



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXVI
September 4, 2013

NUMBER 5
Pages 545 to 652

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2013

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
7	Friday, September 13, 2013	October 2, 2013
8	Friday, September 27, 2013	October 16, 2013
9	Friday, October 11, 2013	October 30, 2013

PLEASE NOTE:

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

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

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

ARCHITECTURAL EXAMINING BOARD[193B]

Grace period for registration renewal, 2.5, 2.11 IAB 8/21/13 ARC 0978C	Second Floor Board Offices 1920 SE Hulsizer Rd. Ankeny, Iowa	September 10, 2013 9 a.m.
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DENTAL BOARD[650]

Sedation and nitrous oxide inhalation analgesia, 29.1 to 29.5, 29.9(1), 29.10 to 29.14 IAB 9/4/13 ARC 1008C	Board Office, Suite D 400 SW 8th St. Des Moines, Iowa	September 24, 2013 2 p.m.
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EDUCATIONAL EXAMINERS BOARD[282]

Master educator license—degree from regionally accredited college or university, 13.8 IAB 9/4/13 ARC 0987C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 25, 2013 1 p.m.
Engineering and STEM endorsements, 13.28(31), 13.28(32), 17.1(3) IAB 9/4/13 ARC 0993C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 25, 2013 1 p.m.
Superintendent/AEA administrator—demonstration of required experience, 18.10 IAB 9/4/13 ARC 0988C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 25, 2013 1 p.m.
Prohibited conduct between licensees and former students, 25.3(1) IAB 9/4/13 ARC 0992C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 25, 2013 1 p.m.

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Accreditation standards—instructional days and hours, 12.1 IAB 8/21/13 ARC 0954C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 10, 2013 3 to 4 p.m.
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Independent accrediting agencies, 12.10 IAB 8/21/13 ARC 0964C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 10, 2013 11 a.m. to 12 noon
Teacher preparation clinical practice standard—teach Iowa student teaching pilot project, 79.14(13) IAB 8/21/13 ARC 0968C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 10, 2013 2 to 3 p.m.
Supplementary weighting plan for operational services, 97.7 IAB 8/21/13 ARC 0967C	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 10, 2013 1 to 2 p.m.

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Flood mitigation program, ch 14 IAB 8/21/13 ARC 0956C	Department Conference Room, Bldg. W-4 Camp Dodge Johnston, Iowa	September 12, 2013 10 a.m.
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Burial sites and cemeteries, rescind ch 18; adopt ch 140 IAB 9/4/13 ARC 1004C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	September 24, 2013 10 a.m.
Minimum standard of valuation for annuity and pure endowment contracts—incorporation of 2012 IAR mortality table, amendments to ch 43 IAB 8/21/13 ARC 0959C	Conference Room 4 North, 4th Floor Insurance Division, Two Ruan Center 601 Locust St. Des Moines, Iowa	September 11, 2013 10 a.m.

LABOR SERVICES DIVISION[875]

Federal occupational safety and health standards for digger derricks—adoption by reference, 26.1 IAB 8/7/13 ARC 0905C	Capitol View Room 1000 East Grand Ave. Des Moines, Iowa	September 4, 2013 9 a.m. (If requested)
Conveyance safety program— elevator inspector qualifications, 71.1 IAB 8/21/13 ARC 0951C	Capitol View Room 1000 East Grand Ave. Des Moines, Iowa	September 11, 2013 10:30 a.m. (If requested)
Conveyance safety program—fees, 71.16 IAB 9/4/13 ARC 1009C	Capitol View Room 1000 East Grand Ave. Des Moines, Iowa	September 25, 2013 9:30 a.m. (If requested)

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Iowa physician health committee, 14.2, 14.4(2), 14.5 to 14.7, 14.8(2), 14.9, 14.11 IAB 8/21/13 ARC 0977C	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	September 10, 2013 11 a.m.
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Residential property seller disclosure statement, 14.1(6) IAB 8/21/13 ARC 0970C	Commission Offices, Second Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	September 24, 2013 9 a.m.
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The following list will be updated as changes occur.

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

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

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

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ARC 1006C

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 201A.5 and 201A.8, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 43, “Fertilizers and Agricultural Lime,” Iowa Administrative Code.

The proposed amendments increase the cost of testing an individual sample of agricultural lime from \$25 to \$60. The fee for sampling has not been increased since 1988. The proposed amendments also reduce the number of samples that have to be taken. The proposed amendments are designed to help address needs at Iowa State University’s laboratory.

Any interested persons may make written suggestions or comments on the proposed amendments on or before September 24, 2013. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendments are subject to the Department’s general waiver provisions.

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

These amendments are intended to implement Iowa Code section 201A.5.

The following amendments are proposed.

ITEM 1. Amend subrule 43.20(2) as follows:

43.20(2) Sample fee. The manufacturer or producer of agricultural lime, limestone, or aglime shall pay a fee of no more than ~~\$25~~ \$60 per sample collected. This fee may be adjusted by the secretary of agriculture by a separate notice letter to each manufacturer or producer to reflect as accurately as possible the actual cost of sampling and testing expended by the Iowa department of agriculture and land stewardship and Iowa State University for each sample taken at the manufacturer’s or producer’s facilities.

ITEM 2. Amend subrules 43.32(1) and 43.32(4) as follows:

43.32(1) Samples of agricultural liming material for analyzing the number of pounds of ECCE shall be obtained by taking samples from the manufacturer’s production belt or stockpile. ~~Samples A~~ minimum of one sample and up to five samples shall be taken at locations where there are permanent production facilities ~~once each calendar month during the months~~ year that agricultural liming material is being produced. Samples shall be taken at locations where there are no permanent production facilities ~~once during the first week~~ time that a portable plant is at the location producing agricultural liming material ~~and once each week~~. ~~Subsequent samples will be taken either during the period that the portable plant is at the location or from the stockpile created, until a total of three to five representative samples from the pile have been accumulated and submitted for analysis, after which a sample shall be obtained and tested once each calendar month during the months in which agricultural liming material is being produced.~~ The manufacturer or producer of agricultural liming material shall notify the secretary of agriculture or person or persons appointed by the secretary of the production of agricultural liming material seven calendar days prior to the manufacture or production of agricultural liming material so that samples may be obtained by a person or persons appointed by the secretary in compliance with this rule.

43.32(4) Samples of water treatment plant lime for analyzing the number of pounds of ECCE shall be obtained by taking samples from the water plant designated sampling point. Samples shall be taken

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

~~once each month during the months~~ when agricultural liming material is being taken off-site for land application. The producer of the agricultural liming material shall notify the secretary of agriculture or person(s) appointed by the secretary about the intent to land apply the liming material seven calendar days prior to the land application ~~of~~ when agricultural liming material is stockpiled so that samples may be obtained in compliance with this rule.

ITEM 3. Amend rule 21—43.34(201A) as follows:

21—43.34(201A) Sample fee. The manufacturer or producer of agricultural liming material or specialty limestone shall pay a fee of no more than ~~\$25~~ \$60 per sample collected. This fee may be adjusted by the secretary of agriculture by a separate notice letter to each manufacturer or producer to reflect as accurately as possible the actual cost of sampling and testing expended by the Iowa department of agriculture and land stewardship and Iowa State University of Science and Technology for each sample collected.

ITEM 4. Amend subrule 43.35(1) as follows:

43.35(1) The secretary of agriculture shall, upon receipt of the analysis provided in rule ~~21—43.33(201A)~~, certify the number of pounds of ECCE, using the method provided in rule ~~21—43.31(201A)~~. The certification shall be forwarded to the manufacturer or producer from whom the sample was obtained by written notice and sent by United States mail.

