



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”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Deputy Editor		(515)281-8157
	Fax:	(515)281-5534

CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 7.17, 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 2008

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. 26 '07	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08
Jan. 11	Jan. 30	Feb. 19	Mar. 5	Mar. 7	Mar. 26	Apr. 30	July 28
Jan. 25	Feb. 13	Mar. 4	Mar. 19	Mar. 21	Apr. 9	May 14	Aug. 11
Feb. 8	Feb. 27	Mar. 18	Apr. 2	Apr. 4	Apr. 23	May 28	Aug. 25
Feb. 22	Mar. 12	Apr. 1	Apr. 16	Apr. 18	May 7	June 11	Sep. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 2	May 21	June 25	Sep. 22
Mar. 21	Apr. 9	Apr. 29	May 14	***May 14***	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	May 30	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	June 13	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	***June 25***	July 16	Aug. 20	Nov. 17
May 14	June 4	June 24	July 9	July 11	July 30	Sep. 3	Dec. 1
May 30	June 18	July 8	July 23	July 25	Aug. 13	Sep. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 8	Aug. 27	Oct. 1	Dec. 29
June 25	July 16	Aug. 5	Aug. 20	***Aug. 20***	Sep. 10	Oct. 15	Jan. 12 '09
July 11	July 30	Aug. 19	Sep. 3	Sep. 5	Sep. 24	Oct. 29	Jan. 26 '09
July 25	Aug. 13	Sep. 2	Sep. 17	Sep. 19	Oct. 8	Nov. 12	Feb. 9 '09
Aug. 8	Aug. 27	Sep. 16	Oct. 1	Oct. 3	Oct. 22	Nov. 26	Feb. 23 '09
Aug. 20	Sep. 10	Sep. 30	Oct. 15	Oct. 17	Nov. 5	Dec. 10	Mar. 9 '09
Sep. 5	Sep. 24	Oct. 14	Oct. 29	Oct. 31	Nov. 19	Dec. 24	Mar. 23 '09
Sep. 19	Oct. 8	Oct. 28	Nov. 12	***Nov. 12***	Dec. 3	Jan. 7 '09	Apr. 6 '09
Oct. 3	Oct. 22	Nov. 11	Nov. 26	***Nov. 26***	Dec. 17	Jan. 21 '09	Apr. 20 '09
Oct. 17	Nov. 5	Nov. 25	Dec. 10	***Dec. 10***	Dec. 31	Feb. 4 '09	May 4 '09
Oct. 31	Nov. 19	Dec. 9	Dec. 24	***Dec. 24***	Jan. 14 '09	Feb. 18 '09	May 18 '09
Nov. 12	Dec. 3	Dec. 23	Jan. 7 '09	Jan. 9 '09	Jan. 28 '09	Mar. 4 '09	June 1 '09
Nov. 26	Dec. 17	Jan. 6 '09	Jan. 21 '09	Jan. 23 '09	Feb. 11 '09	Mar. 18 '09	June 15 '09
Dec. 10	Dec. 31	Jan. 20 '09	Feb. 4 '09	Feb. 6 '09	Feb. 25 '09	Apr. 1 '09	June 29 '09
Dec. 24	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
6	Wednesday, August 20, 2008	September 10, 2008
7	Friday, September 5, 2008	September 24, 2008
8	Friday, September 19, 2008	October 8, 2008

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*****

AGENCY	HEARING LOCATION	DATE AND TIME
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Physical infrastructure assistance program (PIAP) eligibility, 23.7(1), 61.1(2), 61.3(1), 61.4(2), 61.5, 61.7(2), 174.3(5) IAB 8/13/08 ARC 7069B	Iowa Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	September 8, 2008 2:30 to 4:30 p.m.
Targeted jobs withholding tax credit program, 71.1 to 71.6, IAB 8/13/08 ARC 7068B	Iowa Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	September 10, 2008 2:30 to 4:30 p.m.
Information technology—targeted industries, occupational classification, 103.1 to 103.13 IAB 8/13/08 ARC 7067B	ICN/Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	September 8, 2008 3 to 4 p.m.
Targeted industries student competition fund, 108.1 to 108.8 IAB 8/13/08 ARC 7065B	ICN/Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	September 3, 2008 3:30 to 4:30 p.m.
Targeted industries career awareness fund, 109.1 to 109.9 IAB 8/13/08 ARC 7066B	ICN/Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	September 3, 2008 3:30 to 4:30 p.m.
Renewable fuel infrastructure program, amendments to chs 311 to 314 IAB 8/13/08 ARC 7074B	ICN/Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	September 3, 2008 2:30 to 4 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Reissued regional permit 7—water quality certification, 61.2(2) IAB 7/30/08 ARC 7039B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 19, 2008 1 p.m.
Independent redemption center grant program, 107.16 IAB 7/30/08 ARC 7038B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 19, 2008 2 p.m.
MANAGEMENT DEPARTMENT[541]		
DAS customer council, ch 12 IAB 7/30/08 ARC 6996B	Room G14 State Capitol Bldg. Des Moines, Iowa	September 5, 2008 10 a.m.
MEDICINE BOARD[653]		
Definition and supervision of an observer, 9.1, 9.2 IAB 8/13/08 ARC 7048B	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	September 2, 2008 3 p.m.
NATURAL RESOURCE COMMISSION[571]		
Point values assigned to convictions, 15.6(3) IAB 7/30/08 ARC 7037B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 19, 2008 9 a.m.
Removal of trotlines, 85.1 IAB 7/30/08 ARC 7036B	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 22, 2008 3 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
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Administrative fee for fishing tournament permit, 88.2 IAB 7/30/08 ARC 7035B	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	August 22, 2008 3 p.m.
NURSING BOARD[655]		
Administration of anesthetic agents, 6.2(6), 6.4 IAB 7/30/08 ARC 7009B	Des Moines West Room, Holiday Inn 1050 6th Ave. Des Moines, Iowa	September 10, 2008 6 p.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Board of dietetics, rescind chs 80, 84; amend chs 81 to 83 IAB 7/30/08 ARC 7045B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 20, 2008 10 to 11 a.m.
Board of mortuary science, rescind chs 99, 105; amend chs 100 to 103 IAB 7/30/08 ARC 6997B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	August 19, 2008 9 to 9:30 a.m.
Board of massage therapy, rescind chs 130, 135; amend 131.7, 131.11 to 131.13, 133.4 to 133.7, 134.6 IAB 8/13/08 ARC 7063B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 2, 2008 2 to 2:30 p.m.
Board of podiatry, rescind chs 219, 221, 225; amend 220.8, 220.12 to 220.14, 222.5, 222.7, 224.5 IAB 8/13/08 ARC 7081B	Fifth Floor Board Room 526 Lucas State Office Bldg. Des Moines, Iowa	September 3, 2008 9 to 9:30 a.m.
PUBLIC HEALTH DEPARTMENT[641]		
Smokefree air, ch 153 IAB 7/30/08 ARC 6990B (See also ARC 6989B) (ICN Network)	<u>Origination Site:</u> Meeting Room D, Public library 123 S. Linn St. Iowa City, Iowa	August 20, 2008 9:30 to 11:30 a.m.
	Great River AEA 16 3601 West Ave. Burlington, Iowa	August 20, 2008 9:30 to 11:30 a.m.
	Room 203B, Linn Hall Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	August 20, 2008 9:30 to 11:30 a.m.
	Room 105, Clinton Community College 1000 Lincoln Blvd. Clinton, Iowa	August 20, 2008 9:30 to 11:30 a.m.
	Room 100, Wayne Comm. High School 102 N. Dekalb St. Corydon, Iowa	August 20, 2008 9:30 to 11:30 a.m.
	Room 300, Kahl Educational Center Eastern Iowa Community College District 326 W. 3rd St. Davenport, Iowa	August 20, 2008 9:30 to 11:30 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
PUBLIC HEALTH DEPARTMENT[641] (Cont'd)	Keota High School North Ellis Ave. Keota, Iowa	August 20, 2008 9:30 to 11:30 a.m.
	Room 157, Voc. Tech. Bldg. Ottumwa High School 501 E. 2nd Ottumwa, Iowa	August 20, 2008 9:30 to 11:30 a.m.
	<u>Origination Site:</u> Waterloo West High School Baltimore and Ridgeway Waterloo, Iowa	August 20, 2008 2:30 to 4:30 p.m.
	Decorah High School. 100 E. Claiborne Dr. Decorah, Iowa	August 20, 2008 2:30 to 4:30 p.m.
	Room A-123 Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	August 20, 2008 2:30 to 4:30 p.m.
	Regional Office – Marshalltown, AEA 267 909 S. 12th St. Marshalltown, Iowa	August 20, 2008 2:30 to 4:30 p.m.
	Room 106, Activity Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	August 20, 2008 2:30 to 4:30 p.m.
	<u>Origination Site:</u> Second Floor, Department of Education Grimes State Office Bldg. Des Moines, Iowa	August 21, 2008 2:30 to 4:30 p.m.
	Room N147, Lagomarcino Hall Iowa State University Knoll Road & Pamel Drive Ames, Iowa	August 21, 2008 2:30 to 4:30 p.m.
	Room A169, Carroll High School 2809 N. Grant Rd. Carroll, Iowa	August 21, 2008 2:30 to 4:30 p.m.
	Room 101, Guthrie Center High School 906 School St. Guthrie Center, Iowa	August 21, 2008 2:30 to 4:30 p.m.
	Room 104, Newton High School 800 E. 4th St. S. Newton, Iowa	August 21, 2008 2:30 to 4:30 p.m.
	Room 115, Pella High School 212 E. University St. Pella, Iowa	August 21, 2008 2:30 to 4:30 p.m.
	<u>Origination Site:</u> Public Library 400 Willow Ave. Council Bluffs, Iowa	August 22, 2008 9:30 to 11:30 a.m.
	Turner Room, Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	August 22, 2008 9:30 to 11:30 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
PUBLIC HEALTH DEPARTMENT[641] (Cont'd)		
	Room 4, Elk Horn-Kimballton High School 4114 Madison St. Elk Horn, Iowa	August 22, 2008 9:30 to 11:30 a.m.
	Clarke Community High School 800 N. Jackson Osceola, Iowa	August 22, 2008 9:30 to 11:30 a.m.
	Ed May Center, Shenandoah High School 1000 Mustang Dr. Shenandoah, Iowa	August 22, 2008 9:30 to 11:30 a.m.
	Woodbine High School Fifth and Weare Woodbine, Iowa	August 22, 2008 9:30 to 11:30 a.m.
	<u>Origination Site:</u> 4th Floor, DHS Trospar-Hoyt Cty. Services Bldg. 822 Douglas St. Sioux City, Iowa	August 22, 2008 2:30 to 4:30 p.m.
	Fiber Optic Room, Armory Bldg. Cherokee High School 600 W. Bluff St. Cherokee, Iowa	August 22, 2008 2:30 to 4:30 p.m.
	Room B-6 Western Iowa Tech. Community College 11 N. 35th St. Denison, Iowa	August 22, 2008 2:30 to 4:30 p.m.
	Room 204, Library Building Prairie Lakes AEA 8 – Fort Dodge 330 Avenue M Fort Dodge, Iowa	August 22, 2008 2:30 to 4:30 p.m.
	MOC-Floyd Valley High School 615 8th St. SE Orange City, Iowa	August 22, 2008 2:30 to 4:30 p.m.
	Room 120-121 Central Lyon Elementary-Middle School 1105 S. Story Rock Rapids, Iowa	August 22, 2008 2:30 to 4:30 p.m.
	Room 16, Iowa Central Community College 916 N. Russell Storm Lake, Iowa	August 22, 2008 2:30 to 4:30 p.m.
PUBLIC SAFETY DEPARTMENT[661]		
Inventory of impounded vehicles under emergency conditions, 6.4(2) IAB 7/30/08 ARC 6999B (See also ARC 6986B)	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	September 9, 2008 8:45 a.m.
Division of commercial investigation—identification, 11.2 IAB 7/30/08 ARC 7000B (See also ARC 6987B)	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	September 9, 2008 8:30 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
PUBLIC SAFETY DEPARTMENT[661] (Cont'd)		
Bail enforcement; private investigative and security businesses—licensure, 121.2, 121.24 IAB 7/30/08 ARC 6998B (See also ARC 6985B)	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	September 9, 2008 9 a.m.
Evidentiary breath testing, 157,2121.2, 121.24 IAB 7/30/08 ARC 7020B	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	September 9, 2008 8:15 a.m.
Certification of automatic fire extinguishing system contractors, 275.5(4) IAB 7/30/08 ARC 7005B (See also ARC 6984B)	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	September 9, 2008 9:15 a.m.
State Building Code—factory-built structure, 322.11, ch 323 IAB 7/30/08 ARC 7008B (See also ARC 7007B)	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	September 9, 2008 9:30 a.m.
Manufactured housing—relocation due to disaster emergency, 372.8(4) IAB 7/30/08 ARC 7006B (See also ARC 6988B)	First Floor Public Conf. Rm. 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	September 9, 2008 9:30 a.m.
RACING AND GAMING COMMISSION[491]		
Horse racing; licensure; monitoring activities; progressive slot machines, amendments to chs 5, 6, 10 to 12 IAB 8/13/08 ARC 7060B	Commission Office, Suite B 717 E. Court Ave. Des Moines, Iowa	September 2, 2008 9:30 a.m.
REAL ESTATE COMMISSION[193E]		
Moral turpitude defined, 2.1 IAB 7/30/08 ARC 7001B	Second Floor Conference Room 1920 SE Hulsizer Rd. Ankeny, Iowa	August 19, 2008 10 a.m.
Time period for completion of required education, 4.1(10), 16.2(3) IAB 7/30/08 ARC 7004B	Second Floor Conference Room 1920 SE Hulsizer Rd. Ankeny, Iowa	August 19, 2008 10 a.m.
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]		
Access to Iowa communications network—Iowa hospital association, 7.1, 7.4(5) IAB 8/13/08 ARC 7057B	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	September 4, 2008 1 p.m.
TRANSPORTATION DEPARTMENT[761]		
Close-clearance warning signs along railroad tracks, ch 813 IAB 7/30/08 ARC 7003B	Modal Division Conf. Rm., Admin. Bldg. 800 Lincoln Way Ames, Iowa	August 21, 2008 10 a.m. (If requested)

AGENCY	HEARING LOCATION	DATE AND TIME
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]		
War orphans educational assistance fund, 9.3, 9.4, 9.5(1) IAB 8/13/08 ARC 7083B	Building A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	September 2, 2008 4 to 4:30 p.m.
Veterans trust fund, amendments to ch 14 IAB 7/30/08 ARC 7022B (See also ARC 7021B)	Building A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	August 19, 2008 2:30 to 4:30 p.m.
Veterans commemorative property, 15.2, 15.3(1), 15.4(6) IAB 7/30/08 ARC 7002B	Dodge House, Bldg. A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	August 19, 2008 2 to 2:30 p.m.
Limited residency Vietnam Conflict veterans bonus, ch 16 IAB 7/30/08 ARC 7019B (See also ARC 7018B)	Building A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	August 19, 2008 1:30 to 2 p.m.
WORKFORCE DEVELOPMENT DEPARTMENT[871]		
Participation in fact-finding interviews, 24.10 IAB 7/30/08 ARC 7044B	1000 E. Grand Ave. Des Moines, Iowa	August 19, 2008 9:30 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“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 which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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ARC 7064B**ADMINISTRATIVE SERVICES DEPARTMENT[11]****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 Supplement section 8.6 as amended by 2008 Iowa Acts, Senate File 2400, section 29, the Department of Administrative Services hereby gives Notice of Intended Action to rescind Chapter 10, "Customer Councils," Iowa Administrative Code.

The proposed rescission reflects a change in statutory provisions that establish, by rule, a customer council to oversee departmental operations. Most notably, the customer council will now be established by the Department of Management, which has published under Notice of Intended Action new 541—Chapter 12 pertaining to the establishment and functions of the customer council (see IAB 7/30/08, **ARC 6996B**).

Any interested party may make written comments on the proposed rescission on or before September 2, 2008. Written comments should be directed to Patricia Lantz, Hoover State Office Building, 1305 E. Walnut, Level 3, Des Moines, Iowa 50319 or may be sent by fax to (515)281-6401 or by E-mail to patricia.lantz@iowa.gov.

This amendment is intended to implement Iowa Code Supplement section 8.6 as amended by 2008 Iowa Acts, Senate File 2400, sections 29 and 36.

The following amendment is proposed.

Rescind and reserve **11—Chapter 10**.

ARC 7072B**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****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 159.5(11) and 189A.13, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 76, "Meat and Poultry Inspection," Iowa Administrative Code.

The proposed amendments update references to federal regulations in order to retain federal recognition of the state meat and poultry program. Adoption by reference of the federal regulations codifies existing industry practice.

Any interested persons may make written comments or suggestions on these proposed amendments on or before 4:30 p.m. on September 5, 2008. Written comments should be sent to Margaret Thomson, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-6236. E-mail comments may be sent to Margaret.Thomson@IowaAgriculture.gov.

No waiver provision is included in these proposed amendments; however, the Department's general waiver rule would apply.

These amendments are intended to implement Iowa Code chapter 189A.

The following amendments are proposed.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

ITEM 1. Amend rule 21—76.1(189A), introductory paragraph, as follows:

21—76.1(189A) Federal Wholesome Meat Act regulations adopted. Part 301 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~May 1, 2004~~ July 24, 2008, is hereby adopted in its entirety by reference; and in addition thereto, the following subsections shall be expanded to include:

ITEM 2. Amend rule 21—76.2(189A) as follows:

21—76.2(189A) Federal Wholesome Meat Act regulations adopted. Part 303, Part 304, Part 305, Part 306, Parts 308 through 320, Part 329, Part 416, Part 417, Part 424, Part 430, and Part 441 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~May 1, 2004~~ July 24, 2008, are hereby adopted in their entirety by reference. Part 307 except Sections 307.5 and 307.6 and Part 325 except Sections 325.3 and 325.12 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~May 1, 2004~~ July 24, 2008, are hereby adopted in their entirety by reference. Part 500 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~May 1, 2004~~ July 24, 2008, is adopted by reference, except that references in Sections 500.5, 500.6, 500.7, and 500.8 to the federal Uniform Rules of Practice are not adopted.

ITEM 3. Amend rule 21—76.3(189A), introductory paragraph, as follows:

21—76.3(189A) Federal Poultry Products Inspection Act regulations adopted. Part 381, Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~May 1, 2004~~ July 24, 2008, is hereby adopted in its entirety with the following exceptions: 381.96, 381.97, 381.99, 381.101, 381.102, 381.104, 381.105, 381.106, 381.107, 381.128, Subpart R, Subpart T, Subpart V, Subpart W; and in addition thereto, the following subsections shall be expanded to include:

ITEM 4. Amend rule 21—76.4(189A) as follows:

21—76.4(189A) Inspection required. Every establishment except as provided in Section 303.1(a), (b), (c) and (d) of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of ~~May 1, 2004~~ July 24, 2008, in which slaughter of livestock or poultry, or the preparation of livestock products or poultry products is maintained for transportation or sale in commerce, shall be subject to the inspection and other requirements of those parts of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of ~~May 1, 2004~~ July 24, 2008, enumerated in rules 21—76.1(189A), 21—76.2(189A) and 21—76.3(189A).

This rule is intended to implement Iowa Code sections 189A.4 and 189A.5.

ITEM 5. Amend rule 21—76.13(189A) as follows:

21—76.13(189A) Voluntary inspections of exotic animals. Every person wishing to obtain voluntary inspection of exotic animals shall comply with the regulations adopted in this rule.

Part 352 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~May 1, 2004~~ July 24, 2008, is hereby adopted in its entirety by reference.

This rule is intended to implement Iowa Code chapter 189A.

ITEM 6. Amend rule 21—76.14(189A) as follows:

21—76.14(189A) Federal Wholesome Meat Act regulations adopted for the regulation of farm deer.

1. All federal regulations adopted in 21—76.1(189A).

2. All federal regulations adopted in 21—76.2(189A), except Part 303 and Part 307.4(c) of Title 9, Chapter III, of the Code of Federal Regulations, revised as of ~~May 1, 2004~~ July 24, 2008.

