Filed 7/15/13, effective 9/11/13]

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.

ARC 0939C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Podiatry hereby amends Chapter 220, “Licensure of Podiatrists,” Iowa Administrative Code.

The amendments clarify the existing practice of having temporary licenses expire on June 30. The amendments also clarify that temporary licensure is for persons who complete residency in Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0555C** on January 9, 2013. A public hearing was held on February 1, 2013. No public comments were received for this rule making. These amendments are identical to those published under Notice.

After analysis and review of this rule making, there is no anticipated impact on jobs.

These amendments are intended to implement Iowa Code section 149.7.

These amendments will become effective September 11, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 220.6(1) as follows:

220.6(1) A temporary license may be issued for up to one year and may be annually renewed at the discretion of the board. Temporary licenses will expire on June 30.

ITEM 2. Amend paragraph **220.6(2)“e”** as follows:

e. Furnish an affidavit by the institution director or dean of an approved podiatric college ~~from this state,~~ attesting that the applicant has been accepted into a residency program in this state. The residency program must be approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association;

[Filed 7/19/13, effective 9/11/13]

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.

ARC 0901C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 321.423(7)“b,” the Department of Public Health hereby amends Chapter 133, “White Flashing Light Authorization,” Iowa Administrative Code.

The rules in Chapter 133 describe the standards for white flashing lights that may be used by emergency medical care providers for identification of vehicles. These amendments update the

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definitions contained in the rules and add direction to the Department's Web site for the white light permit form.

Notice of Intended Action was published in the May 29, 2013, Iowa Administrative Bulletin as **ARC 0775C**. One comment was received recommending the color of light be changed to blue; the white flashing light is established in Iowa Code section 321.423. The adopted amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on July 10, 2013.

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

These amendments are intended to implement Iowa Code section 321.423(7).

These amendments will become effective on September 11, 2013.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **641—133.1(321)**:

"Ambulance" means ~~the same ambulance~~ as defined in ~~641 IAC 132.1(147A)~~ 641—132.1(147A).

"Ambulance service" means ~~the same ambulance service~~ as defined in ~~641 IAC 132.1(147A)~~ 641—132.1(147A).

"Emergency medical care provider" means ~~an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT basic, EMT intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department~~ emergency medical care provider as defined in 641—131.1(147A).

"First response vehicle" means ~~the same first response vehicle~~ as defined in ~~641 IAC 132.1(147A)~~ 641—132.1(147A).

"Medical director" means ~~any physician licensed under Iowa Code chapter 148, 150, or 150A who shall be responsible for overall medical direction of the service program and who has completed a medical director workshop, sponsored by the department, within one year of the physician's assuming duties~~ medical director as defined in 641—132.1(147A).

"Nontransport service" means ~~any privately or publicly owned rescue or first response service program which does not provide patient transportation (except when no ambulance is available or in a disaster situation) and utilizes only rescue or first response vehicles to provide emergency medical care at the scene of an emergency nontransport service~~ as defined in 641—132.1(147A).

"Rescue vehicle" means ~~the same rescue vehicle~~ as defined in ~~641 IAC 132.1(147A)~~ 641—132.1(147A).

"Service director" means ~~an individual who is responsible for the operation and administration of a service program~~ service director as defined in 641—132.1(147A).

"Service program" or *"service"* means ~~any medical care ambulance service or nontransport service that has received authorization by the department~~ service program as defined in 641—132.1(147A).

ITEM 2. Amend subrule 133.3(1) as follows:

133.3(1) Authorization certificates (~~provided by the department~~) shall be issued by the service director for service vehicles and vehicles owned by emergency medical care providers who are members in good standing with the service. Authorization certificates are available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems). Vehicle authorization shall be limited to:

a. to d. No change.

ITEM 3. Amend subrule 133.3(5) as follows:

133.3(5) The service director shall provide an informational sheet which explains the requirements for use of the white lights to each member who is issued an authorization certificate. The information sheet is available upon request from the Iowa Department of Public Health, Bureau of ~~Emergency Medical Services~~ EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 4. Amend **641—Chapter 133**, implementation sentence, as follows:
These rules are intended to implement Iowa Code ~~sections~~ section 321.423 ~~and 321.428~~.

[Filed 7/15/13, effective 9/11/13]

[Published 8/7/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/7/13.