Each certification of ECCE ~~shall~~ should be based on the average of a maximum of five analyses from five samples. Each new analysis received ~~shall~~ should be added to the previous five analyses and the oldest analysis shall be omitted. Fewer than five analyses shall be averaged on the basis of the actual number of analyses. Nothing in this rule shall preclude a manufacturer or producer from having a certification on separate stockpiles of agricultural liming material provided that each stockpile shall be separated from any other stockpile and each separate stockpile has been sampled and certified as required.

ARC 1008C

DENTAL BOARD[650]

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 Dental Board hereby gives Notice of Intended Action to amend Chapter 29, “Sedation and Nitrous Oxide Inhalation Analgesia,” Iowa Administrative Code.

The proposed amendments include:

- Adding new definitions for “board,” “committee,” “capnography,” and “facility.”
- Clarifying that before a permit will be issued the facility must be inspected and successfully pass.
- Clarifying that a permit will not be issued until completion of a peer review evaluation, if required by the Board.
- Clarifying that a dentist shall ensure that each facility where sedation services are provided is permanently equipped, as defined in Board rule.
- Rescinding the option of issuing a “provisional” permit.
- Establishing the frequency of Board office inspections (every five years) and providing an exception for the University of Iowa College of Dentistry (requiring UICD to submit, every five years, written verification that it is properly equipped).
- Requiring all general anesthesia/deep sedation permit holders to use capnography at all facilities where they provide sedation beginning January 1, 2014 (the intended effective date of

DENTAL BOARD[650](cont'd)

these amendments), consistent with practices of the American Association of Oral and Maxillofacial Surgeons (AAOMS).

- Correcting a reference in subrule 29.10(1) to “conscious” sedation by changing it to “moderate” sedation; updating a cross reference to the rule applicable to facility site visits.
- Describing the process by which permit applications are reviewed by staff and reviewed by the Anesthesia Credentials Committee (ACC) at a public meeting and the process by which the ACC recommendations are presented to the Dental Board for final action.
- Clarifying that the appeal process for denial of a permit will follow the process described in rule 650—11.10(147).
- Rescinding outdated references to earlier renewal years, correcting cross references, and making other minor amendments.

Written comments about the proposed amendments will be accepted through September 24, 2013. Comments should be directed to Melanie Johnson, Executive Director, Iowa Dental Board, 400 S.W. 8th Street, Des Moines, Iowa 50309-4687, or by e-mail at Melanie.Johnson@iowa.gov.

A public hearing will be held on September 24, 2013, at 2 p.m. at the office of the Iowa Dental Board located at 400 SW 8th Street, Suite D, 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 Board office and advise of specific needs.

These proposed amendments were approved at the August 1, 2013, quarterly meeting of the Iowa Dental Board.

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

These amendments are intended to implement Iowa Code sections 153.33 and 153.34.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **650—29.1(153)**:

“*Board*” means the Iowa dental board established in Iowa Code section 147.14(1) “*d.*”

“*Capnography*” means the monitoring of the concentration of exhaled carbon dioxide in order to assess physiologic status or determine the adequacy of ventilation during anesthesia.

“*Committee*” or “*ACC*” means the anesthesia credentials committee of the board.

“*Facility*” means a dental office, clinic, dental school, or other location where sedation is used.

ITEM 2. Amend rule 650—29.2(153) as follows:

650—29.2(153) Prohibitions.

29.2(1) *Deep sedation/general anesthesia.* Dentists licensed in this state shall not administer deep sedation/general anesthesia in the practice of dentistry until they have obtained a permit ~~as required by the provisions of this chapter.~~ Dentists shall only administer deep sedation/general anesthesia in a facility that has successfully passed inspection as required by the provisions of this chapter.

29.2(2) *Moderate sedation.* Dentists licensed in this state shall not administer moderate sedation in the practice of dentistry until they have obtained a permit ~~as required by the provisions of this chapter.~~ Dentists shall only administer moderate sedation in a facility that has successfully passed inspection as required by the provisions of this chapter.

29.2(3) and 29.2(4) No change.

ITEM 3. Amend rule 650—29.3(153) as follows:

650—29.3(153) Requirements for the issuance of deep sedation/general anesthesia permits.

29.3(1) A permit may be issued to a licensed dentist to use deep sedation/general anesthesia on an outpatient basis for dental patients provided the dentist meets the following requirements:

- a. Has successfully completed an advanced education program accredited by the Commission on Dental Accreditation that provides training in deep sedation and general anesthesia; and
- b. Has formal training in airway management; and

DENTAL BOARD[650](cont'd)

c. Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; and

d. Has completed a peer review evaluation, as may be required by the board, prior to issuance of a permit.

29.3(2) A dentist using deep sedation/general anesthesia shall maintain a properly equipped facility at each facility where sedation is administered. The dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: ~~anesthesia or analgesia machine~~ capnography, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. A licensee may submit a request to the board for an exemption from any of the provisions of this subrule. Exemption requests will be considered by the board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the exemption.

29.3(3) The dentist shall ensure that each facility where sedation services are provided is permanently equipped pursuant to subrule 29.3(2) and staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.

29.3(4) to 29.3(7) No change.

ITEM 4. Amend rule 650—29.4(153) as follows:

650—29.4(153) Requirements for the issuance of moderate sedation permits.

29.4(1) A permit may be issued to a licensed dentist to use moderate sedation for dental patients provided the dentist meets the following requirements:

a. Has successfully completed a training program approved by the board that meets the American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students and that consists of a minimum of 60 hours of instruction and management of at least 20 patients; and

b. Has formal training in airway management; or

c. Has submitted evidence of successful completion of an accredited residency program that includes formal training and clinical experience in moderate sedation, which is approved by the board; and

d. Has completed a peer review evaluation, as may be required by the board, prior to issuance of a permit.

29.4(2) A dentist utilizing moderate sedation shall maintain a properly equipped facility. The dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: ~~anesthesia or analgesia machine~~, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. A licensee may submit a request to the board for an exemption from any of the provisions of this subrule. Exemption requests will be considered by the board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the exemption.

29.4(3) The dentist shall ensure that each facility where sedation services are provided is permanently equipped pursuant to subrule 29.3(2) and staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of ~~general anesthesia~~ moderate sedation. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.

29.4(4) and 29.4(5) No change.

~~**29.4(6)** A licensed dentist who has been utilizing moderate sedation on an outpatient basis in a competent manner for five years preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in subrules 29.4(2), 29.4(3), 29.4(4) and 29.4(5).~~

DENTAL BOARD[650](cont'd)

~~29.4(7)~~ **29.4(6)** Dentists qualified to administer moderate sedation may administer nitrous oxide inhalation analgesia provided they meet the requirement of rule 650—29.6(153).

~~29.4(8)~~ **29.4(7)** If moderate sedation results in a general anesthetic state, the rules for deep sedation/general anesthesia apply.

~~29.4(9)~~ **29.4(8)** A dentist utilizing moderate sedation on pediatric or ASA category 3 or 4 patients must have completed an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA category 3 or 4 patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing moderate sedation on pediatric or ASA category 3 or 4 patients.

ITEM 5. Amend rule 650—29.5(153) as follows:

650—29.5(153) Permit holders.