This rule is intended to implement Iowa Code chapter 189A and Iowa Code ~~Supplement~~ chapter 170.

ARC 7069B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[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 sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to amend Chapter 23, "Iowa Community Development Block Grant Program," Chapter 61, "Physical Infrastructure Assistance Program (PIAP)," and Chapter 174, "Wage, Benefit, and Investment Requirements," Iowa Administrative Code.

The amendments to Chapter 23 include a cross reference to Chapter 174, Iowa Administrative Code. The amendments allow the Department to allocate up to \$5 million from the Iowa Values Fund each fiscal year to the PIAP program for projects that do not directly create or retain jobs, but include activities that encourage future job creation. The amendments revise program eligibility requirements to allow such projects to receive PIAP funds and allow the Department to establish performance measures for projects receiving funds under this allocation. The amendments waive the required wage threshold and revise collateral requirements for PIAP projects funded through this allocation of funds. The amendments change the Economic Development Set Aside (EDSA) program wage threshold to reflect requirements in Chapter 23, Iowa Administrative Code.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 8, 2008. Interested persons may submit written comments to Nichole Warren, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4831.

A public hearing to receive comments about the proposed amendments will be held from 2:30 to 4:30 p.m. on September 8, 2008, at the above address in the Iowa Room, Second Floor.

These amendments are intended to implement Iowa Code section 15.108(1)"a" and 2008 Iowa Acts, Senate File 2325.

The following amendments are proposed.

ITEM 1. Amend subrule 23.7(1) as follows:

23.7(1) Restrictions on applicants.

a. and b. No change.

c. ~~The average starting wage of jobs to be created or retained by a proposed project shall meet or exceed the lower of 100 percent of the average county wage or 100 percent of the average regional wage~~ To be eligible for assistance, applicants shall meet the qualifying wage threshold requirements described in 261—Chapter 174.

d. to k. No change.

l. Unless in conflict with a federal HUD definition for CDBG, the standard definitions located in 261—Chapter 173 apply to the EDSA program.

ITEM 2. Amend subrule 61.1(2) as follows:

61.1(2) Administrative procedures. The PIAP program is subject to the requirements of the department's rules located in 261—~~Part VII, additional application requirements and procedures, Chapters 171 through 175 and 261—Part VIII, legal and compliance Chapters 187 through 189.~~

ITEM 3. Amend subrule 61.3(1) as follows:

61.3(1) Quality, high-wage jobs. A business shall create or retain quality, high-wage, full-time jobs or provide the foundation for creation of such jobs. The quality of the jobs will be measured by factors such as the wage level and benefits provided.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 4. Amend paragraph **61.4(2)“c”** as follows:

c. An identification of the number of jobs to be created or retained as a result of the project and an explanation of why they are considered quality, high-wage jobs. The explanation shall include the job classifications, ~~pay ranges~~ the number of jobs that meet or exceed the qualifying wage threshold described in 261—Chapter 174, and benefits to be provided to the employees. If no jobs are to be created or retained as a direct result of the project, the applicant shall provide a description of how the project creates the foundation for the creation of high-quality jobs in the future.

ITEM 5. Amend rule 261—61.5(15E) as follows:

261—61.5(15E) Application review criteria performance measures.

61.5(1) to 61.5(4) No change.

61.5(5) The number of jobs to be created or retained or how the project contributes to the future creation of high-quality jobs.

61.5(6) to 61.5(11) No change.

61.5(12) Each fiscal year the department may allocate up to \$5 million from the Iowa values fund to the PIAP program for eligible projects that shall not be subject to job and wage requirements established in Iowa Code section 15G.112. The department will establish performance measures for projects funded through this allocation. Performance measures may include but are not limited to the requirement of tenant businesses involved in business infrastructure projects to meet minimum job and wage requirements pursuant to Iowa Code section 15G.112, the requirement that a certain percentage of building space resulting from the project be leased to business tenants, documentation that the project is part of a larger redevelopment effort, or other measures deemed appropriate by the department. Performance measures for such projects will be determined at the time of award and incorporated into any contract between the department and the applicant. Performance measures shall be met within three years of the completion of the project.

ITEM 6. Amend subrule 61.7(2) as follows:

61.7(2) Amount of award. The maximum award per project shall not exceed \$1 million. The director may waive this award limit upon a showing that the business exceeds the eligibility requirements for the program; or the wages to be paid are in excess of those paid in the community or the industry; or the project will bring a substantial economic benefit to the community or the state. If an award would exceed the \$1 million level, the director shall advise and consult with the IDED board prior to approving a waiver of the award limit. Any award in excess of \$1 million shall be secured by an irrevocable letter of credit, unless funded through special allocation of PIAP funds, up to \$5 million, established in subrule 61.5(12).

ITEM 7. Amend paragraph **174.3(5)“a”** as follows:

a. *IVF (2005).* Projects that are funded with IVF (2005) moneys through the following programs shall meet the qualifying wage threshold listed below:

Funding Source: <u>IVF (2005)</u>		Qualifying Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the qualifying wage threshold?
CEBA:	Small business gap financing component	130% of average county wage	Yes
	New business opportunities and new product development components	130% of average county wage	Yes
	Venture project component	130% of average county wage	Yes
	Modernization project component	130% of average county wage	Yes

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Funding Source: <u>IVF (2005)</u>		Qualifying Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the qualifying wage threshold?
VAAPFAP		130% of average county wage	Yes
PIAP		130% of average county wage, <u>unless funded through special allocation of PIAP funds, up to \$5 million, established in subrule 61.5(12)</u>	Yes
EVA		130% of average county wage	Yes

ITEM 8. Amend paragraph **174.3(5)“c”** as follows:

c. *EDSA*. Projects that are funded with EDSA moneys shall meet the following wage threshold:

Program Source: <u>CDBG</u>		Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the wage threshold?
EDSA		100% of average county wage <u>or average regional wage, whichever is lower</u>	No

ARC 7068B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[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 sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to amend Chapter 71, “Targeted Jobs Withholding Tax Credit Program,” Iowa Administrative Code.

The proposed amendments establish a limit on the total amount of withholding tax credits awarded based upon the total amount of depreciable assets in the project, defines matching funds to be provided by the business and the local community, and requires all applications to be presented to the Iowa Department of Economic Development Board for comment prior to the Department’s approval.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 10, 2008. Interested persons may submit written comments to Stoney B. Harris, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4735.

A public hearing to receive comments about the proposed amendments will be held from 2:30 to 4:30 p.m. on September 10, 2008, at the above address in the Iowa Room, Second Floor.

These amendments are intended to implement Iowa Code Supplement section 403.19A.

The following amendments are proposed.

ITEM 1. Strike “81GA, HF2731” wherever it appears in **261—Chapter 71** and insert “403” in lieu thereof.

ITEM 2. Amend rule **261—71.1(403)**, definition of “Act” as follows:

“Act” means ~~2006 Iowa Acts, House File 2731~~ Iowa Code Supplement section 403.19A.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 3. Amend subrule 71.4(2) as follows:

71.4(2) *Entering into an agreement.* A pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area. The pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating at least ten new jobs or making a qualifying investment of at least \$500,000 within the urban renewal area. The total award amount of withholding tax credits cannot exceed the total amount of capital investment of depreciable assets in the project. A business shall not be obligated to enter into a withholding agreement with a pilot project city. A pilot project city shall not enter into a withholding agreement with a business after June 30, 2010.

ITEM 4. Amend subrule 71.4(7) as follows:

71.4(7) *Local match requirement.* A pilot project city entering into a withholding agreement shall arrange for the business to provide a match of at least one dollar for each withholding dollar received by the ~~city~~ business. The local match may come from the pilot project city, a private donor, or the employer or a combination of the three. Local matches may be in the form of cash or in-kind contributions to be used for the project. For projects receiving tax credits under the targeted jobs withholding tax credit, local match requirements will be determined by the local fiscal impacts of the project. For projects that will result in an increase in local taxes (e.g., new construction, building additions), applicants will be expected to show one of the following two forms of local match.

a. Tax abatement for the project, provided under Iowa Code chapter 427B.

b. An acceptable form of local match that is equal to the value of tax abatement under Iowa Code chapter 427B, under the established five-year sliding scale.

If a project will not result in an increase in local taxes (i.e., project includes only the purchase of machinery/equipment), then no local match is required.

ITEM 5. Amend paragraph **71.5(1)“b”** as follows:

b. Applications for project approval for the targeted jobs withholding tax credit program may be submitted at any time. The department will review applications for projects in as timely a manner as possible. All applications will be presented to the IDED board for comment prior to the department’s approval. A pilot project city will be notified in writing of the department’s decision regarding the project.

ITEM 6. Amend subrule 71.6(2) as follows:

71.6(2) *Annual report.* The department shall prepare an annual report for the governor, the general assembly, and the legislative services agency on the targeted jobs withholding tax credit program. This report shall be due on ~~July 31~~ January 31 of each year. The report shall include but not be limited to the following:

a. to d. No change.

ITEM 7. Amend **261—Chapter 71**, implementation sentence, as follows:

These rules are intended to implement ~~2006 Iowa Acts, House File 2731~~ Iowa Code Supplement section 403.19A.

ARC 7067B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [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 sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to amend Chapter 103, "Information Technology Training Program," Iowa Administrative Code.

The amendments correct misidentified Standard Occupational Classifications, limit the funding to companies within the targeted industries, and modify the required application information.

Public comments concerning the proposed amendments will be accepted until 4 p.m. on September 8, 2008. Interested persons may submit written or oral comments by contacting Kim Bentley, Program Manager, Innovation and Commercialization Division, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4808.

A public hearing to receive comments about the proposed amendments will be held from 3 to 4 p.m. on September 8, 2008, at the above address in the ICN/Main Conference Room.

These amendments are intended to implement Iowa Code Supplement section 15.411(5).

The following amendments are proposed.

ITEM 1. Strike "82GA, HF829" wherever it appears in **261—Chapter 103** and insert "15" in lieu thereof.

ITEM 2. Amend rule **261—103.3(15)**, definition of "Information technology professional," as follows:
"Information technology professional" means an employee primarily engaged in the delivery of information technology services in one of the following ~~NAICS~~ SOC job classifications or in any similar ~~NAICS~~ SOC job classification:

1. Networking and systems support: 11-3021, 15-1041, 15-1051, 15-1061, 15-1071, 15-1081, 15-1099, 17-3023, 17-3024.
2. Programming and engineering: 15-1011, 15-1021, 15-1031, 15-1032, 15-2031, 15-2099.
3. Assembly, installation and repair: 17-3012, 49-2011, 49-2022, 49-2093, 49-2094, 49-9052, 51-2022, 51-2023, 51-4011, 51-4012, 51-9141.

ITEM 3. Rescind the definition of "NAICS" in rule **261—103.3(15)**.

ITEM 4. Adopt the following **new** definition in rule **261—103.3(15)**:
"SOC" means Standard Occupational Classification (SOC) System.

ITEM 5. Amend subrule 103.4(3) as follows:

103.4(3) Financial assistance shall be based on the actual cost of allowable services as identified in rule ~~261—104.6(82GA, HF829)~~ 261—103.6(15).

ITEM 6. Amend rule 261—103.7(15) as follows:

261—103.7(15) Eligible business. To be eligible for this program, the business, or a department of the business, must be engaged in the delivery of information technology services in the targeted industries of biosciences, advanced manufacturing, or information technology as identified by the North American Industry Classification System, and the business must be located in Iowa.

ITEM 7. Amend paragraph **103.11(3)"c"** as follows:

- c. A copy of the ~~registration contract~~ quote from the training provider outlining costs of training.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 8. Amend **261—Chapter 103**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, House File 829~~ Iowa Code Supplement section 15.411(5).

ARC 7065B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[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 sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to amend Chapter 108, "Targeted Industries Student Competition Fund," Iowa Administrative Code.

The proposed amendments provide additional detail about the application review process, including information about the minimum score required for an application to be considered for funding.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 3, 2008. Interested persons may submit written or oral comments by contacting Alana Anderson, Program Manager, Innovation and Commercialization Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)281-7306.

A public hearing to receive comments about the proposed amendments will be held from 3:30 to 4:30 p.m. on September 3, 2008, at the above address in the ICN/Main Conference Room.

These amendments are intended to implement 2007 Iowa Acts, chapter 122, section 7(6).

The following amendments are proposed.

ITEM 1. Strike "HF829" wherever it appears in **261—Chapter 108** and insert "ch122" in lieu thereof.

ITEM 2. Adopt the following **new** subrule 108.7(6):

108.7(6) Review. Applications will be reviewed in the order received by the department. The board may approve, defer or deny each application for financial assistance, based on the availability of funds. To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

ITEM 3. Amend **261—Chapter 108**, implementation sentence, as follows:

These rules are intended to implement 2007 Iowa Acts, ~~House File 829~~ chapter 122.

ARC 7066B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[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 sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to amend Chapter 109, "Targeted Industries Career Awareness Fund," Iowa Administrative Code.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

The amendments expand the definition of eligible applicants and provide additional details about the application review process, including information about the minimum score required for an application to be considered for funding.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 3, 2008. Interested persons may submit written or oral comments by contacting Alana Anderson, Program Manager, Innovation and Commercialization Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)281-7306.

A public hearing to receive comments about the proposed amendments will be held from 3:30 to 4:30 p.m. on September 3, 2008, at the above address in the ICN/Main Conference Room.

These amendments are intended to implement 2007 Iowa Acts, chapter 122, section 7(9).

The following amendments are proposed.

ITEM 1. Strike “HF829” wherever it appears in **261—Chapter 109** and insert “ch122” in lieu thereof.

ITEM 2. Amend rule 261—109.6(82GA,ch122) as follows:

261—109.6(82GA,ch122) Eligible applicants. Eligible applicants must be industry ~~association groups~~ associations, educational institutions or associations and their industry partners in the targeted industries with efforts or initiatives for a statewide ~~educational and public~~ educational/public awareness campaign campaign(s) to inform students, parents and educators about career opportunities within the targeted industries.

ITEM 3. Adopt the following new subrule 109.8(8):

109.8(8) Review. Applications will be reviewed in the order received by the department. The board may approve, defer or deny each application for financial assistance, based on the availability of funds. To be considered for funding, an application must receive a minimum score of 65 out of a possible 100 points and meet all other eligibility criteria specified in these rules.

ITEM 4. Amend **261—Chapter 109**, implementation sentence, as follows:

These rules are intended to implement 2007 Iowa Acts, ~~House File 829~~ chapter 122.

ARC 7074B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[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 sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to amend Chapter 311, “Renewable Fuel Infrastructure Board—Organization,” Chapter 312, “Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites,” Chapter 313, “Renewable Fuel Infrastructure Program for Biodiesel Terminal Grants,” and Chapter 314, “Renewable Fuel Infrastructure Program Administration,” Iowa Administrative Code.

The amendments implement recent legislative changes as authorized in 2008 Iowa Acts, House File 2689. The amendments include updating Iowa Code citations; adding definitions for “biofuel,” “biodiesel blended fuel,” “person,” “renewable fuel” and “tank vehicle”; incorporating the option of a three-year or five-year grant period; and listing requirements for award amounts for retail sites, terminal facilities for biodiesel B2 through B98 and B99/B100 for year-round distribution and tank vehicles.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 3, 2008. Interested persons may submit written comments to Dick Vegors, Iowa Department of Economic Development, 200 E. Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4796.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

A public hearing will be held Wednesday, September 3, 2008, from 2:30 to 4 p.m. in the ICN/Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 E. Grand Avenue, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code sections 15G.201, 15G.202 and 15G.205, Iowa Code Supplement sections 15G.203 and 15G.204, and 2008 Iowa Acts, House File 2689, and House File 2450, section 6(9)“f.”

The following amendments are proposed.

ITEM 1. Amend **261—Chapter 311** as follows:

CHAPTER 311
RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION

261—311.1(81GA, ch1142 15G) Definitions. As used in these rules, unless the context otherwise requires, the definitions in ~~2006 Iowa Acts, chapter 1142, section 28,~~ Iowa Code section 15G.201 as amended by 2008 Iowa Acts, House File 2689, shall apply to this chapter and to 261—Chapters 312, 313, and 314. The following definitions shall also apply:

“*Agreement*” means the cost-share agreement executed by the department after approval of the grant by the board.

“*Applicant*” means ~~the owner or operator of a site~~ a person, as defined in this rule, who owns or operates a site.

“*Biodiesel*,” for the ~~purposes~~ purpose of these rules this rule, must be at least B99.

~~“Biodiesel blend” must contain at least 1 percent biodiesel.~~

“*Biodiesel blended fuel*,” as defined in Iowa Code section 214A.1, means blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component. For the purpose of this rule, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 1 percent at a retail site.

“*Biofuel*” means ethanol or biodiesel as defined in Iowa Code section 214A.1.

“*Blender pump*,” for the purpose of this rule, means blending biofuel. When blending ethanol, the pump must dispense E-85 gasoline at all times.

“*Board*” means the renewable fuel infrastructure board established by ~~2006 Iowa Acts, chapter 1142, section 29~~ Iowa Code section 15G.202.

“*Checklist*” or “*IDNR checklist*” means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

“*Grant*” or “*cost-share grant*” means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by ~~2006 Iowa Acts, chapter 1142,~~ Iowa Code section 15G.202 to help pay for a project.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“*Project*” means the installation of equipment for motor fuel storage or dispensing or and distribution equipment, or both, for either of E-85 gasoline or biodiesel or biodiesel blend at a fueling site.

“*Rack*” means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

“*Renewable fuel*,” as defined in Iowa Code section 214A.1, means a combustible liquid derived from grain starch, oilseed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized decaying organic matter which is capable of powering machinery, including but not limited to an engine or power plant. Renewable fuel includes but is not limited to biofuel, ethanol blended gasoline, or biodiesel blended fuel meeting the standards provided in Iowa Code section 214A.2 as amended by 2008 Iowa Acts, House File 2689.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

“Retail” means offered for sale to the public for final consumption.

“Retail motor fuel site” means a site at which motor fuel is offered for sale to the public for final consumption. A retail motor fuel site may include a tank ~~wagon~~ vehicle or transport.

“Tank vehicle” means a motor vehicle designed to transport liquid or gaseous materials within a tank having a rated capacity of 1,001 or more gallons either permanently or temporarily attached to the vehicle or chassis.

261—311.2(81GA, ch1142 15G) Renewable fuel infrastructure board.

311.2(1) Composition.

a. *Board structure.* The board shall consist of 11 voting members appointed by the governor. The composition of the board shall be as described in ~~2006 Iowa Acts, chapter 1142, section 29~~ Iowa Code section 15G.202. Six voting members shall constitute a quorum. An affirmative vote of a majority of voting members, excluding any member who has a conflict of interest, is necessary for the board to take substantive action.

b. No change.

c. *Department administrative functions.* As specified in ~~2006 Iowa Acts, chapter 1142, section 29(1)~~ Iowa Code section 15G.202, the Iowa department of economic development shall perform administrative functions necessary for the management of the infrastructure board, and the infrastructure programs as provided in 261—Chapters 312 and 313. The department shall provide the infrastructure board with the necessary facilities, ~~items~~ supplies, and clerical support. The department will also market the renewable fuel infrastructure program throughout the state.

311.2(2) Meetings.

a. and b. No change.

c. Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to ~~Iowa Code section 21.5~~ Iowa Code Supplement section 21.5.

d. and e. No change.

311.2(3) Duties. The board shall perform the duties as outlined in ~~2006 Iowa Acts, chapter 1142, sections 28 to 32,~~ Iowa Code section 15G.202 and other functions as necessary and proper to carry out its responsibilities.

311.2(4) Board committees. Reserved.

These rules are intended to implement ~~2006 Iowa Acts, chapter 1142, section 29~~ Iowa Code section 15G.202.

ITEM 2. Rescind rule 261—312.1(81GA, ch1142) and adopt the following **new** rule in lieu thereof:

261—312.1(15G) Purpose. The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail fuel site.