29.5(1) No dentist shall use or permit the use of deep sedation/general anesthesia or moderate sedation ~~in a dental office~~ for dental patients, unless the dentist possesses a current permit issued by the Iowa board of dental examiners. No dentist shall use or permit the use of deep sedation/general anesthesia or moderate sedation for dental patients in a facility that has not successfully passed an equipment inspection pursuant to the requirements of 29.3(2). A dentist holding a permit shall be subject to review and facility inspection as ~~deemed appropriate by the board~~ at a frequency described in subrule 29.5(10).

29.5(2) and **29.5(3)** No change.

~~29.5(4)~~ If an applicant will be practicing at a facility that has been previously inspected and approved by the board, a provisional permit may be granted to the applicant upon the recommendation of the anesthesia credentials committee after review of the applicant's credentials.

29.5(4) If a facility has not been previously inspected, no permit shall be issued until the facility has been inspected and successfully passed.

29.5(5) to **29.5(9)** No change.

29.5(10) Frequency of facility inspections.

a. The board office will conduct ongoing facility inspections of each facility every five years, with the exception of the University of Iowa College of Dentistry.

b. The University of Iowa College of Dentistry shall submit written verification to the board office every five years indicating that it is properly equipped pursuant to this chapter.

29.5(11) Use of capnography required beginning [insert effective date of these amendments]. Consistent with the practices of the American Association of Oral and Maxillofacial Surgeons (AAOMS), all general anesthesia/deep sedation permit holders shall use capnography at all facilities where they provide sedation beginning [insert effective date of these amendments].

ITEM 6. Amend subrule 29.9(1), introductory paragraph, as follows:

29.9(1) Reporting. All licensed dentists in the practice of dentistry in this state must submit a report within a period of seven days to the board office of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of, antianxiety premedication, nitrous oxide inhalation analgesia, or sedation. The report shall include responses to at least the following:

ITEM 7. Amend rule 650—29.10(153) as follows:

650—29.10(153) Anesthesia credentials committee.

29.10(1) The anesthesia credentials committee is a peer review committee appointed by the board to assist the board in the administration of this chapter. This committee shall be chaired by a member of the board and shall include at least six additional members who are licensed to practice dentistry in Iowa. At least four members of the committee shall hold deep sedation/general anesthesia or ~~conscious moderate sedation~~ moderate sedation permits issued under this chapter.

29.10(2) The anesthesia credentials committee shall perform the following duties at the request of the board:

DENTAL BOARD[650](cont'd)

- a. Review all permit applications and make recommendations to the board regarding those applications.
- b. Conduct site visits at facilities under ~~subrule 29.5(4)~~ rule 650—29.5(153) and report the results of those site visits to the board. The anesthesia credentials committee may submit recommendations to the board regarding the appropriate nature and frequency of site visits.
- c. Perform professional evaluations and report the results of those evaluations to the board.
- d. Other duties as delegated by the board or board chairperson.

ITEM 8. Rescind rule **650—29.12(153)**.

ITEM 9. Renumber rule **650—29.11(153)** as **650—29.12(153)**.

ITEM 10. Adopt the following new rule 650—29.11(153):

650—29.11(153) Review of permit applications.

29.11(1) Review by board staff. Upon receipt of a completed application, board staff will review the application for eligibility. Following staff review, a public meeting of the ACC will be scheduled.

29.11(2) Review by the anesthesia credentials committee (ACC). Following review and consideration of an application, the ACC may at its discretion:

- a. Request additional information;
 - b. Request an investigation;
 - c. Request that the applicant appear for an interview;
 - d. Recommend issuance of the permit;
 - e. Recommend issuance of the permit under certain terms and conditions or with certain restrictions;
 - f. Recommend denial of the permit;
 - g. Refer the permit application to the board for review and consideration without recommendation;
- or

- h. Request a peer review evaluation.

29.11(3) Review by board. The board shall consider applications and recommendations from the ACC. The board may take any of the following actions:

- a. Request additional information;
- b. Request an investigation;
- c. Request that the applicant appear for an interview;
- d. Grant the permit;
- e. Grant the permit under certain terms and conditions or with certain restrictions; or
- f. Deny the permit.

29.11(4) Right to defer final action. The ACC or board may defer final action on an application if there is an investigation or disciplinary action pending against an applicant who may otherwise meet the requirements for permit until such time as the ACC or board is satisfied that issuance of a permit to the applicant poses no risk to the health and safety of Iowans.

29.11(5) Appeal process for denials. If a permit application is denied, an applicant may file an appeal of the final decision using the process described in rule 650—11.10(147).

ITEM 11. Amend renumbered rule 650—29.12(153) as follows:

650—29.12(153) Renewal. A permit to administer deep sedation/general anesthesia or moderate sedation shall be renewed biennially at the time of license renewal. ~~Prior to July 1, 2008, permits expired on June 30 of every even-numbered year. A permit due to expire June 30, 2008, shall be automatically extended until August 30, 2008, and expire August 31, 2008. Beginning July 1, 2008, permits~~ Permits expire August 31 of every even-numbered year.

29.12(1) To renew a permit, a licensee must submit the following:

- a. Evidence of renewal of ACLS certification.
- b. A minimum of six hours of continuing education in the area of sedation. These hours may also be submitted as part of license renewal requirements.

DENTAL BOARD[650](cont'd)

c. The appropriate fee for renewal as specified in 650—Chapter 15.

29.12(2) Failure to renew the permit prior to November 1 following its expiration shall cause the permit to lapse and become invalid for practice.

29.12(3) A permit that has been lapsed may be reinstated upon submission of a new application for a permit in compliance with rule 650—29.5(153) and payment of the application fee as specified in 650—Chapter 15.

ITEM 12. Renumber rule **650—29.13(153)** as **650—29.14(153)**.

ITEM 13. Adopt the following new rule 650—29.13(147,153,272C):

650—29.13(147,153,272C) Grounds for nonrenewal. A request to renew a permit may be denied on any of the following grounds:

29.13(1) After proper notice and hearing, for a violation of these rules or Iowa Code chapter 147, 153, or 272C during the term of the last permit renewal.

29.13(2) Failure to pay required fees.

29.13(3) Failure to obtain required continuing education.

29.13(4) Failure to provide documentation of current ACLS certification.

29.13(5) Failure to provide documentation of maintaining a properly equipped facility.

29.13(6) Receipt of a certificate of noncompliance from the college student aid commission or the child support recovery unit of the department of human services in accordance with 650—Chapter 33 or 650—Chapter 34.

ARC 0987C

EDUCATIONAL EXAMINERS BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

Current language in the rule regarding the master educator license does not indicate that the required master’s degree needs to be earned from a regionally accredited college or university. The proposed amendment provides clarity and consistency with the other existing requirements for degrees earned.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 25, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, 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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public 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 the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, September 27, 2013. Written comments and suggestions should be addressed to Kim

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances From Administrative Rules,” Iowa Administrative Code.

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 272.2(1)“a.”

The following amendment is proposed.

Amend rule 282—13.8(272) as follows:

282—13.8(272) Specific requirements for a master educator’s license. A master educator’s license is valid for five years and may be issued to an applicant who:

1. Is the holder of or is eligible for a standard license as set out in rule 282—13.7(272), and
2. Verifies five years of successful teaching experience, and
3. Completes one of the following options:
 - Master’s degree from a regionally accredited college or university in a recognized endorsement area, or
 - Master’s degree from a regionally accredited college or university in curriculum, effective teaching, or a similar degree program which has a focus on school curriculum or instruction.

ARC 0993C

EDUCATIONAL EXAMINERS BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” and Chapter 17, “Career and Technical Endorsements and Licenses,” Iowa Administrative Code.

In December 2012, a licensure subcommittee of the Governor’s STEM Advisory Council, consisting of science, math, and industrial technology practitioners and administrators as well as higher education, Department of Education, and Board of Educational Examiners representatives met to recommend licensure rules to support implementation of Iowa’s Science, Technology, Engineering, and Mathematics (STEM) initiative. The STEM initiative is based on Executive Order 74, signed by Governor Branstad on July 26, 2011. The subcommittee recommended the proposed amendments, which will create K-8 and 5-8 STEM endorsements, a K-12 STEM specialist, a career and technical license for engineering, and a 5-12 engineering endorsement.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 25, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, 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 proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public 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 the office of the Executive Director at (515)281-5849.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, September 27, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

These amendments are subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances From Administrative Rules,” Iowa Administrative Code.

After analysis and review of this rule making, there is no anticipated impact on jobs.

These amendments are intended to implement Iowa Code section 272.2(1)“a.”

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 13.28(31):

13.28(31) Engineering. 5-12.

- a. Completion of 24 semester hours in engineering coursework.
- b. Methods and strategies of STEM instruction or methods of teaching science or mathematics.

ITEM 2. Adopt the following **new** subrule 13.28(32):

13.28(32) STEM.

a. K-8.

(1) Authorization. The holder of this endorsement is authorized to teach science, mathematics, and integrated STEM courses in kindergarten through grade eight.

(2) Program requirements. Be the holder of the teacher—elementary classroom endorsement.

(3) Content.

1. Completion of a minimum of 12 semester hours of college-level science.

2. Completion of a minimum of 12 semester hours of college-level math (or the completion of Calculus I) to include coursework in computer programming.

3. Completion of a minimum of three semester hours of coursework in content or pedagogy of engineering and technological design that includes engineering design processes or programming logic and problem-solving models and that may be met through either of the following:

- Engineering and technological design courses for education majors;
- Technology or engineering content coursework.

4. Completion of a minimum of 6 semester hours of required coursework in STEM curriculum and methods to include the following essential concepts and skills:

- Comparing and contrasting the nature and goals of each of the STEM disciplines;
- Promoting learning through purposeful, authentic, real-world connections;
- Integration of content and context of each of the STEM disciplines;
- Interdisciplinary/transdisciplinary approaches to teaching (including but not limited to problem-based learning and project-based learning);
- Curriculum and standards mapping;
- Engaging subject-matter experts (including but not limited to colleagues, parents, higher education faculty/students, business partners, and informal education agencies) in STEM experiences in and out of the classroom;

- Assessment of integrative learning approaches;
- Information literacy skills in STEM;
- Processes of science and scientific inquiry;
- Mathematical problem-solving models;
- Communicating to a variety of audiences;
- Classroom management in project-based classrooms;
- Instructional strategies for the inclusive classroom;
- Computational thinking;
- Mathematical and technological modeling.

5. Completion of a STEM field experience of a minimum of 30 contact hours that may be met through the following:

- Completing a STEM research experience;

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- Participating in a STEM internship at a STEM business or informal education organization; or
 - Leading a STEM extracurricular activity.
- b. 5-8.*
- (1) Authorization. The holder of this endorsement is authorized to teach science, mathematics, and integrated STEM courses in grades five through eight.
 - (2) Program requirements. Be the holder a 5-12 science, mathematics, or industrial technology endorsement or 5-8 middle school mathematics or science endorsement.
 - (3) Content.
 1. Completion of a minimum of 12 semester hours of college-level science.
 2. Completion of a minimum of 12 semester hours of college-level math (or the completion of Calculus I) to include coursework in computer programming.
 3. Completion of a minimum of 3 semester hours of coursework in content or pedagogy of engineering and technological design that includes engineering design processes or programming logic and problem-solving models and that may be met through either of the following:
 - Engineering and technological design courses for education majors;
 - Technology or engineering content coursework.
 4. Completion of a minimum of 6 semester hours of required coursework in STEM curriculum and methods to include the following essential concepts and skills:
 - Comparing and contrasting the nature and goals of each of the STEM disciplines;
 - Promoting learning through purposeful, authentic, real-world connections;
 - Integration of content and context of each of the STEM disciplines;
 - Interdisciplinary/transdisciplinary approaches to teaching (including but not limited to problem-based learning and project-based learning);
 - Curriculum and standards mapping;
 - Engaging subject-matter experts (including but not limited to colleagues, parents, higher education faculty/students, business partners, and informal education agencies) in STEM experiences in and out of the classroom;
 - Assessment of integrative learning approaches;
 - Information literacy skills in STEM;
 - Processes of science and scientific inquiry;
 - Mathematical problem-solving models;
 - Communicating to a variety of audiences;
 - Classroom management in project-based classrooms;
 - Instructional strategies for the inclusive classroom;
 - Computational thinking;
 - Mathematical and technological modeling.
 5. Completion of a STEM field experience of a minimum of 30 contact hours that may be met through the following:
 - Completing a STEM research experience;
 - Participating in a STEM internship at a STEM business or informal education organization; or
 - Leading a STEM extracurricular activity
- c. Specialist/coach, K-12.*
- (1) Authorization. The holder of this endorsement is authorized to serve as a STEM specialist in kindergarten and grades one through twelve.
 - (2) Program requirements.
 1. The applicant must have met the requirements for a standard Iowa teaching license and a teaching endorsement in mathematics, science, engineering, industrial technology, or agriculture.
 2. The applicant must hold a master's degree from a regionally accredited institution. The master's degree must be in math, science, engineering or technology or another area with at least 12 hours of college-level science and at least 12 hours of college-level math (or completion of Calculus I) to include coursework in computer programming.
 - (3) Content.

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1. Completion of a minimum of 3 semester hours of coursework in content or pedagogy of engineering and technological design that includes engineering design processes or programming logic and problem-solving models and that may be met through either of the following:

- Engineering and technological design courses for education majors;
- Technology or engineering content coursework.

2. Completion of 9 semester hours in professional development to include the following essential concepts and skills:

- STEM curriculum and methods:
 - Comparing and contrasting the nature and goals of each of the STEM disciplines;
 - Promoting learning through purposeful, authentic, real-world connections;
 - Integration of content and context of each of the STEM disciplines;
 - Interdisciplinary/transdisciplinary approaches to teaching (including but not limited to problem-based learning and project-based learning);

- Curriculum/standards mapping;
- Assessment of integrative learning approaches;
- Information literacy skills in STEM;
- Processes of science/scientific inquiry;
- Mathematical problem-solving models;
- Classroom management in project-based classrooms;
- Instructional strategies for the inclusive classroom;
- Computational thinking;
- Mathematical and technological modeling.

- STEM experiential learning:
 - Engaging subject-matter experts (including but not limited to colleagues, parents, higher education faculty/students, business partners, and informal education agencies) in STEM experiences in and out of the classroom;

- STEM research experiences;
- STEM internship at a STEM business or informal education organization;
- STEM extracurricular activity;
- Communicating to a variety of audiences.

- Leadership in STEM:
 - STEM curriculum development and assessment;
 - Curriculum mapping;
 - Assessment of student engagement;
 - STEM across the curriculum;
 - Research on best practices in STEM;
 - STEM curriculum accessibility for all students.

3. Completion of an internship/externship professional experience or prior professional experience in STEM for a minimum of 90 contact hours.

ITEM 3. Adopt the following new paragraph **17.1(3)“c”**:

c. Engineering.