ITEM 3. Strike "81GA, ch1142" wherever it appears in rule **261—312.2(81GA, ch1142)** and insert “15G” in lieu thereof.

ITEM 4. Amend paragraph **312.2(3)“b”** as follows:

b. The fuel storage tank may be on a tank ~~wagon~~ vehicle or transport if regularly parked overnight in Iowa.

ITEM 5. Amend **261—Chapter 312**, implementation sentence, as follows:

These rules are intended to implement ~~2006 Iowa Acts, chapter 1142, section 30~~ Iowa Code Supplement section 15G.203 as amended by 2008 Iowa Acts, House File 2689.

ITEM 6. Amend **261—Chapter 313** as follows:

CHAPTER 313
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR
BIODIESEL TERMINAL GRANTS

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

261—313.1(81GA, ch1142 15G) Purpose. The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facilities that store and dispense biodiesel or biodiesel blended fuel for the purpose of distribution to dealers facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers.

261—313.2(81GA, ch1142 15G) Eligible applicants. To be eligible to receive a biodiesel terminal grant, an applicant shall:

313.2(1) to 313.2(3) No change.

These rules are intended to implement 2006 Iowa Acts, chapter 1142, section 31 Iowa Code Supplement section 15G.204 as amended by 2008 Iowa Acts, House File 2689.

ITEM 7. Amend **261—Chapter 314** as follows:

CHAPTER 314
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

261—314.1(81GA, ch1142 15G) Allocation of awards by congressional district. The board shall use the boundaries of the state's five congressional districts, and prorate and equally distribute the amount available each fiscal year for each district. The board shall have at its discretion a prorated amount (up to \$500,000) to distribute to any congressional district. On April 1 of each year, if funds allocated to a district have not been committed, the unobligated balance shall revert to the reserve fund and be available for other projects approved by the board.

261—314.2(81GA, ch1142 15G) Form of award available; award amount.

314.2(1) No change.

~~**314.2(2)** *Retroactive grants for projects already completed or in process.* A grant may be awarded for an eligible project already completed or in the process of being completed on or after July 1, 2005, the effective date of the original grant program. This stipulation is true even if the project was not funded under the infrastructure program implemented pursuant to Iowa Code Supplement section 15.401.~~

314.2(3) 314.2(2) *Prospective grants for projects not commenced.* A grant may be awarded for an eligible project not yet commenced.

314.2(3) Amount of award.

a. Retail award site.

(1) Three-year cost-share agreement for a retail site. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(2) Five-year cost-share agreement for a retail site. The maximum award amount is 70 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(3) Supplemental financial incentives. A person may be granted supplemental financial incentives as an amendment to the cost-share agreement.

1. Supplemental award for underwriter laboratories upgrade. The purpose of an award for Underwriter Laboratories (UL) is to upgrade to UL-certified dispensers, blender pumps and dispensing infrastructure, UL-approved conversion kits and approved and insurable installation project(s). The maximum amount available as a supplemental financial incentive is 75 percent of the actual cost of making the improvements or \$30,000, whichever is less.

2. Supplemental award for additional tank and associated infrastructure. A person may request a supplemental financial incentive for tank and associated infrastructure, as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional tank(s) and associated infrastructure at an additional retail motor fuel site after an initial grant award is provided. To be eligible, the initial grant award must be awarded to the person on or after May 12, 2008. The maximum award amount available as a supplemental financial incentive is \$6,000 per supplemental site. The person is limited to four supplemental financial incentive awards within the 12-month period following the completion of the initial retail motor fuel site project.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

b. Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.(1) Biodiesel fuel B2 through B98.1. Duration. The duration of the cost-share agreement shall be five years.2. Maximum award. The maximum award amount is 50 percent of the actual cost of making the improvements or \$50,000, whichever is less.(2) Biodiesel fuel B99/B100 for year-round distribution.1. Duration. The duration of a cost-share agreement is five years.2. Maximum award amount. The maximum award amount is 50 percent of the actual cost of making the improvements or \$100,000, whichever is less.3. Application acceptance begins January 1, 2009. Grant applications for B99/B100 projects will be accepted beginning January 1, 2009.4. Lifetime cap amount. The maximum or lifetime cap for B99/B100 biodiesel terminal grants is \$800,000 per person.c. Tank vehicle.(1) December 31, 2008, deadline. A tank vehicle application must be postmarked no later than December 31, 2008, to be eligible.(2) Duration. The duration of the cost-share agreement is three years. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.(3) Limitation on number of grants. A person may receive one grant for one tank vehicle used to store and dispense E-85 gasoline and one grant for one tank vehicle used to store and dispense biodiesel or biodiesel blend.

~~314.2(4) Amount of award. The maximum award limit per project shall not exceed \$30,000 or 50 percent of the actual cost of making the improvements, whichever is less, in the case of retail motor fuel site grants, or \$50,000 or 50 percent of the actual cost of making the improvements, whichever is less, in the case of biodiesel terminal grants.~~

~~314.2(5) 314.2(4) Time of payment. The grant shall be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.~~

~~a. to c. No change.~~

~~314.2(6) 314.2(5) Deadline for completion. The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.~~

~~314.2(7) 314.2(6) Multiple awards for multiple fuel types.~~

~~a. At a single fuel site. The board may approve multiple awards for projects at a single site provided the total amount of the awards at that site does not in the aggregate exceed 50 percent of the actual cost of making the improvement or \$30,000 in the case of E-85 gasoline, biodiesel or biodiesel blended fuel grants, whichever is less, or 50 percent of the actual cost of making the improvement or \$50,000 in the case of biodiesel terminal grants, whichever is less, at that motor fuel site during the triennium ending June 30, 2012. A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a single fuel site. The infrastructure board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.~~

~~b. At multiple fuel sites. An applicant may apply for and be granted multiple grants for different motor fuel sites. The \$30,000/50 percent and \$50,000/50 percent limits described in subrule 314.2(4) apply only to individual motor fuel sites. However, the board shall make awards fairly and properly among applicants and geographic areas. A person may receive multiple grants as described in paragraph 314.2(6) "a" for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the infrastructure board will make awards fairly and properly among applicants and geographic areas.~~

~~e. — In the event that funding will be exhausted at the end of the fiscal year, the board shall approve remaining applications based on criteria implemented by the board as set forth in subrule 314.4(2).~~

~~314.2(7) Exhaustion of funds. In the event funding is exhausted at the end of the fiscal year or June 30, 2012, the board shall approve remaining applications based on criteria implemented by the board.~~

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

~~314.2(8) No cross program double dipping beyond the per site maximum. No project which has been funded under the infrastructure program administered pursuant to Iowa Code Supplement section 15.401 is eligible for funding under this program beyond the applicable program per site cap of \$30,000 or \$50,000.~~

261—314.3(81GA, ch1142 15G) Application process.

314.3(1) No change.

314.3(2) *Contents of application.*

a. Statutory requirements. An application shall include the information required in ~~2006 Iowa Acts, chapter 1142, section 30(4) “b.”~~ Iowa Code Supplement section 15G.203.

b. No change.

261—314.4(81GA, ch1142 15G) Review process.

314.4(1) ~~The department shall forward completed applications to the underground storage tank fund board for evaluation and recommendation, as specified in 2006 Iowa Acts, chapter 1142, section 30(2). The underground storage tank fund board shall then forward the applications to the renewable fuel infrastructure board for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant. The underground storage tank fund board has chosen not to review the applications. The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.~~

314.4(2) No change.

261—314.5(81GA, ch1142 15G) Contract administration.

314.5(1) No change.

314.5(2) *Contract required.* The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the grant established by the board. The agreement will:

a. to d. No change.

e. Recite the penalty for the storage or dispensing, within the stated time frame of three years or five years from submission of verified documentation of project completion, of motor fuel other than the type of renewable fuel for which the grant was awarded.

f. Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

314.5(3) *Repayment penalty for nonexclusive renewable fuel use.* In the absence of a waiver from the board, the department may impose a ~~civil~~ 25 percent penalty due to a ~~grantee's grant recipient's~~ use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

314.5(4) *Duration of grant agreement; repayment Repayment or board waiver.*

a. ~~The duration of a cost share grant agreement shall be five years from the date of submission of verified documentation of project completion.~~

b. ~~Grantees shall~~ A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded with an additional including a 25 percent penalty.

314.5(5) *Waiver criteria.* The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

a. ~~Transition provision for awards made prior to December 21, 2006. A grant recipient that received an award prior to December 21, 2006, and signed a cost share agreement contract that included the five year exclusive use of renewable fuel requirement has up to 60 days after July 25, 2007, to request that the board rescind the contract and grant a permanent waiver of the 25 percent penalty. Any grant funds disbursed shall be paid back, the 25 percent penalty will be waived, and the contract will be terminated.~~

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b. a. Permanent waiver.

~~(1) Waiver due to completion of contract obligations (no repayment and no 25 percent penalty). The board hereby grants a waiver of the obligation to repay grant funds plus any penalty to all grant recipients that satisfy the terms and conditions of their cost share grant agreements including, but not limited to, the five year exclusive use of renewable fuel requirement.~~

~~(2)~~ (1) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

~~(3)~~ (2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds will be repaid as follows:

1. ~~Months 1 through 10 of contract, 100 percent of grant amount~~ Three-year cost-share agreement: Months 1 through 11 of the cost-share agreement, 100 percent of grant amount. Months 12 through 36 of cost-share agreement, 4 percent of grant amount for each month remaining on the cost-share agreement.

2. ~~Months 11 through 60 of contract, 2 percent of grant amount for each month remaining on contract~~ Five-year cost-share agreement: Months 1 through 10 of the cost-share agreement, 100 percent of grant amount. Months 11 through 60 of the cost-share agreement, 2 percent of grant amount for each month remaining on the cost-share agreement.

e. b. Temporary waiver (temporary suspension of repayment and 25 percent penalty). A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board's satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient's request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient's obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of three years or five years. If the board approves a temporary waiver, the ~~contract~~ duration of the cost-share agreement will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve ~~a request to extend a temporary waiver for an additional six months~~ one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board's action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the three-year or five-year ~~contract period~~ duration of the cost-share agreement will not be extended by the length of the temporary waiver.

These rules are intended to implement ~~2006 Iowa Acts, chapter 1142, sections 28 to 34.~~ Iowa Code sections 15G.201, 15G.202 and 15G.205, Iowa Code Supplement sections 15G.203 and 15G.204, and 2008 Iowa Acts, House File 2689, and House File 2450, section 6(9)"f."

ARC 7059B

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 75, "Conditions of Eligibility," Iowa Administrative Code.

The proposed amendments change the rule that allows children in court-approved subsidized guardianship homes to receive state-funded medical assistance coverage to:

- Limit this coverage group to children for whom Iowa has financial responsibility, as originally intended;
- Remove the upper age limit for consistency with the subsidy program;
- Provide eligibility for children who leave Iowa if they are not eligible for medical assistance through their new state of residence; and
- Clarify that ineligibility under other coverage groups or in another state must be due to substantive eligibility requirements, not due to a failure to provide information or to comply with other procedural requirements.

The proposed amendments also provide that income from the guardianship subsidy is exempt both as income and as a resource. This change is consistent with the way foster care payments are handled and will allow many children in the adoption subsidy program and perhaps other family members to qualify for federally funded Medicaid coverage.

These amendments do not provide for waivers in specified situations because the exemption of subsidized guardianship payments, the removal of the age limit, and the provision for children who leave the state confer benefits. The provision that excludes children for whom Iowa does not have financial responsibility and who are ineligible under other coverage groups or in other states only because of a failure to comply with procedural requirements does not provide for waivers because all such cases should be treated the same. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before September 3, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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 are intended to implement Iowa Code section 249A.3.

The following amendments are proposed.

ITEM 1. Amend subrule 75.1(11) as follows:

75.1(11) Individuals ~~under the age of 18~~ living in a court-approved subsidized guardianship home for whom the department has financial responsibility in whole or in part. ~~Medical~~ When Iowa is responsible for a subsidized guardianship payment for a child pursuant to 441—Chapter 204, medical assistance will be available to individuals under the age of 18 living in a court-approved subsidized guardianship home the child under this subrule provided they are not otherwise eligible for medical assistance under a category for which federal financial participation is available. if the child is living in a court-approved subsidized guardianship home and either:

a. The child lives in Iowa and is not eligible for medical assistance under a category for which federal financial participation is available due to reasons other than:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Failure to provide information, or
(2) Failure to comply with other procedural requirements; or
b. Notwithstanding the residency requirements of 441—75.10(249A) and 441—75.53(249A), the child lives in another state and is not eligible for benefits from the other state pursuant to a program funded under Title XIX of the federal Social Security Act due to reasons other than:

- (1) Failure to provide information, or
(2) Failure to comply with other procedural requirements.

ITEM 2. Adopt the following **new** paragraph **75.57(6)**“s”:

- s. Subsidized guardianship program payments.

ARC 7058B

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,” Iowa Administrative Code.

The proposed amendment to subrule 78.50(1) affects Medicaid coverage for medical services provided by local education agencies (schools). Previous federal guidance provided a complex set of principles for transportation reimbursement that were interpreted to allow schools to claim all costs of transporting students who are served under the Individuals with Disabilities Education Act. Federal regulations have been adopted to eliminate coverage of transportation from home to school and back. However, Congress approved a moratorium on those regulations that delays the effective date until April 1, 2009.

No state Medicaid funding is allocated for local education agency expenses. The local education agency bills Medicaid for covered services and returns the nonfederal share of the Medicaid payment back to the state Medicaid program. This amendment specifies that Iowa Medicaid will not cover any local education agency expenses for a child’s transportation from home to school and back if federal funding becomes unavailable due to federal regulation.

Whether or not the moratorium is extended, Medicaid will continue to reimburse for transportation of eligible children from school or home to a non-school-based direct medical service provider that bills under the Medicaid program and from a non-school-based provider to the child’s home or school.

The other amendments make technical corrections to update the names of the licensing boards for dentists and optometrists.

These amendments do not provide for waivers in specified situations because the federal regulations do not allow for waivers in claiming Medicaid federal matching funds, and the Department has no state funds available to cover these expenses.

Any interested person may make written comments on the proposed amendments on or before September 3, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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 are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend subrule 78.6(6) as follows:

78.6(6) Therapeutically certified optometrists. Therapeutically certified optometrists may provide services and employ pharmaceutical agents in accordance with Iowa Code chapter 154 regulating the practice of

HUMAN SERVICES DEPARTMENT[441](cont'd)

optometry. A therapeutically certified optometrist is an optometrist who is licensed to practice optometry in this state and who is certified by the board of optometry ~~examiners~~ to employ the agents and perform the procedures provided by the Iowa Code.

ITEM 2. Amend paragraph **78.25(2)“e”** as follows:

e. Dental hygiene services within the scope of practice as defined by the dental board of dental examiners at 650—paragraph 10.5(3) “*b.*”

ITEM 3. Amend subrule 78.50(1) as follows:

78.50(1) Covered services. Covered services include, but are not limited to, audiology services, behavior services, consultation services, medical transportation, nursing services, nutrition services, occupational therapy services, personal assistance, physical therapy services, psychologist services, speech-language services, social work services, vision services, and school-based clinic visit services.

a. Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered as local education agency services. However, the administration of vaccines is a covered service.

b. Payment for supplies shall be approved when the supplies are incidental to the patient’s care, e.g., syringes for injections, and do not exceed \$25 per month. Durable medical equipment and other supplies are not covered as local education agency services.

c. To the extent that federal funding is not available under Title XIX of the Social Security Act, payment for transportation between home and school is not a covered service.

ARC 7061B

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 237A.12, the Department of Human Services proposes to amend Chapter 109, “Child Care Centers,” and Chapter 110, “Child Development Homes,” Iowa Administrative Code.

The proposed amendments update child care training rules including training topic areas, approved training organizations, requirements for approved training, and a process and form for training approval requests from training organizations that are not already approved in rule. The amendments do not change the amount of training required. Professional development requirements are similar for both child development homes and child care centers. The amendments formalize processes that are currently in place.

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

Any interested person may make written comments on the proposed amendments on or before September 3, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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 are intended to implement Iowa Code section 232.69 and Iowa Code chapter 237A.

The following amendments are proposed.

ITEM 1. Amend paragraph **109.2(6)“b”** as follows:

b. An applicant or licensee affected by an adverse action may request a hearing by means of a written request directed to the ~~county office or central office of the department~~ Department of Human Services, Appeals Section, 1305 E. Walnut Street, Fifth Floor, Des Moines, Iowa 50319-0114. The request shall be

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submitted within 30 days after the date the department mailed the official notice containing the nature of the denial, revocation, or suspension.

ITEM 2. Amend subrule 109.7(2) as follows:

109.7(2) *Staff employed 20 hours or more per week.*

a. During their first year of employment, all staff employed 20 hours or more per week shall receive the following training:

(1) and (2) No change.

(3) Ten contact hours of training from one or more of the following ~~topical~~ child development associate content areas: Child development, guidance and discipline, developmentally appropriate practices, nutrition, health and safety, communication skills, professionalism, business practices, and cross-cultural competence. Training received for cardiopulmonary resuscitation (CPR), first aid, mandatory reporting of child abuse, and universal precautions shall not count toward the ten contact hours.

1. Planning a safe, healthy learning environment (includes nutrition).

2. Steps to advance children's physical and intellectual development.

3. Positive ways to support children's social and emotional development (includes guidance and discipline).

4. Strategies to establish productive relationships with families (includes communication skills and cross-cultural competence).

5. Strategies to manage an effective program operation (includes business practices).

6. Maintaining a commitment to professionalism.

7. Observing and recording children's behavior.

8. Principles of child growth and development.

(4) At least four hours of the ten contact hours of training shall be received in a ~~sponsored~~ group setting as defined in subrule 109.7(7). Six hours may be received in self-study using a training package approved by the department as defined in subrule 109.7(8). Training received for cardiopulmonary resuscitation (CPR), first aid, mandatory reporting of child abuse, and universal precautions shall not count toward the ten contact hours. A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time.

(5) Center directors and on-site supervisors shall receive all ten hours of training in a ~~sponsored~~ group setting as defined in subrule 109.7(7).

(6) No change.

b. Following their first year of employment, all staff who are employed 20 hours or more a week shall:

(1) No change.

(2) Receive six contact hours of training annually from one or more of the ~~following topical~~ child development associate content areas: child development, guidance and discipline, developmentally appropriate practices, nutrition, health and safety, communication skills, professionalism, business practices, and cross-cultural competence. At least two of the six contact hours shall be in a sponsored group setting listed in subparagraph 109.7(2) "a"(3). A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time.

(3) Center directors and on-site supervisors shall receive eight contact hours of training annually from one or more of the topical ~~child development associate content areas listed in subparagraph 109.7(2) "a"(3).~~ At least four of the eight contact hours shall be in a ~~sponsored~~ group setting as defined in subrule 109.7(7).

ITEM 3. Adopt the following **new** subrules 109.7(6) to 109.7(9):

109.7(6) *Substitution.* A provider who submits documentation from a child care resource and referral agency that the provider has completed the Iowa Program for Infant Toddler Care (IA PITC), ChildNet, or Beyond Business Basics training series may use those hours to fulfill a maximum of two years' training requirements, not including first-aid and mandatory reporter training.

109.7(7) *Group training.* Training received in a group setting is not self-study, but is training received with other adults, either in or out of the child care center.