- (1) Completion of a baccalaureate degree in engineering.
- (2) Demonstrated career and technical competence in engineering by completion of a minimum of 4,000 hours of practical, hands-on experience in engineering.
- (3) Coursework in foundations of career and technical education, planning and implementing courses and curriculum, methods and strategies of STEM instruction, and assessment of STEM programs and students.

ARC 0988C

EDUCATIONAL EXAMINERS BOARD[282]**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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 18, “Issuance of Administrator Licenses and Endorsements,” Iowa Administrative Code.

The proposed amendment would provide for multiple options for superintendent and AEA chief administrator applicants to demonstrate the required administrative experience.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 25, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, 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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public 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 the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, September 27, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances From Administrative Rules,” Iowa Administrative Code.

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 272.2(1)“a.”

The following amendment is proposed.

Amend rule 282—18.10(272) as follows:

282—18.10(272) Superintendent/AEA administrator.

18.10(1) Authorization. The holder of this endorsement is authorized to serve as a superintendent from the prekindergarten level through grade twelve or as an AEA administrator. NOTE: This authorization does not permit general teaching, school service, or administration at any level except that level or area for which the practitioner holds the specific endorsement(s).

18.10(2) No change.

18.10(3) Administrative experience. The applicant must meet one of the following:

a. The applicant must have had three years of experience as a building principal.

b. Other The applicant must have three years of administrative experience.—PK-12 or area education agency administrative experience is acceptable if the applicant acquires the three years’ experience while holding a valid administrator license. in any of the following areas: PK-12 regional education agency administrative experience, PK-12 state department of education administrative experience, PK-12 educational licensing board administrative experience or PK-12 building/district administrative experience while holding a valid Iowa administrator license.

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c. The applicant must have six years of teaching and administrative experience, provided that at least two years are teaching experience and one year is administrative experience.

ARC 0992C**EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 25, “Code of Professional Conduct and Ethics,” Iowa Administrative Code.

The proposed amendment would prohibit romantic or sexual relationships between licensees and former students for 90 days following the student’s last date of enrollment, if the licensee and the student previously had a direct and supervisory relationship. The proposed amendment adds an additional ethics violation under paragraph 25.3(1)“e” (“Student abuse”) specifically for students no longer enrolled in a school district.

The Board previously proposed a Notice of Intended Action (**ARC 0678C**, IAB 4/3/13) setting forth a more broadly written amendment to this rule. Instead of adopting that Notice, the Board considered input from stakeholders and the Administrative Rules Review Committee. The amendment proposed herein reflects changes based on this input; the Board reduced the number of days in the proposed amendment from 180 to 90, provided a statutory cross reference defining “sexual conduct,” and narrowed the prohibited conduct. The Board intends to terminate the rule making initiated by **ARC 0678C**.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 25, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, 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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public 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 the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, September 27, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is subject to waiver pursuant to 282—Chapter 6, “Waivers or Variances From Administrative Rules,” Iowa Administrative Code.

After analysis and review of this rule making, there is no anticipated impact on jobs.

This amendment is intended to implement Iowa Code section 272.2(1)“a.”

The following amendment is proposed.

Amend subrule 25.3(1) as follows:

25.3(1) Standard I—conviction of crimes, sexual or other immoral conduct with or toward a student, and child and dependent adult abuse. Violation of this standard includes:

a. to d. No change.

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e. Student abuse. Licensees shall maintain professional relationships with all students, both inside and outside the classroom. The following acts or behavior constitutes unethical conduct without regard to the existence of a criminal charge or conviction:

(1) to (4) No change.

(5) Furnishing alcohol or illegal or unauthorized drugs or drug paraphernalia to any student or knowingly allowing a student to consume alcohol or illegal or unauthorized drugs in the presence of the licensee; or

(6) Failing to report any suspected act of child or dependent adult abuse as required by state law; or

(7) Committing or soliciting any sexual conduct as defined in Iowa Code section 709.15(3) "b" or soliciting, encouraging, or consummating a romantic relationship with any person who was a student within 90 days prior to any conduct alleged in the complaint, if that person was taught by the practitioner or was supervised by the practitioner in any school activity when that person was a student.

ARC 1000C**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 chapter 17A and section 234.6, the Department of Human Services proposes to amend Chapter 7, "Appeals and Hearings," Iowa Administrative Code.

These amendments provide for the use of contested case proceedings for bidders that appeal the Department's notice of disqualification or decision on a contract award through a competitive procurement bid process. These amendments will move appeals for decisions in competitive procurement bid processes from an "other agency action" into the contested case process, which is consistent with how other state agencies handle these types of appeals.

When bidders appeal an award based on the competitive procurement bid process, the case will be reviewed by an administrative law judge rather than through the Department. The Department will be represented in these appeals by the Attorney General's office.

Any interested person may make written comments on the proposed amendments on or before September 24, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code chapter 17A.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 7**, preamble, as follows:

This chapter applies to contested case proceedings conducted by or on behalf of the department. The definitions in rule 441—7.1(17A) apply to the rules in both Division I and Division II of 441—Chapter 7.

ITEM 2. Adopt the following **new** definitions in rule **441—7.1(17A)**:

"*Bidder*" means an individual or entity that submits a proposal in response to a competitive procurement issued by the department.

"*Director*" means the director of the department of human services or the director's designee.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“Party” means a party as defined in Iowa Code subsection 17A.2(8).

“Proposed decision” means the presiding officer’s recommended findings of fact, conclusions of law, and decision and order in contested cases where the department did not preside.

ITEM 3. Amend rule **441—7.1(17A)**, definitions of “Aggrieved person” and “Reconsideration,” as follows:

“Aggrieved person” means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. to 11. No change.

12. Bidders that have participated in a competitive procurement bid process. Appeals resulting from a competitive procurement bid process will be handled pursuant to 441—Chapter 7, Division II.

13. Individuals and providers that are not listed in paragraphs “1” to “11” “12” may meet the definition of an aggrieved person if the department has taken an adverse action against that individual or provider.

“Reconsideration” means a review process that must be exhausted before an appeal hearing is granted. Such review processes include, but are not limited to, a reconsideration request through: ~~the Iowa Medicaid enterprise or its subcontractors, Magellan Behavioral Health Care, a health maintenance organization, a prepaid health plan, medical assistance patient management services, the managed health care review committee, a division or bureau within the department, the mental health and developmental disabilities commission, or a licensed health care professional as specified in 441—paragraph 9.9(1) “i.”~~

1. The Iowa Medicaid enterprise (IME) or its subcontractors,

2. The managed health care review committee,

3. A division or bureau within the department,

4. The mental health and disability services commission,

5. A licensed health care professional as specified in 441—paragraph 9.9(1) “i,” or

6. Any division or bureau within the department, from a bidder in a competitive procurement bid process.

Once the reconsideration process is complete, a notice of decision will be issued with appeal rights.

ITEM 4. Adopt the following **new** Division I heading before rule **441—7.3(17A)**:

DIVISION I

ITEM 5. Reserve rules **441—7.25** to **441—7.40**.

ITEM 6. Adopt the following **new** Division II in **441—Chapter 7**:

DIVISION II

APPEALS BASED ON THE COMPETITIVE PROCUREMENT BID PROCESS

441—7.41(17A) Scope and applicability. The rules in Division II apply to appeals based on the department’s competitive procurement bid process.

441—7.42(17A) Requests for timely filing of an appeal. Any bidder that receives either a notice of disqualification or a notice of award, and has first exhausted the reconsideration process, is considered an aggrieved party and may file a written appeal with the department.

7.42(1) An aggrieved party in a competitive procurement must seek reconsideration of a disqualification or a notice of award prior to filing any appeal. The request for reconsideration must be received by the department within five days of the date of either a disqualification notice or notice of award. The department will expeditiously address the request for reconsideration and issue a decision on the reconsideration. If the party seeking reconsideration continues to be an aggrieved party following receipt of the decision on reconsideration, the aggrieved party may file an appeal within five days of the date of the department’s decision on reconsideration.

7.42(2) The written appeal shall state the grounds upon which the appellant challenges the department’s decision.

7.42(3) The day after the department’s decision on reconsideration is issued is the first day of the period in which the appeal may be filed. The mailing address is: Department of Human Services, Appeals

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Section, 1305 East Walnut Street, Des Moines, Iowa, 50319-0114. Appeals may also be sent by fax, e-mail, or in-person delivery.

441—7.43(17A) Bidder appeals. The bidder appeal shall be a contested case proceeding and shall be conducted in accordance with the provisions of Division II. Division I of this chapter does not apply to competitive procurement bid appeals, unless otherwise noted.

7.43(1) Hearing time frame. The presiding officer shall hold a hearing on the bidder appeal within 60 days of the date the notice of appeal was received by the department.

7.43(2) Registration. Upon receipt of the notice of appeal, the department shall register the appeal.

7.43(3) Acknowledgment. Upon receipt of the notice of appeal, the department shall send a written acknowledgment of receipt of the appeal to the appellant, representative, or both. The appropriate department staff will be notified of the appeal.

7.43(4) Granting a hearing. The department shall determine whether an appellant may be granted a hearing and the issues to be discussed at the hearing in accordance with the applicable rules, statutes or federal regulations or request for proposal.

a. The appeals of those appellants who are granted a hearing shall be certified to the department of inspections and appeals for the hearing to be conducted. The department shall indicate at the time of certification the issues to be discussed at the hearing.

b. Appeals of those appellants that are denied a hearing shall not be closed until a letter is sent to the appellant and the appellant's representative advising of the denial of the hearing and the basis upon which that denial is made. Any appellant that disagrees with a denial may present additional information relative to the reason for denial and request reconsideration by the department over the denial.

7.43(5) Hearing scheduled. For those records certified for hearing, the department of inspections and appeals shall establish the date, time, method and place of the hearing, with due regard for the convenience of the appellant as set forth in the department of inspections and appeals rules in 481—Chapter 10 unless otherwise designated by federal or state statute or regulation.

7.43(6) Method of hearing. The department of inspections and appeals shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. All parties shall be granted the same rights during a teleconference hearing as specified in rule 441—7.13(17A).

7.43(7) Reschedule requests. Requests made by the appellant or the department to set another date, time, method or place of hearing shall be made to the department of inspections and appeals, except as otherwise noted. The granting of the requests will be at the discretion of the department of inspections and appeals. All requests concerning the scheduling of a hearing shall be made to the department of inspections and appeals directly.

7.43(8) Notification. For those appeals certified for hearing, the department of inspections and appeals shall send a notice to the appellant at least ten calendar days in advance of the hearing date.

a. The notice, as described in Iowa Code section 17A.12(2), shall set forth:

- (1) The date, time, method and place of the hearing;
- (2) That evidence may be presented orally or documented to establish pertinent facts; and
- (3) That the appellant may question or refute any testimony, may bring witnesses of the appellant's choice and may be represented by others, including an attorney. The department will not pay the cost of legal representation.

b. A copy of this notice shall be made available to the department employee who took the action and to any other parties to the appeal.

441—7.44(17A) Procedures for bidder appeal.

7.44(1) Discovery. The parties shall serve any discovery requests upon other parties at least 30 days prior to the date set for the hearing. The parties must serve responses to discovery at least 15 days prior to the date set for the hearing.

HUMAN SERVICES DEPARTMENT[441](cont'd)

7.44(2) Witnesses and exhibits. The parties shall contact each other regarding witnesses and exhibits at least 10 days prior to the date set for the hearing. The parties must meet prior to the hearing regarding the evidence to be presented in order to avoid duplication or the submission of extraneous materials.

7.44(3) Amendments to notice of appeal. The aggrieved bidder may amend the grounds upon which the bidder challenges the department's award no later than 15 days prior to the date set for the hearing.

7.44(4) If the hearing is not conducted in person, the parties must deliver all exhibits to the office of the presiding officer at least 3 days prior to the time the hearing is conducted.

7.44(5) The presiding officer shall issue a proposed decision in writing that includes findings of fact and conclusions of law stated separately. The decision shall be based on the record of the contested case and shall conform to Iowa Code chapter 17A. The presiding officer shall send the proposed decision to the appellant and representative by mail.

7.44(6) The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6).

441—7.45(17A) Stay of agency action for bidder appeal.

7.45(1) *When a stay may be requested.*

a. Any party appealing the issuance of a notice of disqualification or notice of award may petition for stay of the decision pending its review. The petition for stay shall be filed with the notice of appeal, shall state the reasons justifying a stay, and shall be accompanied by an appeal bond equal to 120 percent of the contract value.

b. Any party adversely affected by a final decision and order may petition the department for a stay of that decision and order pending judicial review. The petition for stay shall be filed with the director within five days of receipt of the final decision and order and shall state the reasons justifying a stay.

7.45(2) *When a stay is granted.* In determining whether to grant a stay, the director shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

7.45(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

441—7.46(17A) Request for review of the proposed decision. A request for review of the proposed decision shall follow the provisions outlined in subrules 7.16(5) to 7.16(7).

441—7.47(17A) Other procedural considerations.

7.47(1) *Consolidation—severance.*

a. Consolidation. The presiding officer may, upon motion by any party or the presiding officer's own motion, consolidate any or all matters at issue in two or more contested case proceedings where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues; and
- (3) Consolidation would not adversely affect the rights of parties to those proceedings.

At any time prior to the hearing, any party may on motion request that the matters not be consolidated, and the motion shall be granted for good cause shown.

b. Severance. The presiding officer may, upon motion by any party or upon the presiding officer's own motion, for good cause shown, order any proceeding or portion thereof severed.

7.47(2) *Presiding officer.* Appeal hearings shall be conducted by a hearing officer appointed by the department of inspections and appeals pursuant to rule 441—7.3(17A).

7.47(3) *Rights of appellants during hearings.* All rights afforded appellants at rule 441—7.13(17A) shall apply.

441—7.48(17A) Appeal record.

7.48(1) The appeal record shall consist of all items specified in subrule 7.16(1).

7.48(2) The party that requests a transcription of the proceedings shall bear the cost.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—7.49(17A) Pleadings.

7.49(1) Pleadings may be required by rule, by the notice of hearing or by order of the presiding officer.

7.49(2) Petition. When an action of the department is appealed and pleadings are required under subrule 7.49(1), the aggrieved party shall file the petition.

a. Any required petition shall be filed within 20 days of delivery of the notice of hearing, unless otherwise ordered.

b. The petition shall state in separately numbered paragraphs the following:

- (1) On whose behalf the petition is filed;
- (2) The particular provisions of the statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

7.49(3) Answer. If pleadings are required, the answer shall be filed within 20 days of service of the petition or notice of hearing, unless otherwise ordered.

a. Any party may move to dismiss or apply for a more definite, detailed statement when appropriate.

b. The answer shall show on whose behalf it is filed and specifically admit, deny or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and may contain as many defenses as the pleader may claim.

c. The answer shall state the name, address and telephone number of the person filing the answer and of the attorney representing that person, if any.

d. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

7.49(4) Amendment. Any notice of hearing, petition or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

441—7.50(17A) Ex parte communications. The rules regarding ex parte communications listed at 441—7.18(17A) apply.