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a. The training must be conducted by a trainer who is employed by or under contract with one of the following entities or who uses curriculum or training materials developed or obtained with the written permission of one of the following entities:

- (1) An accredited university or college.
- (2) A community college.
- (3) Iowa State University Extension.
- (4) A child care resource and referral agency.
- (5) An area education agency.
- (6) The regents' center for early developmental education at the University of Northern Iowa.
- (7) A hospital (for health and safety, first-aid, and CPR training).
- (8) The American Red Cross, the American Heart Association, the National Safety Council, or Medic First Aid (for first-aid and CPR training).
- (9) An Iowa professional association, including the Iowa Association for the Education of Young Children (Iowa AEYC), the Iowa Family Child Care Association (IFCCA), the Iowa After School Alliance, and the Iowa Head Start Association.
- (10) A national professional association, including the National Association for the Education of Young Children (NAEYC), the National Child Care Association (NCCA), the National Association for Family Child Care (NAFCC), the National After School Association, and the American Academy of Pediatrics.
- (11) The Child and Adult Care Food Program and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
- (12) The Iowa department of public health, department of education, or department of human services.

b. Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph "a" or an entity approved under paragraph "g." Approved training shall be made available to Iowa child care providers through the child care provider training registry beginning July 1, 2009.

c. Training received in a group setting may include distance learning opportunities such as training conducted over the Iowa communications network, on-line courses, or Web conferencing (webinars) if:

- (1) The training meets the requirements in subrule 109.7(9);
- (2) The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and
- (3) The training organization meets the requirements listed in this subrule or is approved by the department.

d. The department will not approve more than six hours of training delivered in a single day.

e. The department may randomly monitor any state-approved training for quality control purposes.

f. Training conducted with staff either during the hours of operation of the facility, staff lunch hours, or while children are resting must not diminish the required staff ratio coverage. Staff shall not be actively engaged in care and supervision and simultaneously participate in training.

g. A training organization not approved by the department may submit training for approval to the department on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

109.7(8) Self-study training.

a. Self-study training packages approved by the department include curriculum developed and materials distributed by:

- (1) Department child care licensing consultants,
- (2) Iowa State University Extension, or
- (3) A child care resource and referral agency.

b. Self-study training materials not distributed by these entities may be submitted by the training organization to the department for approval on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

109.7(9) Approved training. Training provided to Iowa child care providers shall offer:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- a. Instruction that is consistent with:
 - (1) Iowa child care regulatory standards;
 - (2) The Iowa early learning standards; and
 - (3) The philosophy of developmentally appropriate practice as defined by the National Association for the Education of Young Children, the Program for Infant Toddler Care, and the National Health and Safety Performance Standards.
- b. Content equal to at least one contact hour of training.
- c. An opportunity for ongoing interaction and timely feedback, including questions and answers within the contact hours if training is delivered in a group setting.
- d. A certificate of training for each participant that includes:
 - (1) The name of the participant.
 - (2) The title of the training.
 - (3) The dates of training.
 - (4) The child development associate content area addressed.
 - (5) The name of the training organization.
 - (6) The name of the instructor.
 - (7) The number of contact hours.
 - (8) An indication of whether the training was delivered through self-study or in a group setting.

ITEM 4. Rescind paragraph **110.5(2)“b”** and adopt the following **new** paragraph in lieu thereof:

- b. Certificates or other documentation verifying required training as set forth in subrule 110.5(11).

ITEM 5. Adopt the following **new** subrules 110.5(11) to 110.5(14):

110.5(11) Professional development.

- a. The provider shall receive two hours of Iowa’s training for mandatory reporting of child abuse:
 - (1) During the first three months of registration as a child development home; and
 - (2) Every five years thereafter.
- b. The provider shall obtain first-aid training within the first three months of registration as a child development home.
 - (1) First-aid training shall be provided by a nationally recognized training organization, such as the American Red Cross, the American Heart Association, the National Safety Council, or Emergency Medical Planning (Medic First Aid) or by an equivalent trainer using curriculum approved by the department.
 - (2) First-aid training shall include certification in infant and child first aid that includes management of a blocked airway and mouth-to-mouth resuscitation.
 - (3) The provider shall maintain a valid certificate indicating the date of first-aid training and the expiration date.
- c. During the first year of registration, the provider shall receive a minimum of 12 hours of training from one or more of the following child development associate content areas. The provider shall receive at least 6 of these hours in a group setting as defined in subrule 110.5(12), and 2 of the hours must be from the content area in subparagraph (1). A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time.
 - (1) Planning a safe, healthy learning environment (includes nutrition).
 - (2) Steps to advance children’s physical and intellectual development.
 - (3) Positive ways to support children’s social and emotional development (includes guidance and discipline).
 - (4) Strategies to establish productive relationships with families (includes communication skills and cross-cultural competence).
 - (5) Strategies to manage an effective program operation (includes business practices).
 - (6) Maintaining a commitment to professionalism.
 - (7) Observing and recording children’s behavior.
 - (8) Principles of child growth and development.
- d. During the second year of registration and each succeeding year, the provider shall receive a minimum of 12 hours of training from one or more of the child development associate content areas as defined in

HUMAN SERVICES DEPARTMENT[441](cont'd)

paragraph "c." The provider shall receive at least 6 of these hours in a group setting as defined in subrule 110.5(12). The provider may receive the remaining hours in self-study as defined in subrule 110.5(13). A provider shall not use a specific training or class to meet minimum continuing education requirements more than one time.

e. A provider who submits documentation from a child care resource and referral agency that the provider has completed the Iowa Program for Infant Toddler Care (IA PITC), ChildNet, or Beyond Business Basics training series may use those hours to fulfill a maximum of two years' training requirements, not including first-aid and mandatory reporter training.

110.5(12) Group training. Training received in a group setting is not self-study, but is training received with other adults.

a. The training must be conducted by a trainer who is employed by or under contract with one of the following entities or who uses curriculum or training materials developed by or obtained with the written permission of one of the following entities:

- (1) An accredited university or college.
- (2) A community college.
- (3) Iowa State University Extension.
- (4) A child care resource and referral agency.
- (5) An area education agency.
- (6) The regents' center for early developmental education at the University of Northern Iowa.
- (7) A hospital (for health and safety, first-aid, and CPR training).
- (8) The American Red Cross, the American Heart Association, the National Safety Council, or Medic First Aid (for first-aid and CPR training).
- (9) An Iowa professional association, including the Iowa Association for the Education of Young Children (Iowa AEYC), the Iowa Family Child Care Association (IFCCA), the Iowa After School Alliance, and the Iowa Head Start Association.
- (10) A national professional association, including the National Association for the Education of Young Children (NAEYC), the National Child Care Association (NCCA), the National Association for Family Child Care (NAFCC), the National After School Association, and the American Academy of Pediatrics.
- (11) The Child and Adult Care Food Program and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).
- (12) The Iowa department of public health, department of education, or department of human services.

b. Training received in a group setting must follow a presentation format that incorporates a variety of adult learning methods. The material or content of the training must be obtained from one of the entities listed in paragraph "a" or an entity approved under paragraph "g." Approved training shall be made available to Iowa child care providers through the child care provider training registry beginning July 1, 2009.

c. Training received in a group setting may include distance learning opportunities such as training conducted over the Iowa communications network, on-line courses, or Web conferencing (webinars) if:

- (1) The training meets the requirements in subrule 110.5(14);
- (2) The training is taught by an instructor and requires interaction between the instructor and the participants, such as required chats or message boards; and
- (3) The training organization meets the requirements listed in this subrule or is approved by the department.

d. The department will not approve more than six hours of training delivered in a single day.

e. The department may randomly monitor any state-approved training for quality control purposes.

f. Training conducted with staff either during the hours of operation of the facility, staff lunch hours, or while children are resting must not diminish the required staff ratio coverage. Staff shall not be actively engaged in care and supervision and simultaneously participate in training.

g. A training organization not approved by the department may submit training for approval to the department on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

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110.5(13) Self-study training. Up to six hours of training may be received in self-study using a training package approved by the department.

a. Self-study training packages approved by the department include curriculum developed and materials distributed by:

- (1) Department child care licensing consultants,
- (2) Iowa State University Extension, or
- (3) A child care resource and referral agency.

b. Self-study training materials not distributed by these entities may be submitted by the training organization to the department for approval on Form 470-4528, Request for Child Care Training Approval. All approvals, unless otherwise specified, shall be valid for five years. The department shall issue its decision within 30 business days of receipt of a complete request.

110.5(14) Approved training. Training provided to Iowa child care providers shall offer:

a. Instruction that is consistent with:

- (1) Iowa child care regulatory standards;
- (2) The Iowa early learning standards; and
- (3) The philosophy of developmentally appropriate practice as defined by the National Association for the Education of Young Children, the Program for Infant Toddler Care, and the National Health and Safety Performance Standards.

b. Content equal to at least one contact hour of training.

c. An opportunity for ongoing interaction and timely feedback, including questions and answers within the contact hours if training is delivered in a group setting.

d. A certificate of training for each participant that includes:

- (1) The name of the participant.
- (2) The title of the training.
- (3) The dates of training.
- (4) The child development associate content area addressed.
- (5) The name of the training organization.
- (6) The name of the instructor.
- (7) The number of contact hours.
- (8) An indication of whether the training was delivered through self-study or in a group setting.

ARC 7049B

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 147.76 and 272C.3, the Board of Medicine hereby proposes to amend Chapter 1, "Administrative and Regulatory Authority," Chapter 2, "Public Records and Fair Information Practices," Chapter 3, "Waivers and Variances," Chapter 8, "Fees," Chapter 9, "Permanent Physician Licensure," Chapter 10, "Resident, Special and Temporary Physician Licensure," Chapter 11, "Continuing Education and Mandatory Training for Identifying and Reporting Abuse," Chapter 13, "Standards of Practice and Principles of Medical Ethics," Chapter 16, "Student Loan Default or Noncompliance," Chapter 17, "Licensure of Acupuncturists," Chapter 23, "Grounds for Discipline," and Chapter 26, "Reinstatement After Disciplinary Action," Iowa Administrative Code.

The proposed amendments are intended to update the citations in the Board's rules as a result of the enactment of 2008 Iowa Acts, Senate File 2338.

The Board approved these amendments to its rules during a regularly scheduled meeting on July 10, 2008.

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Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on September 2, 2008. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or E-mailed to ann.mowery@iowa.gov.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2338.

The following amendments are proposed.

ITEM 1. Amend rule **653—1.1(17A,147)**, definitions of “License,” “Licensee,” “Medical practice Acts,” “Physician,” “Profession,” “Respondent,” and “Rule,” as follows:

“*License*” shall mean a certificate issued to a person licensed to practice medicine and surgery, osteopathic medicine and surgery ~~or osteopathy~~, or acupuncture under the laws of the state of Iowa.

“*Licensee*” shall mean a person licensed to practice medicine and surgery, osteopathic medicine and surgery ~~or osteopathy~~, or acupuncture under the laws of the state of Iowa.

“*Medical practice Acts*” shall refer to Iowa Code chapters 147, and 148, ~~150 and 150A~~.

“*Physician*” shall mean a person licensed to practice medicine and surgery; or osteopathic medicine and surgery ~~or osteopathy~~ under the laws of this state.

“*Profession*” shall mean medicine and surgery, osteopathic medicine and surgery ~~or osteopathy~~, or acupuncture.

“*Respondent*” shall mean a licensee charged by the board in a complaint and statement of charges with violations of statutes or rules relating to the practice of medicine and surgery, osteopathic medicine and surgery ~~or osteopathy~~, or acupuncture.

“*Rule*” shall mean a regulation, requirement, procedure, or standard of general application prescribed by the board relating to either the administration or enforcement of Iowa Code chapters 147, 148, and 148E; ~~150 and 150A~~.

ITEM 2. Amend rule 653—1.2(17A) as follows:

653—1.2(17A) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 147, 148, 148E, ~~150, 150A~~, and 272C with regard to the practice of medicine and surgery, osteopathic medicine and surgery, ~~osteopathy~~, and acupuncture, including, but not limited to, the examination of applicants; determining the eligibility of applicants for licensure by examination or endorsement; the granting of permanent, temporary, resident or special licenses to physicians; determining the ineligibility of physicians to provide supervision to physician assistants; the investigation of violations or alleged violations of statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, ~~osteopathy~~, and acupuncture; the imposition of discipline upon licensees as provided by statute or rule; and the operation of a licensee review committee for the purpose of evaluating and monitoring licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability and who self-report or who are referred by the board to the committee.

ITEM 3. Amend paragraphs **1.3(5)“a”** and **“b”** as follows:

a. Administer the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, ~~osteopathy~~, and the practice of acupuncture by acupuncturists.

b. Review or investigate, upon receipt of a complaint or upon its own initiation, based upon information or evidence received, alleged violations of statutes or rules which relate to the practice of medicine and surgery, osteopathic medicine and surgery, ~~osteopathy~~, and the practice of acupuncture by licensed acupuncturists.

ITEM 4. Amend subrule 1.3(6) as follows:

1.3(6) Appoints a full-time executive director who:

a. Is not a member of the board.

b. Under the guidance or direction of the board performs administrative duties of the board including, but not limited to: staff supervision and delegation; administration and enforcement of the statutes and rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, ~~osteopathy~~, and the practice of acupuncture; issuance of subpoenas on behalf of the board or a committee of the board during the investigation of possible violations; enunciation of policy on behalf of the board.

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ITEM 5. Amend **653—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 68B, 148, 148E, ~~150, 150A~~, 252J, 261, and 272C.

ITEM 6. Amend subrule 2.14(1) as follows:

2.14(1) *Records of agency disciplinary hearings.* These records contain information about licensees and certificants who are the subject of an agency disciplinary proceeding or other action. This information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 147A, 148, 148C, ~~150, 150A~~, and 272C. This information is stored electronically and on paper. The information contained in “records of closed” board hearings is confidential in whole or in part pursuant to Iowa Code sections 21.5(4) and 272C.6 or other provisions of the law.

ITEM 7. Amend subrule 2.14(6) as follows:

2.14(6) *Examination records.* These records contain information about applicants for any of the following examinations: United States Medical Licensing Examination (USMLE), Federation of State Medical Boards of the United States, Inc. - Federation Licensing Examination (FLEX), National Board of Medical Examiners, National Board of Osteopathic Medical Examiners, National Commission for the Certification of Acupuncturists, individual state or territorial medical licensing boards, Licentiate of the Medical Council of Canada examination (LMCC), Special Purpose Examination (SPEX), or other examination approved by the board. These records may also contain information about applicants who pursue licensure by endorsement, score transfer, or other means. The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 148, and 148E, ~~150, and 150A~~ and is stored electronically and on paper. Portions of the examination records are confidential in part pursuant to Iowa Code sections 22.7(1), 22.7(19), and 147.21.

ITEM 8. Amend subrule 2.14(7) as follows:

2.14(7) *Investigative reports.* These records contain information about the subjects of board investigations and the activities of board investigators and agents. The records include a variety of attachments such as interviews; drug audits; medical records; pharmacy records; exhibits; police reports; and investigators’ comments, conclusions, and recommendations. This information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 147A, 148, and 148C, ~~150, and 150A~~. This information is stored electronically on microfilm and on paper. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections 22.7, 147.21, and 272C.6(4).

ITEM 9. Amend subrule 2.14(8) as follows:

2.14(8) *Licensure and certification records.* These records contain information about doctors of medicine and surgery, and osteopathic medicine and surgery, ~~and osteopathy~~; and registered acupuncturists who are licensed or registered by the agency. The information is collected by the agency pursuant to the authority granted in Iowa Code chapters 147, 148, and 148E, ~~150, and 150A~~ and is stored on paper, in automated data processing systems, on microfiche, on CD-ROM, floppy disk, and in the state archives. These records may contain information which is confidential under subrule 2.13(2).

ITEM 10. Amend **653—Chapter 3**, parenthetical implementation, as follows:

(17A,147,148,~~150,150A~~)

ITEM 11. Amend rule 653—3.4(17A,147,148), introductory paragraph, as follows:

653—3.4(17A,147,148) Criteria for waiver or variance. In response to a petition completed pursuant to rule 3.6(17A,147,148,~~150,150A~~), the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

ITEM 12. Amend subrule 3.5(4) as follows:

3.5(4) *File petition.* A petition is deemed filed when it is received in the board office. A petition should be sent to the Iowa Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686. The petition must conform to the form specified in rule 3.17(17A,147,148,~~150,150A~~).

MEDICINE BOARD[653](cont'd)

ITEM 13. Amend rule 653—3.6(17A,147,148) as follows:

653—3.6(17A,147,148) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. to 3. No change.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 3.4(17A,147,148,~~150,150A~~). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

5. to 10. No change.

ITEM 14. Amend **653—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter~~ chapters 17A, ~~as amended by 2000 Iowa Acts, chapter 1176, and Iowa Code chapters~~ 147, and 148, ~~150, and 150A~~.

ITEM 15. Amend rule **653—8.4(147,148,272C)**, catchwords, as follows:

653—8.4(147,148,272C) Application and licensure fees to practice medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~.

ITEM 16. Amend **653—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 147.11, 147.80, ~~147.103A, 148.3,~~ 148.5, 148.10, and 148.11.

ITEM 17. Amend rules **653—9.1(147,148,150,150A)** to **653—9.15(147,148,150,150A)** by changing the parenthetical implementation from “(147,148,150,150A)” to “(147,148)”.

ITEM 18. Amend rule **653—9.1(147,148)**, definitions of “Applicant,” “Current, active status,” “Medical degree,” and “Practice,” as follows:

“*Applicant*” means a person who seeks authorization to practice medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~ in this state by making application to the board.

“*Current, active status*” means a license that is in effect and grants the privilege of practicing medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~, as applicable.

“*Medical degree*” means a degree of doctor of medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~, or comparable education from a foreign medical school.

“*Practice*” means the practice of medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~.

ITEM 19. Amend subrules 9.2(1) and 9.2(2) as follows:

9.2(1) Licensure required. Licensure is required for practice in Iowa as identified in Iowa Code ~~sections~~ section 148.1, ~~150.2, and 150A.1;~~ the exceptions are identified in subrule 9.2(2). Provisions for permanent physician licensure are found in this chapter; provisions for resident, special and temporary physician licensure are found in 653—Chapter 10.

9.2(2) Licensure not required. The following persons are not required to obtain a license to practice in Iowa:

a. Those persons described in Iowa Code ~~sections~~ section 148.2(1) to (5), ~~150.3, and 150A.2(1) to (5).~~

b. Those persons who are incidentally called into this state in consultation with a physician or surgeon licensed in this state as described in Iowa Code ~~sections~~ section 148.2(5) ~~and 150A.2(5),~~ and as defined in rule 9.1(147,148,~~150,150A~~).

c. to g. No change.

h. Visiting resident physicians who come to Iowa to practice as part of their resident training program if under the supervision of an Iowa-licensed physician. An Iowa physician license is not required of a physician in training if the physician has a resident or permanent license in good standing in the home state of the resident training program. An Iowa temporary license is required of a physician in training if the physician does not hold a resident or permanent physician license in good standing in the home state of the resident training program (see rule 653—10.5(147,148,~~150,150A~~)).

MEDICINE BOARD[653](cont'd)

ITEM 20. Amend subrule 9.3(1) as follows:

9.3(1) Requirements. To be eligible for permanent licensure, an applicant shall meet all of the following requirements:

a. Fulfill the application requirements specified in rule 9.5(147,148,~~150,150A~~).

b. No change.

c. Hold a medical degree from an educational institution approved by the board at the time the applicant graduated and was awarded the degree.

(1) Educational institutions approved by the board shall be fully accredited by an accrediting agency recognized by the board as schools of instruction in medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~ and empowered to grant academic degrees in medicine.

(2) The accrediting bodies currently recognized by the board are:

1. LCME for the educational institutions granting degrees in medicine and surgery; and

2. AOA for educational institutions granting degrees in osteopathic medicine and surgery ~~or osteopathy~~.

(3) No change.

d. No change.

e. Pass one of the licensure examinations or combinations as prescribed in rule 9.4(147,148,~~150,150A~~).

ITEM 21. Amend paragraph **9.5(2)“e”** as follows:

e. A certified statement of scores on any examination required in rule 9.4(147,148,~~150,150A~~) that the applicant has taken in any jurisdiction. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

ITEM 22. Amend paragraph **9.6(8)“g”** as follows:

g. Deny a license. The board may deny a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial is set forth in rule 9.15(147,148,~~150,150A~~).

ITEM 23. Amend subrule 9.11(6), introductory paragraph, as follows:

9.11(6) Failure to renew. Failure of the licensee to renew a license within two months following its expiration date shall cause the license to become inactive and invalid. A licensee whose license is invalid is prohibited from practice until the license is reinstated in accordance with rule 9.13(147,148,~~150,150A~~).

ITEM 24. Amend subrule 9.13(3) as follows:

9.13(3) Reinstatement application process. The process is the same as that described in rule 9.6(147,148,~~150,150A~~).

ITEM 25. Amend **653—Chapter 9**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 147, 148, ~~150, 150A~~, and 272C.

ITEM 26. Amend rules **653—10.1(147,148,150,150A)** to **653—10.5(147,148,150,150A)**, parenthetical implementation, by striking “150,150A.”

ITEM 27. Amend rule **653—10.1(147,148)**, definitions of “Applicant,” “Medical degree” and “Practice,” as follows:

“*Applicant*” means a person who seeks authorization to practice medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~ in this state by making application to the board.

“*Medical degree*” means a degree of doctor of medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~, or comparable education from an international medical school.

“*Practice*” means the practice of medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~.

ITEM 28. Amend rule 653—10.2(148) as follows:

653—10.2(148) Licensure required. Licensure is required for practice in Iowa as identified in Iowa Code ~~sections section~~ 148.1, ~~150.2, and 150A.1~~; the exceptions are identified in 653—subrule 9.2(2). Provisions for permanent physician licensure are found in 653—Chapter 9; provisions for resident, special and temporary physician licensure are found in this chapter.

MEDICINE BOARD[653](cont'd)

ITEM 29. Amend paragraph **10.3(1)“f”** as follows:

f. A visiting resident physician may come to Iowa to practice as a part of the physician’s resident training program if the physician is under the supervision of an Iowa-licensed physician. An Iowa physician license is not required of a physician in training if the physician has a resident or permanent license in good standing in the home state of the resident training program. An Iowa temporary physician license is required of a physician in training if the physician does not hold a resident or permanent physician license in good standing in the home state of the resident training program (see rule 653—10.5(147,148,~~150,150A~~)).

ITEM 30. Amend subparagraph **10.3(4)“h”(6)** as follows:

(6) Deny a license. The board may deny a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial is set forth in 653—9.15(147,148,~~150,150A~~).

ITEM 31. Amend subparagraph **10.3(7)“h”(6)** as follows:

(6) Deny a request for an extension of the license. The board may deny an extension of a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial of an extension is set forth in 653—9.15(147,148,~~150,150A~~).

ITEM 32. Amend subparagraph **10.4(4)“h”(5)** as follows:

(5) Deny a license. The board may deny a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial is set forth in 653—9.15(147,148,~~150,150A~~).

ITEM 33. Amend paragraphs **10.5(1)“a”** and **“c”** as follows:

a. The temporary license to practice is intended for a physician to participate in a board-approved activity, as defined in rule 653—10.1(147,148,~~150,150A~~), in Iowa that is short-term. Temporary licensure is not intended to be a way for a physician to practice before a permanent license is granted. Temporary licensure is not intended for locum tenens.

c. A physician incidentally called into this state in consultation with a physician and surgeon licensed in this state, as defined in rule 653—10.1(147,148,~~150,150A~~), is not required to obtain a temporary license in Iowa.

ITEM 34. Amend subrule 10.5(5) as follows:

10.5(5) Standard application review process for a temporary license. The standard review process shall be utilized to review each application for a temporary license, except that the process identified in subrule 10.5(6) shall be used for any international medical graduate who does not currently hold a license in good standing in any United States jurisdiction or for any physician who seeks temporary licensure for an activity not listed in paragraphs “1” through “6” of the definition of “board-approved activity” in rule 653—10.1(147,148,~~150,150A~~). The standard application review process is as follows:

a. to g. No change.

h. The board shall consider applications and recommendations from the committee and shall:

(1) to (3) No change.

(4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician’s services by the organization or individual. The procedure for appealing a license denial is set forth in 653—9.15(147,148,~~150,150A~~).

ITEM 35. Amend subrule 10.5(6) as follows:

10.5(6) Application review process for applicants with certain exceptions. This application process shall be used to review applications submitted by an international medical graduate who does not currently hold a license in good standing in any United States jurisdiction or by a physician seeking temporary licensure for an activity not listed in paragraphs “1” through “6” of the definition of “board-approved activity” in rule 653—10.1(147,148,~~150,150A~~). Following is the application review process for applicants with exceptions:

a. to c. No change.

d. The board shall consider applications and recommendations from the committee and shall:

(1) to (3) No change.

(4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician’s services by the organization or individual. The procedure for appealing a license denial is set forth in 653—9.15(147,148,~~150,150A~~).

MEDICINE BOARD[653](cont'd)

ITEM 36. Amend **653—Chapter 10**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 147, 148, ~~150, 150A~~, and 272C.

ITEM 37. Amend rule **653—11.1(272C)**, definitions of “Active licensee” and “Licensee,” as follows:

“*Active licensee*” means any person licensed to practice medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~ in Iowa who has met all conditions of licensure and maintains a current license to practice in Iowa.

“*Licensee*” means any person licensed to practice medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~ in the state of Iowa.

ITEM 38. Amend rule 653—13.2(148,150,150A,272C), parenthetical implementation, as follows:

653—13.2(148,150,150A,272C) Standards of practice—appropriate pain management.

ITEM 39. Amend rule 653—13.4(147), parenthetical implementation, as follows:

653—13.4(147, 148) Supervision of pharmacists engaged in collaborative drug therapy management.

ITEM 40. Amend subrule **13.4(1)**, definition of “Physician,” as follows:

“*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery, or osteopathic medicine and surgery, ~~or osteopathy~~. A physician who executes a written protocol with an authorized pharmacist shall supervise the pharmacist’s activities involved in the overall management of patients receiving medications or disease management services under the protocol. The physician may delegate only drug therapies that are in areas common to the physician’s practice.

ITEM 41. Amend rule **653—13.4(148)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~chapters~~ chapter 148, ~~150 and 150A~~.

ITEM 42. Amend rule 653—13.5(147,148,150) as follows:

653—13.5(147,148,150) Standards of practice—chelation therapy. Chelation therapy or disodium ethylene diamine tetra acetic acid (EDTA) may only be used for the treatment of heavy metal poisoning or in the clinical setting when a licensee experienced in clinical investigations conducts a carefully controlled clinical investigation of its effectiveness in treating other diseases or medical conditions under a research protocol that has been approved by an institutional review board of the University of Iowa or Des Moines University—Osteopathic Medical Center.

This rule is intended to implement Iowa Code chapters 147; and 148, ~~and 150~~.

ITEM 43. Amend rule **653—13.20(147,148,150)**, introductory paragraph, as follows:

653—13.20(147,148,150) Principles of medical ethics. The Code of Medical Ethics (2002-2003) prepared and approved by the American Medical Association and the Code of Ethics (2002-2003) prepared and approved by the American Osteopathic Association shall be utilized by the board as guiding principles in the practice of medicine and surgery, and osteopathic medicine and surgery ~~and osteopathy~~ in this state.

ITEM 44. Amend rule **653—16.1(261)**, definition of “License,” as follows:

“*License*” means a license to practice medicine and surgery, osteopathic medicine and surgery, ~~osteopathy~~, or acupuncture under Iowa Code chapters 148; and 148E, ~~150, and 150A~~.

ITEM 45. Amend rule 653—17.2(148E) as follows:

653—17.2(148E) Licensure exceptions. In accordance with Iowa Code section 148E.3, the following rules govern those persons engaged in the practice of acupuncture not otherwise licensed by the state to practice medicine and surgery, ~~osteopathy~~, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry. A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the board as one that leads to eligibility for licensure is not required to obtain a license.

MEDICINE BOARD[653](cont'd)

ITEM 46. Amend subrule 17.10(2) as follows:

17.10(2) Standard of care. A licensee shall be held to the same standard of care as persons licensed to practice medicine and surgery, ~~osteopathy, and~~ or osteopathic medicine and surgery. Pursuant to Iowa Code section 272C.3, any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care in the practice of acupuncture constitutes malpractice and is grounds for the revocation or suspension of a license to practice acupuncture in this state.

ITEM 47. Amend rule 653—23.1(272C), introductory paragraph, as follows:

653—23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, ~~150, 150A,~~ 252J, 261 or 272C or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 48. Amend paragraph **23.1(2)“f”** as follows:

f. A willful or repeated departure from or the failure to conform to the minimal standard of acceptable and prevailing practice of medicine and surgery, or osteopathic medicine and surgery ~~or osteopathy~~ in the state of Iowa;

ITEM 49. Amend subrules 23.1(4) and 23.1(10) as follows:

23.1(4) Unprofessional conduct. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee’s practice or otherwise, and whether committed within this state or elsewhere; or a violation of the standards and principles of medical ethics or 653—13.7(147,148,272C) or 653—13.20(147,148,~~150~~) as interpreted by the board.

23.1(10) Violation of the laws or rules governing the practice of medicine or acupuncture of this state, another state, the United States, or any country, territory or other jurisdiction. Violation of the laws or rules governing the practice of medicine includes, but is not limited to, willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148, 148E, ~~150, 150A~~ or 272C or other state or federal laws or rules governing the practice of medicine.

ITEM 50. Amend subrules 23.1(14), 23.1(15), 23.1(21) and 23.1(23) as follows:

23.1(14) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession includes, but is not limited to, an intentional perversion of the truth, either orally or in writing, by a physician in the practice of medicine and surgery, or osteopathic medicine and surgery ~~or osteopathy~~ or by an acupuncturist.

23.1(15) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice acupuncture, ~~or~~ medicine and surgery, or osteopathic medicine and surgery ~~or osteopathy~~ in this state, and includes false representations of material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for a license in this state.

23.1(21) Knowingly aiding, assisting, procuring, or advising a person in the unlawful practice of acupuncture, ~~or~~ medicine and surgery, or osteopathic medicine and surgery ~~or osteopathy~~.

23.1(23) Failure to report voluntary agreements. Failure to report any voluntary agreement to restrict the practice of acupuncture, ~~or~~ medicine and surgery, or osteopathic medicine and surgery ~~or osteopathy~~ entered into with this state, another state, the United States, an agency of the federal government, or any country, territory or other jurisdiction.

MEDICINE BOARD[653](cont'd)

ITEM 51. Amend subrule 26.1(6) as follows:

26.1(6) A physician seeking reinstatement under this rule whose license became inactive during the period of suspension or revocation is also required to complete the reactivation process set forth in 653—9.13(147,148,~~150,150A~~) or 653—9.14(147,148,~~150,150A~~).

ARC 7048B

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 147.76 and 272C.3, the Board of Medicine hereby proposes to amend Chapter 9, "Permanent Physician Licensure," Iowa Administrative Code.

The proposed amendments define an observer and what an observer may do in a clinical setting and what is expected of the physician supervisor of an observer in a clinical setting.

The Board approved the amendment to Chapter 9 during a regularly scheduled meeting held on July 10, 2008.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on September 2, 2008. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to ann.mowery@iowa.gov.

There will be a public hearing on September 2, 2008, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 148 and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition in rule **653—9.1(147,148,150,150A)**:

"Observer" means a person who is not enrolled in an Iowa medical school or osteopathic medical school, who observes care to patients in Iowa for a defined period of time and for a noncredit experience, and who is supervised and accompanied by an Iowa-licensed physician as defined in 9.2(3). An observer shall not provide patient care, regardless of the observer's level of training or supervision. The supervising physician may authorize an observer to read a chart, observe a patient interview or examination, or witness procedures, including surgery. An observer shall not chart; touch a patient as part of an examination; conduct an interview; order, prescribe or administer medications; make decisions that affect patient care; direct others in providing patient care; or conduct procedures, including surgery. Any of these activities requires licensure to practice in Iowa. An unlicensed physician or a medical student may touch a patient to verify a physical finding in the immediate presence of a physician but shall not conduct a more inclusive physical examination.

ITEM 2. Amend paragraph **9.2(2)"a"** as follows:

a. Those persons described in Iowa Code sections 148.2(1) to ~~148.2(5), 150.3, and 150A.2(1) to (5)~~.

(1) A medical student or osteopathic medical student in an international medical school may not take on the role of a medical student in the patient care setting unless enrolling in the University of Iowa's Carver College of Medicine or in Des Moines University's College of Osteopathic Medicine; such a student may only be an observer as defined in rule 9.1(147,148,150,150A).

(2) A graduate of an international medical school shall not practice medicine without an Iowa medical license; however, the graduate may be an observer as defined in rule 9.1(147,148,150,150A).

MEDICINE BOARD[653](cont'd)

ITEM 3. Adopt the following **new** subrule 9.2(3):

9.2(3) Supervision of an observer. An Iowa-licensed physician who supervises an observer shall accompany the observer and solicit consent from each patient, where feasible, for the observation. The physician shall inform the patient of the observer's background, e.g., high school student considering a medical career, a medical graduate who is working on licensure. The supervising physician shall ensure that the observer remains within the scope of an observer as defined in rule 9.1(147,148,150,150A).

ARC 7050B

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 147.76 and 148E.7, the Board of Medicine hereby gives Notice of Intended Action to adopt new Chapter 12, "Nonpayment of State Debt," and to amend Chapter 23, "Grounds for Discipline," Iowa Administrative Code.

The Board approved these proposed amendments during its regularly held meeting on July 10, 2008.

Proposed Chapter 12 establishes that the Board may deny an application for the issuance or renewal of a medical or osteopathic medical license or acupuncture license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the Department of Revenue according to the procedures set forth in 2008 Iowa Acts, Senate File 2428, division II. The proposed rules spell out the procedures related to preparation and service of a denial notice, effective date of denial, responsibility of licensees and applicants to inform the Board of all actions related to the certificate of noncompliance, reinstatement following action against a license for state debt, effect of filing in district court, and final notification.

Proposed amendments to Chapter 23 address grounds for discipline related to state debt.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on September 2, 2008. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to ann.mowery@iowa.gov.

These amendments are intended to implement Iowa Code chapters 17A, 147, 148 and 272C and 2008 Iowa Acts, Senate File 2428, division II.

The following amendments are proposed.

ITEM 1. Adopt the following **new** 653—Chapter 12:

CHAPTER 12
NONPAYMENT OF STATE DEBT

653—12.1(82GA,SF2428) Definitions. For the purpose of this chapter, the following definitions shall apply.

"Act" means 2008 Iowa Acts, Senate File 2428, division II.

"Applicant" means an individual who is seeking the issuance of a license.

"Board" means the board of medicine.

"Centralized collection unit" means the centralized collection unit of the Iowa department of revenue.

"Certificate of noncompliance" means a document provided by the centralized collection unit of the department of revenue certifying that the named applicant or licensee has an outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

MEDICINE BOARD[653](cont'd)

“*Denial notice*” means a board notification denying an application for the issuance or renewal of a license as required by the Act.

“*Revocation or suspension notice*” means a board notification suspending a license for an indefinite or specified period of time or a notification revoking a license as required by the Act.

“*Withdrawal certificate*” means a document provided by the centralized collection unit certifying that the certificate of noncompliance is withdrawn and that the board may proceed with issuance, reinstatement, or renewal of a license.

653—12.2(82GA,SF2428) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the centralized collection unit. This rule shall apply in addition to the procedures set forth in the Act.

12.2(1) *Service of denial notice.* Notice shall be served upon the applicant or licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

12.2(2) *Effective date of denial.* The effective date of the denial of the issuance or renewal of a license, as specified in the denial notice, shall be 60 days following service of the denial notice upon the applicant or licensee.

12.2(3) *Preparation and service of denial notice.* The executive director of the board is authorized to prepare and serve the denial notice upon the applicant or licensee.

12.2(4) *Licensees and applicants responsible to inform board.* Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with the Act. Licensees and applicants shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawals of certificates issued by the centralized collection unit.

12.2(5) *Reinstatement following license denial.* All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to the Act.

12.2(6) *Effect of filing in district court.* In the event an applicant or a licensee files a timely district court action following service of a board denial notice, the board shall continue with the intended action described in the denial notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

12.2(7) *Final notification.* The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license, and shall similarly notify the applicant or licensee if the license is issued or renewed following the board’s receipt of a withdrawal certificate.

653—12.3(82GA,SF2428) Suspension or revocation of a license. The board shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit according to the procedures set forth in the Act. This rule shall apply in addition to the procedures set forth in the Act.

12.3(1) *Service of revocation or suspension notice.* A revocation or suspension notice shall be served upon the licensee by certified mail, return receipt requested; by personal service; or through authorized counsel.

12.3(2) *Effective date of revocation or suspension.* The effective date of the suspension or revocation of a license, as specified in the revocation or suspension notice, shall be 60 days following service of the notice upon the licensee.

12.3(3) *Preparation and service of revocation or suspension notice.* The executive director of the board is authorized to prepare and serve the revocation or suspension notice upon the licensee and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event that the license is on suspension, the executive director shall notify the licensee of the board’s intention to revoke the license.

MEDICINE BOARD[653](cont'd)

12.3(4) Licensee responsible to inform board. The licensee shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with the Act. Licensees shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and any withdrawal certificates issued by the centralized collection unit.

12.3(5) Reinstatement following license suspension or revocation. A licensee shall pay all board fees required for license renewal or license reinstatement before a license will be reinstated after the board has suspended or revoked a license pursuant to the Act.

12.3(6) Effect of filing in district court. In the event a licensee files a timely district court action pursuant to the Act, and following service of a revocation or suspension notice, the board shall continue with the intended action described in the revocation or suspension notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the license suspension or revocation, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

12.3(7) Final notification. The board shall notify the licensee in writing through regular first-class mail, or such other means as the board determines appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license, and shall similarly notify the licensee if the license is reinstated following the board's receipt of a withdrawal certificate.

These rules are intended to implement 2008 Iowa Acts, Senate File 2428, division II.

ITEM 2. Amend rule 653—23.1(272C), introductory paragraph, as follows:

653—23.1(272C) Grounds for discipline. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148, 148E, ~~150, 150A,~~ 252J, 261, or 272C or 2008 Iowa Acts, Senate File 2428, division II, or the rules promulgated thereunder. The grounds for discipline apply to physicians and acupuncturists. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), including civil penalties in an amount not to exceed \$10,000, when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 3. Renumber subrule **23.1(40)** as **23.1(41)**.

ITEM 4. Adopt the following new subrule 23.1(40):

23.1(40) Nonpayment of state debt as evidenced by a certificate of noncompliance issued pursuant to 2008 Iowa Acts, Senate File 2428, division II, and 653—Chapter 12.

ITEM 5. Amend **653—Chapter 23**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapters 17A, 147, 148 and 272C and 2008 Iowa Acts, Senate File 2428, division II.

ARC 7063B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Massage Therapy hereby gives Notice of Intended Action to rescind Chapter 130, "Administrative and Regulatory Authority for the Board of Massage Therapy," to amend Chapter 131, "Licensure of Massage Therapists," Chapter 133, "Continuing

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Education for Massage Therapists,” and Chapter 134, “Discipline for Massage Therapists,” and to rescind Chapter 135, “Fees,” Iowa Administrative Code.

These proposed amendments rescind chapters and rules that duplicate existing rules in 645—Chapters 4 and 5.

Any interested person may make written comments on the proposed amendments no later than September 2, 2008, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on September 2, 2008, from 2 to 2:30 p.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 intended to implement Iowa Code chapters 21, 147, 152C and 272C.

The following amendments are proposed.

ITEM 1. Rescind and reserve **645—Chapter 130**.

ITEM 2. Rescind and reserve rules **645—131.7(152C)**, **645—131.11(147)**, **645—131.12(147)** and **645—131.13(17A,147,272C)**.

ITEM 3. Rescind and reserve rules **645—133.4(152C,272C)**, **645—133.5(152C,272C)**, **645—133.6(152C,272C)** and **645—133.7(152C,272C)**.

ITEM 4. Rescind and reserve rule **645—134.6(152C)**.

ITEM 5. Rescind and reserve **645—Chapter 135**.