441—7.51(17A) Right of judicial review. The rules regarding right of judicial review listed at 441—7.20(17A) apply.

ARC 0999C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

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

These amendments remove the provision that allows participants to reverse an imposed subsequent limited benefit plan (LBP) once hours of employment or activity participation are verified. With these amendments, consequences for noncompliance with subsequent LBPs will be made uniform.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Any interested person may make written comments on the proposed amendments on or before September 24, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 239B.4.

The following amendments are proposed.

ITEM 1. Amend paragraph **41.24(8)“e”** as follows:

e. Reconsideration of a subsequent limited benefit plan. A person who chooses a subsequent limited benefit plan may reconsider that choice at any time following the required six-month period of ineligibility.

(1) A subsequent limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to establish the limited benefit plan. Therefore, once timely and adequate notice is issued, the person who chose the limited benefit plan cannot end it by complying with the issue that resulted in its imposition ~~except when the participant has failed to provide verification of hours of employment or participation as described in paragraph “h.”.~~

(2) to (4) No change.

ITEM 2. Rescind paragraph **41.24(8)“h.”**

ITEM 3. Amend subrule 93.13(1) as follows:

93.13(1) Notification of participation issue. When participants appear to be choosing a limited benefit plan by not carrying out the FIA responsibilities, the PROMISE JOBS worker shall send one written reminder or letter as specified in subrule 93.10(1) ~~except when the participant has failed to verify hours of employment or participation as described in 441—paragraph 93.13(2)“m.”.~~ The reminder or letter shall:

- a.* Clearly identify the participation issue and the specific action needed to resolve it,
- b.* Clarify expectations,
- c.* Attempt to identify barriers to participation that should be addressed in the FIA,
- d.* Explain the consequences of the limited benefit plan, and
- e.* Offer supervisory intervention.

ITEM 4. Rescind paragraph **93.13(2)“m.”**

ITEM 5. Reletter paragraph **93.13(2)“n”** as **93.13(2)“m.”**

ARC 1001C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 239B.4(6), the Department of Human Services proposes to amend Chapter 41, “Granting Assistance,” Chapter 46, “Overpayment Recovery,” and Chapter 60, “Refugee Cash Assistance,” Iowa Administrative Code.

These amendments limit the types of businesses at which the electronic access card (EAC) can be used. Recipient households will not be allowed to use their EACs to access benefits at any of the following

HUMAN SERVICES DEPARTMENT[441](cont'd)

prohibited locations: a liquor store, a casino, a gambling casino, a gaming establishment, or a retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. A recipient that is proved to have used the recipient's EAC card at one of the above locations is considered to have committed a fraudulent act, must repay the amount accessed at the location, and is subject to a household ineligibility period.

These amendments also remove an obsolete reference to intentional program violations.

Any interested person may make written comments on the proposed amendments on or before September 24, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 239B.4(6).

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 41.25(11):

41.25(11) Access to benefits.

a. A recipient shall not use the recipient's electronic access card issued pursuant to 441—subrule 45.21(1) to access benefits at any of the following prohibited locations as defined by federal statute or regulation applicable to this prohibition:

- (1) A liquor store,
- (2) A casino, gambling casino or gaming establishment, or
- (3) A retail establishment that provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment.

b. When the department receives a detailed complaint or suspects that a recipient has used the recipient's electronic access card at a prohibited location, the case shall be referred to the department of inspections and appeals for further investigation.

c. When the department of inspections and appeals finds that a recipient has used the recipient's electronic access card at a prohibited location, the household that includes the recipient is:

- (1) Considered to have committed a fraudulent act;
- (2) Liable for any amounts accessed at a prohibited location and required to repay such amount in accordance with 441—Chapter 46;
- (3) Ineligible for FIP for a three-month period after the first report by the department of inspections and appeals which includes a finding of misuse;
- (4) Ineligible for FIP for a six-month period after each subsequent report by the department of inspections and appeals which includes a finding of misuse.

When the parents from a two-parent family separate during an ineligibility period, the ineligibility period applies to both the household of the parent that remains in the home and any household entered by the parent who left the home.

ITEM 2. Amend rule **441—46.21(239B)**, definitions of "Client error" and "Overpayment," as follows:

"*Client error*" means and may result from:

1. False or misleading statements, oral or written, regarding the client's income, resources, or other circumstances which may affect eligibility or the amount of assistance received;
2. Failure to timely report changes in income, resources, or other circumstances as required by rule 441—40.27(239B); ~~or~~
3. Failure to refund to the child support recovery unit any nonexempt payment from the absent parent received after the date the decision on eligibility was made; or
4. Access of benefits issued via the electronic access card at a prohibited location pursuant to 441—subrule 41.25(11).

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Overpayment*” means any assistance payment received in an amount greater than the amount the eligible group is entitled to receive or the amount of any payment accessed at a prohibited location pursuant to 441—subrule 41.25(11).

ITEM 3. Amend subrule 46.24(3) as follows:

46.24(3) Client error:

a. An overpayment due to client error shall be computed as if the information had been reported and acted upon timely.

b. Overpayments due to failure to refund payments received from the absent parent shall be the total nonexempt support payment made for members of the eligible group at the time the support payment was received. In addition, assistance payments made to meet the needs of the eligible group may also be subject to recoupment under provisions in 441—subrule 41.22(6).

c. An overpayment due to a recipient’s accessing benefits via the electronic access card at a prohibited location shall be the total of the transactions at prohibited locations pursuant to 441—subrule 41.25(11).

ITEM 4. Adopt the following **new** subrule 60.10(4):

60.10(4) Restrictions found in 441—subrule 41.25(11) apply to benefits issued under this chapter.

ITEM 5. Amend rule 441—60.16(217) as follows:

441—60.16(217) Overpayment recovery. Recovery of overpayments and ~~intentional program violation~~ shall be determined as defined in 441—Chapter 46, Division II, except that refugee cash assistance shall be substituted for the family investment program whenever it appears.

ARC 1007C

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 sections 237A.2, 237A.5(2)“k,” 237A.8, and 237A.12, the Department of Human Services proposes to amend Chapter 109, “Child Care Centers,” and Chapter 110, “Child Development Homes,” Iowa Administrative Code.

These amendments provide clear regulatory guidance for licensed child care centers regarding the requirement to post a provisional license status in a conspicuous place within the center. Additionally, the amendments provide clear regulatory guidance for licensed child care center staff regarding the requirement to notify parents, guardians, and legal custodians immediately following an incident of inappropriate, sexually acting-out behavior in the center.

Any interested person may make written comments on the proposed amendments on or before September 24, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

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

These amendments are intended to implement Iowa Code section 237A.12.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

d. If the center's license is denied, suspended or revoked, the administrator of the department shall notify the parent, guardian, or legal custodian of each child for whom the facility provides child care. The center shall cooperate with the department in providing the names and address of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

ITEM 2. Amend paragraph **109.4(3)“a”** as follows:

a. Postings are required for the certificate of license, notice of exposure of children to a communicable disease, and notice of ~~actions~~ action to deny, suspend, or revoke the center's license or reduce the center's license to a provisional status. The center's license, reflecting current regulatory status, and all other required postings shall be conspicuously placed at the main entrance to the center. If the center is located in a building used for additional purposes and shares the main entrance to the building, the required postings shall be conspicuously placed in the center in an area that is frequented daily by parents or the public.