ARC 7081B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry hereby gives Notice of Intended Action to rescind Chapter 219, “Administrative and Regulatory Authority for the Board of Podiatry Examiners,” to amend Chapter 220, “Licensure of Podiatrists,” to rescind Chapter 221, “Minimum Training Standards for Podiatry Assistants Engaging in Podiatric Radiography,” to amend Chapter 222, “Continuing Education for Podiatrists,” Chapter 223, “Practice of Podiatry,” and Chapter 224, “Discipline for Podiatrists,” and to rescind Chapter 225, “Fees,” Iowa Administrative Code.

These proposed amendments change the name of the Board of Podiatry in response to 2007 Iowa Acts, Senate File 74, which renamed health-related examining boards as licensing boards, and remove duplicative chapters because new chapters common to all boards have recently been adopted.

Any interested person may make written comments on the proposed amendments no later than September 3, 2008, addressed to Roxanne Sparks, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail rsparks@idph.state.ia.us.

A public hearing will be held on September 3, 2008, from 9 to 9:30 a.m. in Fifth Floor Board Room 526, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 149 and 272C.

The following amendments are proposed.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- ITEM 1. Rescind and reserve **645—Chapter 219**.
- ITEM 2. Rescind and reserve rules **645—220.8(147)**, **645—220.12(147)**, **645—220.13(147)** and **645—220.14(17A,147,272C)**.
- ITEM 3. Strike the words “board of podiatry examiners” wherever they appear in **645—Chapter 220** and insert the words “board of podiatry” in lieu thereof.
- ITEM 4. Rescind and reserve **645—Chapter 221**.
- ITEM 5. Rescind and reserve rules **645—222.5(149,272C)** and **645—222.7(149,272C)**.
- ITEM 6. Strike the words “board of podiatry examiners” wherever they appear in **645—Chapter 222** and insert the words “board of podiatry” in lieu thereof.
- ITEM 7. Strike the words “board of podiatry examiners” wherever they appear in **645—Chapter 223** and insert the words “board of podiatry” in lieu thereof.
- ITEM 8. Rescind and reserve rule **645—224.5(149)**.
- ITEM 9. Strike the words “board of podiatry examiners” wherever they appear in **645—Chapter 224** and insert the words “board of podiatry” in lieu thereof.
- ITEM 10. Rescind and reserve **645—Chapter 225**.

ARC 7060B**RACING AND GAMING COMMISSION[491]****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 99D.7 and 99F.4, the Iowa Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 5, “Track, Gambling Structure, and Excursion Gambling Boat Licensees’ Responsibilities,” Chapter 6, “Occupational and Vendor Licensing,” Chapter 10, “Thoroughbred and Quarter Horse Racing,” Chapter 11, “Gambling Games,” and Chapter 12, “Accounting and Cash Control,” Iowa Administrative Code.

The proposed amendments are described below:

New subrule 5.4(7) sets forth the requirements for the video recording of gambling activities.

The amendments to paragraph “a” of subrule 5.4(8) are intended to improve its organization and to clarify that “year” means a calendar year.

The rescission of subrule 6.16(5) eliminates provisions for temporary licenses for horse owners.

New rule 491—6.28(99D) requires that the owner and the trainer be licensed by no later than the first post time of the race card for the day in which the horse is entered.

New paragraph “f” of subrule 10.6(2) prohibits a horse from being run on two consecutive calendar days.

Definitions of “discount rate,” “present value” and “reserve” are set forth in rule 491—11.1(99F).

The amendments to subrule 11.12(8) remove the requirements for trustees relating to wide area progressive jackpots and establish a reserve.

New paragraph “e” of subrule 12.3(1) requires that a facility have an internal control relating to surveillance coverage.

New subrule 12.15(5) requires that a facility maintain a log of updates to computer systems connected to each slot machine.

Any person may make written suggestions or comments on the proposed amendments on or before September 2, 2008. Written material should be directed to the Racing and Gaming Commission, 717 E.

RACING AND GAMING COMMISSION[491](cont'd)

Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on September 2, 2008, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Rescind subrule 5.4(7) and adopt the following **new** subrule in lieu thereof:

5.4(7) Video recording. Licensees shall conduct continuous surveillance with the capability of video recording all gambling activities under Iowa administrative rules 661—Chapter 141, promulgated by the department of public safety.

a. “Gambling activities” means participating in or wagering on gambling games on the gaming floor; the movement, storage, and handling of uncounted gambling revenues; manual exchange of moneys for forms of wagering credit on the gaming floor; entrance of the public onto the gaming floor; and any other activity as determined by the commission administrator or administrator’s designee.

b. Commission and DCI representatives shall have unrestricted access to and use of, including independent access capabilities, both live and recorded views and images of the surveillance system.

c. A commission representative may allow a gambling game to be placed in operation pending approval under 661—Chapter 141.

ITEM 2. Amend paragraph **5.4(8)“a”** as follows:

a. *Qualifying agreements.*

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 are agreements that qualify for submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

~~(1)~~ 1. Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity or a unit of government for the payment of taxes or utilities.

~~(2)~~ 2. Any disposal of facility assets or provision of goods and services at less than market value to anyone other than a not-for-profit entity or a unit of government.

~~(3)~~ 3. A previously approved qualifying agreement, if consideration exceeds the approved amount in a calendar year by the greater of \$100,000 or 25 percent.

~~A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements that are ongoing or open-ended need only be submitted on initiation, unless there is a material change in terms or noncompliance with 5.4(8)“b”(4).~~

~~(4)~~ 4. Any type of contract, regardless of value or term, where a third party provides electronic or mechanical access to cash or credit for a patron of the facility. The contract must contain a clause that provides for immediate notification and implementation when technology becomes available to allow a person to voluntarily bar the person’s access to receive cash or credit from such devices located on the licensed premises.

(2) A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements that are ongoing or open-ended need only be submitted on initiation, unless there is a material change in terms or noncompliance with 5.4(8)“b”(4).

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 3. Rescind and reserve subrule **6.16(5)**.

ITEM 4. Adopt the following **new** rule 491—6.28(99D):

491—6.28(99D) Time by which owner and trainer must be licensed. The owner (includes stable names, partnerships, and corporations) and the trainer of a horse entered to race must both be licensed by the first post time of the race card for the day in which the horse is entered.

ITEM 5. Adopt the following **new** paragraph **10.6(2)“f”**:

f. Consecutive days. No horse shall be run on two consecutive calendar days.

ITEM 6. Adopt the following **new** definitions in rule **491—11.1(99F)**:

“*Discount rate*” means either the current prime rate as published in the Wall Street Journal or a blended rate computed by obtaining quotes for the purchase of qualified investments at least three times per month.

“*Present value*” means the current value of a future payment or series of payments, discounted using the discount rate.

“*Reserve*” means an account with an independent financial institution or brokerage firm consisting of cash and qualified investments used to satisfy periodic payments of prizes.

ITEM 7. Amend paragraphs **11.12(8)“i”** and **“j”** as follows:

i. When a system jackpot is won, a person authorized to provide the multilink ~~and the trustee(s) provided for in paragraph “n,” subparagraph (1),~~ shall have the opportunity to inspect the machine, EPROM, the error events received by the central system, and any other data which could reasonably be used to ascertain the validity of the jackpot.

(1) to (3) No change.

j. Any person authorized to provide a multilink must supply to the commission ~~and the trustee(s),~~ as requested, reports which support and verify the economic activity of the system.

(1) Any person authorized to provide a multilink must supply to the commission ~~and the trustee(s),~~ as requested, reports and information indicating the amount of, and basis for, the current system jackpot. Such reports may include an aggregate report and a detail report. The aggregate report may show only the balancing of the system with regard to systemwide totals. The detail report shall be in such form as to indicate for each machine, summarized by location, the coin-in totals as such terms are commonly understood in the industry.

(2) No change.

ITEM 8. Rescind paragraphs **11.12(8)“m”** to **“o”** and adopt the following **new** paragraphs in lieu thereof:

m. A facility, or an entity that is licensed as a manufacturer or distributor, shall provide the multilink, in accordance with a written agreement which shall be reviewed and approved by the commission prior to offering the jackpots.

n. The payment of any system jackpot offered on a multilink shall be administered by the person authorized to provide the multilink, and such person shall have primary liability for payment of any system jackpot the person administers. In addition, any facility shall have secondary liability for the payment of system jackpots won on a multilink in which the licensee is or was a participant if and to the extent that the person authorized to provide the multilink fails to make payment when due.

o. A person who is authorized to provide the multilink shall comply with the following:

(1) A reserve shall be established and maintained by the provider of the multilink in an amount of not less than the sum of the following amounts:

1. The present value of the aggregate remaining balances owed on all jackpots previously won by patrons on the multilink.

2. The present value of the amount currently reflected on the jackpot meters of the multilink.

3. The present value of one additional reset (start amount) of the multilink.

(2) The reserve shall continue to be maintained until all payments owed to winners of the system jackpots have been made.

(3) For system jackpots disbursed in periodic payments, any qualified investment shall be purchased within 90 days following notice of the win of the system jackpot, and a copy of such qualified investment will be provided to the commission office within 30 days of purchase. Any qualified investment shall have

RACING AND GAMING COMMISSION[491](cont'd)

a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment, and shall have a maturity date prior to the date the periodic jackpot payment is required to be made.

(4) The person authorized to provide the multilink shall not be permitted to sell, trade, or otherwise dispose of any qualified investments prior to their maturity unless approval to do so is first obtained from the commission.

(5) Upon becoming aware of an event of noncompliance with the terms of the reserve requirement mandated by subparagraph (1) above, the person authorized to provide the multilink must immediately notify the commission of such event. An event of noncompliance includes a nonpayment of a jackpot periodic payment or a circumstance which may cause the person authorized to provide the multilink to be unable to fulfill, or which may otherwise impair the person's ability to satisfy, the person's jackpot payment obligations.

(6) On a quarterly basis, the person authorized to provide the multilink must deliver to the commission office a calculation of system reserves required under subparagraph (1) above. The calculation shall come with a certification of financial compliance signed by a duly authorized financial officer of the person authorized to provide the multilink, on a form prescribed by the commission, validating the calculation.

(7) The reserve required under subparagraph (1) must be examined by an independent certified public accountant according to procedures approved by the commission. Two copies of the report must be submitted to the commission office within 90 days after the conclusion of the fiscal year of the person authorized to provide the multilink.

ITEM 9. Adopt the following **new** paragraph **11.12(8)“p”**:

p. For system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a “qualified prize option,” as that term is defined in Section 451(h) of the Internal Revenue Code. The person authorized to provide the multilink shall calculate the single cash payment based on the discount rate. Until the new discount rate becomes effective, the discount rate selected by the person authorized to provide the multilink shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected discount rate.

ITEM 10. Adopt the following **new** paragraph **12.3(1)“e”**:

e. Surveillance control governing the administration of the network for the purpose of utilizing and transmitting live or recorded views or images of a video surveillance system for asset protection, loss prevention, investigation of tort/liability claims, game protection, employee oversight, resolution of patron disputes, corporate governance, management analysis, or other use consistent with a licensee's statutory responsibilities as approved by the administrator. Capabilities within the surveillance system for video recording of other areas of a facility and grounds may be included provided that commission and DCI access is unrestricted.

ITEM 11. Adopt the following **new** subrule 12.15(5):

12.15(5) The licensee shall maintain a current log, accessible to commission representatives, of all changes and updates made to the computer system. All changes and updates shall be approved as required by 491—subrule 11.4(1).

ARC 7057B**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION,
IOWA[751]****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 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 7, "Authorized Use and Users," Iowa Administrative Code.

These amendments reflect the addition of a new subsection to Iowa Code section 8D.13 during the 2008 legislative session (2008 Iowa Acts, House File 2539), providing the Iowa Hospital Association access to the Iowa Communications Network.

These amendments are subject to waiver or variance pursuant to 751—Chapter 16.

Any interested person may make written comments or suggestions on the proposed amendments on or before September 2, 2008. Such written comments should be directed to Tamara Fujinaka, Government Relations Manager, Iowa Communications Network, First Floor, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. E-mail may be sent to tami.fujinaka@iowa.gov.

Also, there will be a public hearing on September 4, 2008, beginning at 1 p.m. in the ICN Grand Conference Room, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa. 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 plans to attend the public hearing and who may have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

These amendments were approved at the July 17, 2008, meeting of the Iowa Telecommunications and Technology Commission.

These amendments are intended to implement 2008 Iowa Acts, House File 2539.

The following amendments are proposed.

ITEM 1. Amend rule **751—7.1(8D)**, definition of "Private agency," as follows:

"*Private agency*" means an accredited nonpublic school, a nonprofit institution of higher education eligible for tuition grants, ~~or~~ a hospital licensed pursuant to Iowa Code chapter 135B or a physician clinic to the extent provided in Iowa Code section 8D.13, subsection 16, or the Iowa Hospital Association.

ITEM 2. Amend subrule 7.4(5) as follows:

7.4(5) Telemedicine connectivity.

a. The following telemedicine facilities may connect directly to the network for video and data transmissions including Internet access.

~~a.~~ (1) Hospitals licensed pursuant to Iowa Code chapter 135B;

~~b.~~ (2) Physician clinics to the extent provided in Iowa Code section 8D.13(16).

b. Access is offered to the Iowa Hospital Association for the purposes of collection, maintenance, and dissemination of health and financial data for hospitals and for hospital education services.

ARC 7083B**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 Supplement section 35A.5 and 2008 Iowa Acts, Senate File 2289, the Department of Veterans Affairs hereby proposes to amend Chapter 9, "War Orphans Educational Assistance Fund," Iowa Administrative Code.

The proposed amendments to Chapter 9 are intended to comply with changes made during the 2008 legislative session. Changes to Chapter 9 include modifying the residency requirements so that benefits may be provided to a war orphan of a deceased veteran who lived in this state; requiring that a war orphan begin utilizing the education benefits before reaching the age of 26 and finish schooling before reaching the age of 31; establishing that this assistance is for tuition costs only and will be paid directly to the institution; setting minimum academic standards that students must meet in order to receive funding; allowing these funds to be used at any postsecondary institution in Iowa; and establishing a maximum funding amount that equals five times the highest resident undergraduate tuition rate of the three regent universities.

Any interested party or persons may present their views either orally or in writing at a public hearing to be held on September 2, 2008, from 4 to 4:30 p.m. at the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa.

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. Persons who wish to make oral presentations at the public hearing should contact Kent Hartwig, Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50313-1824, or at (515)242-5331, prior to the date of the hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact Kent Hartwig at (515)242-5331.

Any interested person may make written comments or suggestions on the proposed amendments until 4:30 p.m. on September 2, 2008. Written comments and suggestions should be addressed to Kent Hartwig, Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50313-1824; sent by E-mail to kent.hartwig@iowa.gov; or sent by fax to (515)242-5659.

No fiscal impact is anticipated.

These amendments are intended to implement Iowa Code sections 35.8 and 35.9 as amended by 2008 Iowa Acts, Senate File 2289.

The following amendments are proposed.

ITEM 1. Amend rule 801—9.3(35) as follows:

801—9.3(35) Program for children of veterans who died on or after September 11, 2001.

9.3(1) Definition. For the purposes of this rule, a war orphan is:

a. ~~The A~~ child who has not reached the age of 31 and who is the child of a man or woman who died in service or as a result of such service on or after September 11, 2001, as follows:

(1) While serving in the military or naval forces of the United States, to include members of the reserve components performing service or duties required or authorized under Chapter 39, United States Code, and Title 32, United States Code, Sections 502 through 505.

(2) Active state service required or authorized under Iowa Code chapter 29A, or as a result of such service.

b. ~~The A~~ child who has not reached the age of 31 and who is the child of a national guardsman or other member of a reserve component who died or was killed in the performance of training or other duties ordered by ~~competent~~ federal or state authorities.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

9.3(2) Residency requirement. A war orphan shall have lived in the state of Iowa for at least two years. To qualify for war orphan tuition assistance, the war orphan shall be the child of a veteran who died as a result of active military service and at the time of entering into active military service had maintained primary residence in this state for a period of at least six months immediately preceding the filing of an application before entering into active military service.

9.3(3) School requirement. A war orphan shall attend in this state a community college established under Iowa Code chapter 260C or an institution of higher education governed by the state board of regents a postsecondary educational institution in this state.

9.3(4) Amount of payment. In no case shall payment of war orphans educational assistance be in excess of \$5,500 per person per year or the amount of the child's established financial need, whichever is less. There is a lifetime maximum of \$27,500 per person an amount in excess of the highest resident undergraduate tuition rate established per year for an institution of higher learning under the control of the state board of regents, less the amount of any state and federal education benefits, grants, or scholarships received by the child, or the amount of the child's established financial need, whichever is less, to defray the expenses of tuition. The lifetime maximum payment to an eligible child shall be an amount not to exceed five times the highest resident undergraduate tuition rate established per year for an institution of higher learning under the control of the state board of regents.

9.3(5) Age requirements. In order to receive state educational assistance under this rule, a war orphan shall begin postsecondary education prior to reaching the age of 26. State educational assistance ceases at the time the war orphan reaches the age of 31.

ITEM 2. Amend subrules 9.4(2) to 9.4(4) as follows:

9.4(2) How assistance may be used. War orphans educational assistance may be used to defray the expenses of tuition, matriculation, laboratory and similar fees, books and supplies, board, lodging, and any other reasonably necessary expense for the child or children attending a school meeting the requirements set forth above.

9.4(3) Scholastic and financial standing. War orphans educational assistance is a gift from the state of Iowa to any eligible war orphans and is given regardless of scholastic or financial standing orphan who meets the academic progress standards of the postsecondary educational institution the war orphan is attending.

9.4(4) Unrestricted factors. There are no restrictions on war orphans with respect to age, number of years of planned attendance at a school of learning, or marital status.

ITEM 3. Amend paragraph 9.5(1)“b” as follows:

b. A copy of the war orphan's birth certificate and proof of death of the veteran parent shall be included with the completed application. Proof of death of the veteran parent while in service may be a telegram, letter, or certified verification from the U.S. Department of Defense. Proof of death after service is a copy of a death certificate. Proof that the deceased veteran parent resided in this state for six months immediately before entering active military service shall also be included with the application. This may include, but is not limited to, a record of a property tax payment, mortgage payment or rent payment or a rental contract.

ITEM 4. Amend **801—Chapter 9**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 35.8, and 35.9 as amended by 2008 Iowa Acts, Senate File 2289, and Iowa Code sections 35.10 and 35.11.

ARC 7076B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code Supplement section 137F.2, the Department of Inspections and Appeals hereby amends Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code.

Item 1 deletes language from subrule 31.1(8) to remove the distance restriction between a sink drain and a sewage drain and to require that only an air break be present.

Item 2 rescinds duplicative provisions for mobile units/pushcarts that are included in the 2005 Food and Drug Administration Food Code with Supplement, which was adopted effective July 1, 2008, with publication in the Iowa Administrative Bulletin on April 9, 2008, as **ARC 6708B**. Rule 481—31.7(137F) is rescinded so that the standards set forth for mobile units/pushcarts in the Food Code will be applied to mobile units/pushcarts rather than the standards in rule 481—31.7(137F). The effects on the regulated industry will be the lowering of the required holding temperatures, the lowering of the required cooking temperatures for pork, the adoption of the same standards for bare-hand contact as for all other food establishments, and the adoption of the uniform consumer advisory.

Item 1 of this rule making is subject to waiver provisions through the 2005 Food and Drug Administration Food Code with Supplement and the Department's general waiver provisions at 481—Chapter 6. Item 2 of this rule making is not subject to waiver provisions because the amendment rescinds a rule; the rules in place subsequent to rescission are subject to waiver provisions through the 2005 Food and Drug Administration Food Code with Supplement and the Department's general waiver provisions at 481—Chapter 6.

Notice of Intended Action on Item 2 of these amendments was published in the Iowa Administrative Bulletin on June 18, 2008, as **ARC 6839B**. Item 1 was added in response to comments received during training of food inspectors regarding adoption of the Food Code. Item 2 is identical to the original Notice.

The Director adopted these amendments on July 24, 2008.

The Department finds that these amendments confer a benefit on the regulated community by lowering required temperatures and reducing the spacing requirement between drains. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments became effective on July 24, 2008.

These amendments are intended to implement Iowa Code Supplement chapter 137F.

The following amendments are adopted.

ITEM 1. Amend subrule 31.1(8) as follows:

31.1(8) Paragraph 5-402.11(D) is amended by adding the following: "A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air break ~~of not less than one inch between the outlet and the rim of the floor sink or receptor.~~"

ITEM 2. Rescind and reserve rule **481—31.7(137F)**.

[Filed Emergency After Notice 7/24/08, effective 7/24/08]

[Published 8/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/08.

ARC 7075B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 135C.2, 135C.26 and 135C.36, the Department of Inspections and Appeals hereby amends Chapter 50, "Health Care Facilities Administration," and Chapter 56, "Fining and Citations," Iowa Administrative Code.

Item 1 rescinds rule 481—50.7(10A,135C) and adopts a new rule in lieu thereof to clarify when health care facilities must notify the Department of an occurrence. The rule clearly defines "major injury" and provides clarification on other occurrences that require notification. Item 3 amends rule 481—56.9(135C) to clarify the factors considered in determining the class of violation.

The comments received from the public were generally favorable, but some commenters requested further clarification in certain areas. Changes were made to the rules to reflect those comments.

Notice of Intended Action was published in the April 9, 2008, Iowa Administrative Bulletin as **ARC 6710B**. In response to comments, the following changes were made since publication of the Notice.

- Subrule 50.7(1) was changed to add references to the definition of ambulatory.
- Subrule 50.7(3) was changed to provide further clarity on the situations intended to be covered by this subrule.
- Subrule 50.7(4) was changed so that the industry term "elopes" replaces the term "wanders away." Additionally, a clear definition of "elopes" was provided.
- Subrule 50.7(6) was changed to limit the need to report fires in facilities to those that cause injury, that require the notification of emergency services, or that call for full or partial evacuation.
- Subrule 50.7(7) was changed to limit the need to report problems with sprinkler or alarm systems to those instances in which the system is down more than 4 hours in a 24-hour period and clarifies that notification to the Department and the State Fire Marshal is required.
- Subrule 56.9(2) was changed to limit the past history of a facility as it relates to a violation that has occurred to the 24 months preceding the violation.

These amendments were presented to the Board of Health for its initial review on March 12, 2008. The amendments were approved by the Board of Health on July 24, 2008.

These amendments are intended to implement Iowa Code sections 135C.2, 135C.26, and 135C.35.

These amendments will become effective on September 17, 2008.

The following amendments are adopted.

ITEM 1. Rescind rule 481—50.7(10A,135C) and adopt the following **new** rule in lieu thereof:

481—50.7(10A,135C) Additional notification. The director or the director's designee shall be notified within 24 hours, or the next business day, by the most expeditious means available (I,II,III):

50.7(1) Of any accident causing major injury.

a. "Major injury" shall be defined as any injury which:

- (1) Results in death; or
- (2) Requires admission to a higher level of care for treatment, other than for observation; or
- (3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a "major injury" based upon the circumstances of the accident, the previous functional ability of the resident, and the resident's prognosis.

b. The following are not reportable accidents:

- (1) An ambulatory resident, as defined in rules 481—57.1(135C), 58.1(135C), and 63.1(135C), who falls when neither the facility nor its employees have culpability related to the fall, even if the resident sustains a major injury; or
- (2) Spontaneous fractures; or
- (3) Hairline fractures.

50.7(2) When damage to the facility is caused by a natural or other disaster.

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

50.7(3) When there is an act that causes major injury to a resident or when a facility has knowledge of a pattern of acts committed by the same resident on another resident that results in any physical injury. For the purposes of this subrule, “pattern” means two or more times within a 30-day period.

50.7(4) When a resident elopes from a facility. For the purposes of this subrule, “elopes” means when a resident who has impaired decision-making ability leaves the facility without the knowledge or authorization of staff.

50.7(5) When a resident attempts suicide, regardless of injury.

50.7(6) When a fire occurs in a facility and the fire requires the notification of emergency services, requires full or partial evacuation of the facility, or causes physical injury to a resident.

50.7(7) When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapter 235B and 2008 Iowa Acts, House File 2591, which require reporting of dependent adult abuse.

ITEM 2. Amend **481—Chapter 50**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 22.11, and 135B.3 to 135B.7, 135C.6, 135C.7, 135C.10, 135C.11, 135C.14, 135C.16, 135C.19, and 135C.26 and Iowa Code chapters 10A and 135C.

ITEM 3. Amend rule 481—56.9(135C) as follows:

481—56.9(135C) Factors determining selection of class of violation. In determining which class of violation will be designated in the citation, where more than one class is specified in the notation following the rule, the director of the department of inspections and appeals ~~may~~ shall consider evidence of the circumstances surrounding the violation, including, but not limited to, the following factors:

56.9(1) The frequency and length of time during which the violation occurred, i.e., whether the violation was an isolated or a widespread occurrence, practice, or condition;

~~**56.9(2)** The frequency of the violation, i.e., whether the violation was an isolated or a widespread occurrence, practice, or condition;~~

~~**56.9(3)** **56.9(2)** The past history of the facility, within 24 months of the violation as it relates to the nature of the violation, i.e., whether the violation was a first-time occurrence or one which has occurred in the past at that facility;~~

~~**56.9(4)** **56.9(3)** The intent culpability of the facility, as it relates to the reasons the violation occurred;~~

~~**56.9(5)** **56.9(4)** The extent of any harm to the residents or the effect on the health, safety, or security of the residents which resulted from the violation;~~

~~**56.9(6)** **56.9(5)** The relationship of the violation to any other types of violations which have occurred in the facility, i.e., whether other violations in combination with the violation in question, caused increased harm or adverse effects to the residents of the facility;~~

~~**56.9(7)** **56.9(6)** The actions of the facility after the occurrence of the violation, including when corrective measures, if any, were implemented and whether the facility notified the director as required;~~

~~**56.9(8)** **56.9(7)** The accuracy and extent of records kept by the facility which relate to the violation, and the availability of such records to the department;~~

~~**56.9(9)** The number of other types of related violations occurring simultaneously or within a short period of time of the violation in question.~~

~~**56.9(8)** The rights of residents to make informed decisions with their doctor(s) and family/legal representative(s); and~~

~~**56.9(9)** Whether the facility made a good-faith effort to address a high-risk resident’s specific needs, and whether the evidence substantiates this effort.~~

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

ITEM 4. Amend **481—Chapter 56**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~sections 10A.202, 10A.402, 135C.14(8), 135C.25 and 135C.36~~ chapters 10A and 135C.

[Filed 7/24/08, effective 9/17/08]

[Published 8/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/08.

ARC 7082B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 510B.3, the Iowa Insurance Division hereby adopts new Chapter 59, "Pharmacy Benefits Managers," Iowa Administrative Code.

This chapter describes the authority of the Insurance Division to oversee pharmacy benefits managers. In addition, the chapter establishes standards for timely payment of claims, penalties for noncompliance, and a resolution process for complaints and disputes.

Notice of Intended Action was published in the May 7, 2008, Iowa Administrative Bulletin as **ARC 6781B**. A public hearing was held at the office of the Insurance Division at 10 a.m. on May 28, 2008. The Division received oral and written comments. The Division changed the date timely payment of pharmacy claims will take effect due to the additional time needed to review and revise the rules so that carriers and pharmacy benefits managers may develop the quicker time payment schedule. The completion date of the feasibility study has been extended. The Division implemented an internal appeals process for issues regarding audits and terminations with an independent third-party review following the internal appeals process. The termination provisions have also been modified to allow for a termination when the pharmacy benefits manager has evidence that the pharmacy or pharmacist has engaged in fraudulent conduct or poses a significant risk to patient care or safety.

These rules will become effective September 17, 2008.

These rules are intended to implement Iowa Code chapters 17A and 514L and Iowa Code Supplement chapter 510B.

The following amendment is adopted.

Adopt the following new 191—Chapter 59:

CHAPTER 59 PHARMACY BENEFITS MANAGERS

191—59.1(510B) Purpose. The purpose of this chapter is to administer the provisions of Iowa Code Supplement chapter 510B relating to the regulation of pharmacy benefits managers.

191—59.2(510B) Definitions. The terms defined in Iowa Code Supplement section 510B.1 shall have the same meaning for the purposes of this chapter. The definitions contained in 191—Chapter 58, "Third-Party Administrators," and 191—Chapter 78, "Uniform Prescription Drug Information Card," of the Iowa Administrative Code are incorporated by reference. As used in this chapter:

"*Clean claim*" means a claim which is received by any pharmacy benefits manager for adjudication and which requires no further information, adjustment or alteration by the pharmacist or pharmacies or the insured in order to be processed and paid by the pharmacy benefits manager. A claim is a clean claim if it has no defect or impropriety, including any lack of substantiating documentation, or no particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this chapter. A clean claim includes a resubmitted claim with previously identified deficiencies corrected.

"*Complaint*" means a written communication expressing a grievance or an inquiry concerning a transaction between a pharmacy benefits manager and a pharmacy or pharmacist.

INSURANCE DIVISION[191](cont'd)

“Day” means a calendar day, unless otherwise defined or limited.

“Paid” means the day on which the check is mailed or the day on which the electronic payment is processed by the pharmacy benefits manager’s bank.

191—59.3(510B) Timely payment of pharmacy claims.

59.3(1) All benefits payable under a pharmacy benefits management plan shall be paid as soon as feasible but within 20 days after receipt of a clean claim when the claim is submitted electronically and shall be paid within 30 days after receipt of a clean claim when the claim is submitted in paper format.

59.3(2) Payments to the pharmacy or pharmacist for clean claims are considered to be overdue if not paid within 20 or 30 days, whichever is applicable. If any clean claim is not timely paid, the pharmacy benefits manager must pay the pharmacy or pharmacist interest at the rate of 10 percent per annum commencing the day after any claim payment or portion thereof was due until the claim is finally settled or adjudicated in full.

59.3(3) Existing contracts between clients and pharmacy benefits managers shall comply with the requirement that clean claims be paid within 20 or 30 days, whichever is applicable, when such contracts are renegotiated on or after January 1, 2009, but no later than December 31, 2009.

191—59.4(510B) Study. On or before December 31, 2009, the commissioner will examine the feasibility of requiring a 15-day payment schedule for electronically submitted claims. The examination shall include economic impact on pharmacy benefits managers, patients, and Iowa pharmacies.

191—59.5(510B) Complaints.

59.5(1) Each pharmacy benefits manager shall develop an internal system to record and report complaints. This system shall include but not be limited to:

- a. Complaints from the pharmacy indicating the reason for the complaint and factual documentation to support the complaint;
- b. Contact name, address and telephone number of the pharmacy benefits manager;
- c. Contact name, address and telephone number of the pharmacy;
- d. Prescription number;
- e. Prescription reimbursement amount for disputed claim(s);
- f. Disputed prescription claim payment date(s);
- g. Plan benefits certificate.

59.5(2) A summary of all complaints as outlined in subrule 59.5(1) received by the pharmacy benefits manager shall be submitted to the commissioner on a quarterly basis within 30 days after the calendar quarter has ended.

191—59.6(510B) Auditing practices.

59.6(1) An audit of the pharmacy records by a pharmacy benefits manager shall be conducted in accordance with the following:

- a. The pharmacy benefits manager conducting the initial on-site audit must provide the pharmacy written notice at least one week prior to conducting any audit;
- b. Any audit which involves clinical or professional judgment must be conducted by or in consultation with a pharmacist;
- c. When a pharmacy benefits manager alleges an overpayment has been made to a pharmacy or pharmacist, the pharmacy benefits manager shall provide the pharmacy or pharmacist sufficient documentation to determine the specific claims included in the alleged overpayment;
- d. A pharmacy may use the records of a hospital, physician or other authorized practitioner of the healing arts for drugs or medicinal supplies, written or transmitted by any means of communication, for purposes of validating the pharmacy record with respect to orders or refills of a legend or narcotic drug;
- e. Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the pharmacy benefits manager;

INSURANCE DIVISION[191](cont'd)

f. The period covered by an audit may not exceed two years from the date on which the claim was submitted to or adjudicated by a managed care company, insurance company, third-party payor, or any pharmacy benefits manager that represents such companies, groups, or a department;

g. Unless otherwise consented to by the pharmacy, an audit may not be initiated or scheduled during the first seven calendar days of any month due to the high volume of prescriptions filled during that time;

h. The preliminary audit report must be delivered to the pharmacy within 120 days after conclusion of the audit. A final written audit report shall be received by the pharmacy within six months of the preliminary audit report or final appeal, whichever is later;

i. A pharmacy shall be allowed at least 30 days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit; and

j. The audit criteria set forth in this subrule shall apply only to audits of claims submitted for payment after December 31, 2008.

59.6(2) Notwithstanding any other provision in this rule, the entity conducting the audit shall not use the accounting practice of extrapolation in calculating the recuperation of contractual penalties for audits.

59.6(3) Recuperation of any disputed funds shall occur only after final disposition of the audit, including the appeals process as set forth in subrules 59.6(4) and 59.6(5).

59.6(4) Each pharmacy benefits manager conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the pharmacy benefits manager. If, following the appeal, the pharmacy benefits manager finds that an unfavorable audit report or any portion thereof is unsubstantiated, the pharmacy benefits manager shall dismiss the audit report or said portion without the necessity of any further proceedings.

59.6(5) If, following the final appeal, the pharmacy benefits manager finds that an unfavorable audit report or any portion thereof is found to be substantiated, the pharmacy benefits manager shall already have in place a process for an independent third-party review of the final audit findings. As part of the final appeal process of any final adverse decision, the pharmacy benefits manager shall notify the pharmacy in writing of its right to request an independent third-party review of the final audit findings and the process used to request such a review.

59.6(6) Each pharmacy benefits manager conducting an audit shall, after completion of any review process, provide a copy of the final audit report to the plan sponsor.

59.6(7) This rule shall not apply to any investigative audit which involves fraud, willful misrepresentation, abuse, or any other statutory provision which authorizes investigations relating to but not limited to insurance fraud.

191—59.7(510B) Termination of pharmacy contracts.

59.7(1) A pharmacy or pharmacist shall not be terminated from the network or penalized by a pharmacy benefits manager solely because of filing a complaint, grievance or appeal.

59.7(2) A pharmacy or pharmacist shall not be terminated from the network or penalized by a pharmacy benefits manager due to any disagreement with the decision of the pharmacy benefits manager to deny or limit benefits to covered persons or due to any assistance provided to covered persons by the pharmacy or pharmacist in obtaining reconsideration of the decision of the pharmacy benefits manager.

59.7(3) Termination of contracts between a pharmacy benefits manager and a pharmacy shall include a provision describing notification procedures for contract termination. The contract shall require no less than 60 days' prior written notice by either party who wishes to terminate the contract.

59.7(4) If the pharmacy benefits manager has evidence that the pharmacy or pharmacist has engaged in fraudulent conduct or poses a significant risk to patient care or safety, the pharmacy benefits manager may immediately suspend the pharmacy or pharmacist from further performance under the contract provided written notice of termination is provided to the pharmacy or pharmacist.

59.7(5) Termination of a contract between a pharmacy benefits manager and a pharmacy or pharmacist or termination of a pharmacy or pharmacist from the network of the pharmacy benefits manager shall not release the pharmacy benefits manager from the obligation to make payments due to the pharmacy or pharmacist for services rendered before the contract of the pharmacy or pharmacist was terminated.

INSURANCE DIVISION[191](cont'd)

59.7(6) Independent third-party review of termination decision. The pharmacy or pharmacist may request an independent third-party review of the final decision to terminate the contract between the pharmacy benefits manager and the pharmacy or pharmacist by filing with the pharmacy benefits manager a written request for an independent third-party review of the decision. This written request must be filed with the pharmacy benefits manager within 30 days of receipt of the final termination decision.

These rules are intended to implement Iowa Code chapters 17A and 514L and Iowa Code Supplement chapter 510B.

[Filed 7/25/08, effective 9/17/08]

[Published 8/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/08.

ARC 7070B

LOTTERY AUTHORITY, IOWA[531]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99G.9(3), the Iowa Lottery Authority hereby amends Chapter 11, "Prizes," Iowa Administrative Code.

The amendment in Item 1 adopts new subrule 11.1(5), requiring players to sign every ticket or share prior to presenting the ticket or share for checking or validation. The new subrule further requires retailers to verify the presence of a signature on a ticket or claim. The amendment in Item 2 eliminates language indicating that a prize may be paid to the physical possessor of an unsigned ticket. This amendment is being made to provide additional protection for the public and to continue to ensure the integrity of lottery operations.

These amendments were previously Adopted and Filed Emergency and published in the March 12, 2008, Iowa Administrative Bulletin as **ARC 6651B**. Notice of Intended Action to solicit comments on that submission was published in the Iowa Administrative Bulletin on March 12, 2008, as **ARC 6652B**. No comments were received, and no one attended the public hearing on April 2, 2008. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Iowa Lottery Authority Board adopted these amendments on June 13, 2008.

These amendments are intended to implement Iowa Code sections 99G.9(3), 99G.21, and 99G.31.

These amendments will become effective on September 17, 2008, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

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 [11.1(5), 11.4] is being omitted. These amendments are identical to those published under Notice as **ARC 6652B** and Adopted and Filed Emergency as **ARC 6651B**, IAB 3/12/08.

[Filed 7/23/08, effective 9/17/08]

[Published 8/13/08]

[For replacement pages for IAC, see IAC Supplement 8/13/08.]

ARC 7071B

LOTTERY AUTHORITY, IOWA[531]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99G.9(3), the Iowa Lottery Authority hereby amends Chapter 11, "Prizes," Iowa Administrative Code.

This amendment changes rule 531—11.6(99G) by requiring parents or guardians to sign tickets submitted by minors. The amendment also updates the method of prize payment to reflect the current lottery practice.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 7, 2008, as **ARC 6788B**. The deadline for comments on the amendment was May 27, 2008. No comments were received. No one attended the hearing on May 28, 2008. This amendment is identical to the one published under Notice of Intended Action.

The Iowa Lottery Authority Board adopted this amendment on July 17, 2008.

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

This amendment will become effective on September 17, 2008.

The following amendment is adopted.

Amend rule 531—11.6(99G) as follows:

531—11.6(99G) Prize payment to minors. If the person entitled to a prize is under the age of 18, the payment of the prize may be made by delivery of a ~~draft payable~~ cash or a check payable to the order of the minor or to a parent or legal guardian of the minor. Claim forms and tickets submitted by minors must be signed by a parent or legal guardian of the minor.

This rule is intended to implement Iowa Code ~~Supplement~~ sections 99G.9(3), 99G.21(2), 99G.30(3), and 99G.31.

[Filed 7/23/08, effective 9/17/08]

[Published 8/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/08.

ARC 7080B

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medicine hereby amends Chapter 1, "Administrative and Regulatory Authority," and Chapter 25, "Contested Case Proceedings," Iowa Administrative Code.

The amendments are intended to implement 2008 Iowa Acts, Senate File 2338, section 46, that became effective on July 1, 2008, by updating Chapters 1 and 25. Item 1 defines an alternate board member. Item 2 defines the Board's authority to appoint a pool of up to ten alternate board members to serve on a hearing panel when a sufficient number of board members is unavailable to hear a contested case. An alternate board member is deemed a member of the Board only for the hearing panel(s) for which the alternate member serves. Item 3 identifies how alternate board members are approved. Item 4 gives the executive director, or designee, the authority to request an alternate board member to serve on a hearing panel when a sufficient number of board members is unavailable to hear a contested case. Item 5 establishes that a decision of a hearing panel containing alternate members is considered a final decision of the Board, in accordance with Iowa Code Supplement section 148.2A as amended by 2008 Iowa Acts, Senate File 2338, section 46.

The Board approved these amendments to Chapters 1 and 25 during a telephone conference call on July 24, 2008.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 18, 2008, as **ARC 6858B**. No public comment was received. The proposed amendments are adopted as Noticed.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

MEDICINE BOARD[653](cont'd)

These amendments shall become effective on September 17, 2008.

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 [1.1, 1.3(5), 1.3(7), 25.18(1), 25.24(1)] is being omitted. These amendments are identical to those published under Notice as **ARC 6858B**, IAB 6/18/08.

[Filed 7/24/08, effective 9/17/08]

[Published 8/13/08]

[For replacement pages for IAC, see IAC Supplement 8/13/08.]

ARC 7077B

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medicine hereby amends Chapter 8, "Fees," Iowa Administrative Code.

The amendments are intended to update the Board's rules on verification of physician licensure and fees for public records. Item 1 eliminates a service for verification of licensure status by a password-protected Web site that is no longer used. It also adds a provision that requires that physicians use an online service, VeriDoc, to verify the status of their license to another medical board. Currently, one state does not accept VeriDoc's electronic verification; therefore, a provision is included for the Board to continue to send paper verifications to that state. The VeriDoc fee for a certified statement verifying Iowa licensure status to another medical board is \$40, which is the same fee the Board charges for a paper verification. Item 2 eliminates a subscription charge for electronically shared press releases, statements of charges, final orders and consent agreements. The information is available for free on the Board's Web site or through a state listserv that provides free information to the public.

The Board approved these amendments to Chapter 8 during a telephone conference call on July 24, 2008.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 18, 2008, as **ARC 6862B**. No public comment was received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

These amendments will become effective September 17, 2008.

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 [8.5(1), 8.6] is being omitted. These amendments are identical to those published under Notice as **ARC 6862B**, IAB 6/18/08.

[Filed 7/24/08, effective 9/17/08]

[Published 8/13/08]

[For replacement pages for IAC, see IAC Supplement 8/13/08.]

ARC 7073B

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medicine hereby amends Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

The amendment removes a requirement in order to allow a physician who has previously held a permanent physician license in a United States jurisdiction to practice under a resident physician license when the physician is enrolled as an intern, a resident or a fellow in an Iowa resident training program. A similar

MEDICINE BOARD[653](cont'd)

amendment was adopted earlier this year, but the Board overlooked updating paragraph 10.3(2)“d” with the same requirement.

The Board approved this amendment to Chapter 10 during a telephone conference call on July 24, 2008.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on June 18, 2008, as **ARC 6859B**. No public comment was received. This amendment is adopted as Noticed.

This amendment is intended to implement Iowa Code chapters 147 and 148.

This amendment will become effective September 17, 2008.

The following amendment is adopted.

Rescind paragraph **10.3(2)“d.”**

[Filed 7/24/08, effective 9/17/08]

[Published 8/13/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/08.

ARC 7078B

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76, 148E.7 and 272C.3, the Board of Medicine hereby amends Chapter 11, “Continuing Education and Mandatory Training for Identifying and Reporting Abuse,” and Chapter 23, “Grounds for Discipline,” Iowa Administrative Code.

The amendments address a licensee’s failure to comply with an audit of continuing education or mandatory training for identifying and reporting abuse within 30 days of a request by board staff. The amendments also establish that failure to comply with the audit is grounds for discipline.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 18, 2008, as **ARC 6860B**. Public comment was accepted on or before July 8, 2008.

Following publication of the Notice of Intended Action, the Board modified the amendments in response to a request by the Iowa Medical Society for an extension of time in which to submit audit materials if a physician requests an extension of time.

The Board approved these amendments to Chapters 11 and 23 during a telephone conference call on July 24, 2008.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

These amendments will become effective on September 17, 2008.

The following amendments are adopted.

ITEM 1. Amend subparagraph **11.4(1)“a”(3)** as follows:

(3) A licensee shall maintain a file containing records documenting continuing education activities, including dates, subjects, duration of programs, registration receipts where appropriate and any other relevant material, for four years after the date of the activity. The board may audit this information at any time within the four years. If the board conducts an audit of continuing education activities, a licensee shall respond to the board and provide all materials requested, within 30 days of a request by board staff or within the extension of time if one had been granted. Failure to comply with this provision is grounds for discipline.

ITEM 2. Amend subparagraph **11.4(1)“c”(4)** as follows:

(4) A licensee shall maintain a file containing records documenting mandatory training for identifying and reporting abuse, including dates, subjects, duration of programs, and proof of participation, for five years after the date of the training. The board may audit this information at any time within the five-year period. If the board conducts an audit of mandatory training for identifying and reporting abuse, a licensee shall respond to the board and provide all materials requested, within 30 days of a request made by board staff or within the extension of time if one had been granted. Failure to comply with this provision is grounds for discipline.

MEDICINE BOARD[653](cont'd)

ITEM 3. Renumber subrule **23.1(38)** as **23.1(40)**.

ITEM 4. Adopt the following **new** subrules 23.1(38) and 23.1(39):

23.1(38) Failure to respond to the board or submit continuing education materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one had been granted.

23.1(39) Failure to respond to the board or submit requested mandatory training for identifying and reporting abuse materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one had been granted.

[Filed 7/24/08, effective 9/17/08]

[Published 8/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/08.

ARC 7079B

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76, 148E.7 and 272C.3, the Board of Medicine hereby amends Chapter 25, "Contested Case Proceedings," Iowa Administrative Code.

Iowa Code section 148.7(4) addresses the licensee's right to appear personally and by attorney at a hearing or prehearing conference. The amendment in Item 1 defines "appear personally" to mean that a licensee may participate in a hearing via teleconference or videoconference or be physically present. Item 2 allows the respondent to appear personally and by attorney.

The Board approved these amendments to Chapter 25 during a telephone conference call on July 24, 2008.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 18, 2008, as **ARC 6861B**. No public comment was received. These amendments are adopted as Noticed.

These amendments are intended to implement Iowa Code chapters 17A and 148.

These amendments will become effective on September 17, 2008.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition in rule **653—25.1(17A)**:

"*Appear personally*" means the ability to participate at a hearing or a prehearing conference through teleconference or videoconference or to be physically present.

ITEM 2. Amend subrule 25.18(5) as follows:

25.18(5) Parties have the right to ~~participate or~~ appear personally and to be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney at the party's own expense.

[Filed 7/24/08, effective 9/17/08]

[Published 8/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/08.

ARC 7053B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic hereby rescinds Chapter 40, "Administrative and Regulatory Authority for the Board of Chiropractic," amends Chapter 41, "Licensure of Chiropractic Physicians," Chapter 44, "Continuing Education for Chiropractic Physicians," and Chapter 45, "Discipline for Chiropractic Physicians," and rescinds Chapter 46, "Fees," Iowa Administrative Code.

These amendments rescind chapters and rules that duplicate existing rules in 645—Chapters 4 and 5.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 7, 2008, as **ARC 6780B**. A public hearing was held on May 27, 2008, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

These amendments were adopted by the Board of Chiropractic on July 9, 2008.

These amendments will become effective September 17, 2008.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

The following amendments are adopted.

ITEM 1. Rescind and reserve **645—Chapter 40**.

ITEM 2. Rescind and reserve rules **645—41.7(151)**, **645—41.11(147)**, **645—41.12(147)** and **645—41.13(17A,151,272C)**.

ITEM 3. Rescind and reserve rules **645—44.4(151,272C)**, **645—44.5(151,272C)**, **645—44.6(272C)** and **645—44.7(151,272C)**.

ITEM 4. Rescind and reserve rule **645—45.5(151)**.

ITEM 5. Rescind and reserve **645—Chapter 46**.

[Filed 7/17/08, effective 9/17/08]

[Published 8/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/08.

ARC 7052B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic hereby amends Chapter 41, "Licensure of Chiropractic Physicians," and Chapter 44, "Continuing Education for Chiropractic Physicians," Iowa Administrative Code.

These amendments change the conditions that the Board will consider for granting a temporary certificate, modify requirements to qualify for a temporary certificate, allow fee credit toward a permanent license for applicants who have a temporary certificate, and clarify continuing education requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 7, 2008, as **ARC 6778B**. A public hearing was held on May 27, 2008, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

These amendments were adopted by the Board of Chiropractic on July 9, 2008.

These amendments will become effective September 17, 2008.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 41.5(2) as follows:

41.5(2) Demonstrated need. An applicant must establish that a need exists for the issuance of a temporary license and that the need serves the public interest. An applicant may only meet the demonstrated need requirement by proving that the need meets one of the following conditions:

a. The applicant will provide chiropractic services in connection with a special activity, event or program conducted in this state;

b. The applicant will provide chiropractic services in connection with a state emergency as proclaimed by the governor; or

c. The applicant previously held an unrestricted license to practice chiropractic in this state and will provide gratuitous chiropractic services as a voluntary public service; ~~or~~

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~d. — The applicant will provide chiropractic services during a disability or long term illness of an Iowa licensed chiropractic physician.~~

~~The temporary certificate shall be issued only for conditions stated in paragraphs “a” through “d.”~~

ITEM 2. Amend paragraph **41.5(3)“d”** as follows:

d. Provide a copy of a chiropractic diploma (no larger than 8½" × 11") from a chiropractic school accredited by the CCE and approved by the board and submit an official certificate of completion of 120 hours of physiotherapy from a board-approved chiropractic college. The physiotherapy course must include a practicum component.

ITEM 3. Adopt the following **new** subrule 41.5(6):

41.5(6) A temporary license holder who meets all licensure conditions as specified in rule 645—41.2(151) may obtain a permanent license in lieu of the temporary certificate. To obtain a permanent license, the applicant shall submit any additional documentation required for permanent licensure that was not submitted as a part of the temporary certificate application. The applicant may receive fee credit toward the permanent licensure fee equivalent to the fee paid for the temporary permit if the application for the permanent license and all required documentation are received by the board prior to the expiration of the temporary permit.

ITEM 4. Amend subparagraph **44.3(2)“a”(1)** as follows:

(1) At least 36 hours of continuing education credit obtained from a program that directly relates to clinical case management of chiropractic patients. Beginning with the July 1, ~~2006~~ 2008, to June 30, ~~2008~~ 2010, renewal cycle, at least 24 of these hours shall be earned by completing a program in which an instructor conducts the class employing either a traditional in-person classroom-type presentation or a live, real-time interactive media presentation through the Iowa communications network (ICN). The remaining 12 hours may be obtained by independent study, including on-line instruction.

[Filed 7/17/08, effective 9/17/08]

[Published 8/13/08]

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ARC 7051B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic hereby amends Chapter 43, “Practice of Chiropractic Physicians,” and Chapter 45, “Discipline for Chiropractic Physicians,” Iowa Administrative Code.

These amendments adopt new rules defining the chiropractic physician’s responsibilities for training requirements of chiropractic assistants and change the time line for maintaining records to be consistent with other rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 7, 2008, as **ARC 6779B**. A public hearing was held on May 27, 2008, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

These amendments have been changed since the Notice of Intended Action. The Board identified the need to include a mechanism for colleges to be notified of the clinical training provided by each chiropractor. The Board added language in new paragraph 43.12(2)“e” to clarify the chiropractor’s responsibilities. Proposed paragraph “e” has been relettered as paragraph “f.” New paragraph 43.12(2)“e” reads as follows:

“e. The supervising chiropractic physician shall provide a written attestation to the chiropractic college that the chiropractic assistant has completed the clinical experience. The college shall issue a separate certificate of completion for the active or passive chiropractic training program as defined in paragraphs ‘b,’ ‘c’ and ‘d’ of this subrule.”

These amendments were adopted by the Board of Chiropractic on July 9, 2008.

These amendments will become effective September 17, 2008.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

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 [43.1, 43.12(1), 43.12(2), 45.2(1)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 6779B**, IAB 5/7/08.

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[Published 8/13/08]

[For replacement pages for IAC, see IAC Supplement 8/13/08.]

ARC 7055B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistants hereby rescinds Chapter 325, "Administrative and Regulatory Authority for the Board of Physician Assistants," amends Chapter 326, "Licensure of Physician Assistants," Chapter 328, "Continuing Education for Physician Assistants," and Chapter 329, "Discipline for Physician Assistants," and rescinds Chapter 330, "Fees," Iowa Administrative Code.

These amendments rescind chapters and rules that duplicate existing rules in 645—Chapters 4 and 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 7, 2008, as **ARC 6786B**. A public hearing was held on May 27, 2008, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Physician Assistants on July 16, 2008.

These amendments will become effective September 17, 2008.

These amendments are intended to implement Iowa Code chapters 21, 147, 148C and 272C.

The following amendments are adopted.

ITEM 1. Rescind and reserve **645—Chapter 325**.

ITEM 2. Rescind and reserve rules **645—326.5(148C)**, **645—326.12(147)**, **645—326.13(147)** and **645—326.14(272C)**.

ITEM 3. Rescind and reserve rules **645—328.4(148C,272C)**, **645—328.5(148C,272C)**, **645—328.6(148C,272C)** and **645—328.7(148C,272C)**.

ITEM 4. Rescind and reserve rule **645—329.5(148C)**.

ITEM 5. Rescind and reserve **645—Chapter 330**.

[Filed 7/17/08, effective 9/17/08]

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ARC 7054B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Athletic Training hereby rescinds Chapter 350, "Administrative and Regulatory Authority for the Board of Athletic Training Examiners," amends Chapter 351, "Licensure of Athletic Trainers," Chapter 352, "Continuing Education for Athletic Trainers," and Chapter 353, "Discipline for Athletic Trainers," and rescinds Chapter 354, "Fees," Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These amendments restore the acceptance of current BOC certification for proof of continuing education at the time of an audit. Additionally, the amendments change the name of the Board of Athletic Training in response to 2007 Iowa Acts, Senate File 74, which renamed health-related examining boards as licensing boards, and remove duplicative rules because new rules common to all boards have recently been adopted.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 23, 2008, as **ARC 6717B**. A public hearing was held on May 14, 2008, and public comments were allowed through that same date. No written or oral comments were received, and no one attended the hearing.

Since publication of the Notice of Intended Action, three internal references have been corrected through the editorial process to reflect the rescission of Chapters 350 and 354.

These amendments were adopted by the Board of Athletic Training on June 17, 2008.

These amendments will become effective September 17, 2008.

These amendments are intended to implement Iowa Code chapters 147, 152D and 272C.

The following amendments are adopted.

ITEM 1. Rescind and reserve **645—Chapter 350**.

ITEM 2. Strike the words “board of athletic training examiners” and “board of examiners for athletic training” wherever they appear in **645—Chapter 351** and insert the words “board of athletic training” in lieu thereof.

ITEM 3. Rescind and reserve rules **645—351.8(147)**, **645—351.11(147)**, **645—351.12(147)** and **645—351.14(17A,147,272C)**.

ITEM 4. Strike the words “board of athletic training examiners” and “board of examiners for athletic training” wherever they appear in **645—Chapter 352** and insert the words “board of athletic training” in lieu thereof.

ITEM 5. Rescind rule **645—352.4(152D,272C)** and adopt the following **new** rule in lieu thereof:

645—352.4(152D,272C) Audit of continuing education report. In addition to the requirements of **645—4.11(272C)**, proof of current BOC certification shall be accepted in lieu of individual certificates of completion for an audit.

ITEM 6. Rescind and reserve rules **645—352.5(152D,272C)**, **645—352.6(272C)** and **645—352.9(272C)**.

ITEM 7. Strike the words “board of athletic training examiners” and “board of examiners for athletic training” wherever they appear in **645—Chapter 353** and insert the words “board of athletic training” in lieu thereof.

ITEM 8. Rescind and reserve rule **645—353.5(152D)**.

ITEM 9. Rescind and reserve **645—Chapter 354**.

[Filed 7/17/08, effective 9/17/08]

[Published 8/13/08]

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ARC 7062B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 101.1, the State Fire Marshal hereby amends Chapter 221, “Flammable and Combustible Liquids,” Iowa Administrative Code.

Iowa Code section 101.1 authorizes and requires the State Fire Marshal to adopt administrative rules establishing reasonable requirements for the safe transportation, storage, handling, and use of flammable liquids. Recently, a temporary storage container for gasoline has been advertised. This container consists of

PUBLIC SAFETY DEPARTMENT[661](cont'd)

a soft plastic bladder contained in cardboard. The amendment adopted herein bars the use of any temporary or disposable container for flammable or combustible liquids and requires that any container used to store or carry flammable or combustible liquids be made of metal or hard plastic.

This amendment was proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on March 26, 2008, as **ARC 6662B**. A public hearing on the proposed amendment was held on April 23, 2008, at which hearing representatives of a company which is producing and marketing a “temporary gas can” spoke. The representatives submitted a sample of the can they are marketing as well as written material in support of allowing the use of the can. The Fire Marshal has also received comments from representatives of the fire service in Iowa, advocating that the amendment be adopted as proposed.

The Fire Marshal finds that the use of temporary containers for storing and carrying gasoline and other flammable liquids does constitute a fire hazard. Specifically, there is not an effective way to ensure a can is emptied in a timely fashion after being filled, nor is it certain that a can will not be reused. In addition, while the temporary containers do not appear to be in violation of regulations of the federal Environmental Protection Agency (EPA), this is not an affirmative statement on the part of the EPA that the containers are safe, but a function of the fact that these federal regulations do not apply to temporary containers.

The amendment adopted herein is identical to that proposed in the Notice of Intended Action.

This amendment will become effective on October 1, 2008.

This amendment is intended to implement Iowa Code chapter 101.

The following amendment is adopted.

Adopt the following **new** paragraph **221.3(1)“i”**:

i. Delete section 3404.3.1.1 and insert in lieu thereof the following:

3404.3.1.1 Approved containers. Only approved containers and portable tanks shall be used. No flammable or combustible liquid shall be placed into, stored in, or carried in any container other than one which is metal or hard plastic. No flammable or combustible liquid shall be placed into, stored in, or carried in any temporary or disposable container.

[Filed 7/21/08, effective 10/1/08]

[Published 8/13/08]

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ARC 7056B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 47.1 and 53.46, the Secretary of State hereby amends Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

This rule making establishes a process for the electronic transmission of absentee ballot materials to and from voters who are eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). These citizens are also covered under Iowa Code chapter 53, division II, “Absent Voting by Armed Forces.” This process for electronic transmission includes both E-mail and facsimile transmissions of ballots from the county commissioner of elections to voters and allows those voters to send their requests for absentee ballots by E-mail or facsimile.

In addition, current subrule 21.1(14), which requires an emergency declaration from the Federal Voting Assistance Program (FVAP) to trigger the use of electronic transmission for sending absentee ballots, is amended to permit the return of absentee ballots via electronic means only for UOCAVA voters who are in an area designated by the U.S. Department of Defense to be an imminent danger pay zone. The amendment to subrule 21.1(14) eliminates the requirement for an emergency declaration from FVAP and provides easier voting access to all UOCAVA voters who are in hazardous parts of the world.

Iowa Code section 53.46(4) authorizes and empowers the state commissioner “[t]o arrange for special transportation of ballots in co-operation with the government of the United States through any authorized instrumentality thereof and to that end the state commissioner is empowered to direct the commissioners of

SECRETARY OF STATE[721](cont'd)

the several counties of the state to send ballots to voters in the armed forces of the United States other than in the usual course of mail.” The state commissioner is also authorized to “co-operate with any authorized departments, agencies and instrumentalities of the government of the United States in effecting the intent and purposes of this division.” The Federal Voting Assistance Program is an authorized agency of the Department of Defense whose mission is to help U.S. citizens who are in military service or who are overseas participate in elections. The Uniformed and Overseas Citizens Absentee Voting Act established FVAP.

FVAP provides a secure Web site and other services for the safe electronic transmission of absentee voting materials, including both applications and the ballots themselves. Pursuant to the authority of Iowa Code section 53.46, the Secretary of State adopts these amendments in order for Iowans to fully participate in both new and existing services provided by FVAP.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on June 4, 2008, as **ARC 6834B**. No public comments were received, and the adopted amendments are identical to the published Notice.

These amendments will become effective on September 17, 2008.

These amendments are intended to implement Iowa Code section 53.46 and Iowa Code Supplement section 53.40.

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 [21.1(14), 21.320] is being omitted. These amendments are identical to those published under Notice as **ARC 6834B**, IAB 6/4/08.

[Filed 7/17/08, effective 9/17/08]

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