ITEM 3. Amend paragraph **109.6(6)“i”** as follows:

i. Notice to parents. The administrator of the department shall notify the ~~parent, guardian, or legal custodian~~ parents, guardians, and legal custodians of each child for whom the person provides child care if there has been founded child abuse committed by an owner, director, or staff member of the child care center. The center shall cooperate with the department in providing the names and addresses of the ~~parent, guardian, or legal custodian~~ parents, guardians, and legal custodians of each child for whom the facility provides child care.

ITEM 4. Amend subrule 109.10(10) as follows:

109.10(10) Recording incidents. Incidents involving a child, including minor injuries, minor changes in health status, or other minor behavioral concerns, shall be reported to the ~~parent~~ parents, guardians, and legal custodians on the day of the incident. Incidents resulting in an injury to a child shall be reported to the parent on the day of the incident. Incidents resulting in a serious injury to a child or incidents resulting in a significant change in the health status of a child shall be verbally reported immediately to the parent parents, guardians, and legal custodians immediately. The parents, guardians, and legal custodians of any child included in incidents involving inappropriate, sexually acting-out behavior shall be notified immediately after the incident. A written report, fully documenting every incident, shall be provided to the parent or person authorized to remove the child from the center. The written report shall be prepared by the staff member who observed the incident and a copy shall be retained in the child's file.

ITEM 5. Amend paragraph **110.7(3)“i”** as follows:

i. Notice to parents of abuse in care. If there has been founded child abuse committed by an owner, director, or staff member of the child care facility or child care home, the department's administrator shall notify the ~~parent, guardian, or custodian~~ parents, guardians, and legal custodians of each child for whom the facility or child care home provides care. The child care facility or child care home shall cooperate with the department in providing the names and addresses of the parents, guardians, and legal custodians of each child for whom the facility provides child care.

(1) to (3) No change.

ITEM 6. Adopt the following new subrule 110.7(6):

110.7(6) Required notifications. If a certificate of registration is revoked, the administrator of the department shall notify the parent, guardian, or legal custodian of each child for whom the facility provides care. The provider shall cooperate with the department in providing the names and address of the parent, guardian, or legal custodian of each child for whom the facility provides child care.

ARC 1004C**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 523I.207, the Insurance Division (the Division) hereby gives Notice of Intended Action to rescind Chapter 18, “Cemeteries,” and to adopt new Chapter 140, “Burial Sites and Cemeteries,” Iowa Administrative Code.

New Chapter 140 is promulgated to implement and administer the provisions of Iowa Code chapter 523I, which regulates burial sites and cemeteries.

The new chapter addresses the assessment of expenses for examinations of cemeteries pursuant to Iowa Code section 523I.213A, notices of disinterments of remains filed pursuant to Iowa Code section 523I.309, sales practices by cemeteries that constitute the sale of insurance, and a total return method of distributing perpetual care trust fund income to perpetual care cemeteries. The Division intends that these rules shall become effective January 1, 2014, and that burial sites and cemeteries must be in compliance with the adopted rules beginning January 1, 2014.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 27, 2013. Such written comments should be directed to Dennis Britson, Iowa Securities Bureau, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309-3738; fax (515)281-3059; e-mail dennis.britson@iid.iowa.gov.

Also, there will be a public hearing on September 24, 2013, at 10 a.m., at the offices of the Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views about the amendments either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record.

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

The proposed rules are subject to waiver consistent with the waiver provisions provided in 191—Chapter 4.

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

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

The following amendments are proposed.

ITEM 1. Rescind and reserve **191—Chapter 18**.

ITEM 2. Adopt the following **new** 191—Chapter 140:

CHAPTER 140
BURIAL SITES AND CEMETERIES

191—140.1(523I) Purpose. This chapter is promulgated to implement and administer the provisions of Iowa Code chapter 523I, which regulates burial sites and cemeteries.

This rule is intended to implement Iowa Code sections 523I.201 and 523I.207.

191—140.2(523I) Definitions. For purposes of this chapter, the definitions of Iowa Code chapter 523I are incorporated by reference. In addition, the following definitions shall apply:

“*Act*” shall mean Iowa Code chapter 523I, the “Iowa cemetery Act.”

“*Bureau*” shall mean the securities and regulated industries bureau of the division.

INSURANCE DIVISION[191](cont'd)

“*Division*” shall mean the insurance division.

This rule is intended to implement Iowa Code section 523I.207.

191—140.3(523I) Administration.

140.3(1) *Contact information.* All mailed complaints and inquiries shall be sent to the Securities and Regulated Industries Bureau, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309-3738. Telephone inquiries may be made at (515)281-5705. E-mail correspondence may be made through the division’s Web site, www.iid.state.ia.us.

140.3(2) *Complaints and inquiries.* The division may receive and process any complaint made regarding burial sites or cemeteries. Where appropriate, the division may refer complaints, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local official, may make and file a complaint with the division. Complaints may be received from sources outside the state of Iowa and processed in the same manner as those originating in Iowa. If required by the division, complaints shall be made on forms prescribed by the division.

140.3(3) *Forms and filing procedures.*

a. Copies of all required forms and instructions for filing complaints, notices and annual reports are available on the division’s Web site, www.iid.state.ia.us.

b. All filings of annual reports and notices shall be made as directed by the division. Instructions are available at the division’s Web site, www.iid.state.ia.us.

This rule is intended to implement Iowa Code sections 523I.201 and 523I.207.

191—140.4(523I) Examination expenses assessment. The fee for an on-site examination of a perpetual care cemetery performed by the division pursuant to Iowa Code section 523I.213A is \$150. The fee will not be assessed more than once every five years. In addition, the division reserves the right to assess actual costs of staff time, travel, meals and lodging expenses in special circumstances, or for investigative examinations for cause, as often as necessary.

This rule is intended to implement Iowa Code sections 523I.202, 523I.207, and 523I.213A.

191—140.5(523I) Notice of disinterment. The notice filed by a cemetery reporting a disinterment pursuant to Iowa Code section 523I.309 shall include a description of the error, the reason the error occurred, the identity of all parties in interest, the date of the initial interment, the identity of the remains being relocated, the location where the disinterment will occur, and the location of the new interment space.

The division and parties in interest may waive the 60-day notice period if all parties in interest have received notice of the action and consented to the disinterment and relocation.

This rule is intended to implement Iowa Code sections 523I.207 and 523I.309.

191—140.6(523I) Sale of insurance. Any offer to provide merchandise or services in the event of the death of a person other than a purchaser or beneficiary named in the purchase agreement of cemetery and funeral merchandise and services is the sale of insurance and must be properly underwritten by an insurance company authorized to sell insurance in Iowa.

This rule is intended to implement Iowa Code sections 523I.207 and 523I.211.

191—140.7(523I) Commingling of perpetual care trust fund accounts.

140.7(1) Except as otherwise provided in subrules 140.7(2) and 140.7(3), the assets of a perpetual care trust fund may not be commingled with other perpetual care trust fund assets or with any other funds.

140.7(2) The assets of a perpetual care trust fund may be managed by a master trust managing funds from more than one cemetery.

140.7(3) The assets of a perpetual care trust fund may be commingled into other cemeteries’ trust funds for investment purposes if separate title and separate accounting are maintained for each cemetery’s individual perpetual care trust fund.

This rule is intended to implement Iowa Code sections 523I.207 and 523I.810.

INSURANCE DIVISION[191](cont'd)

191—140.8(523I) Distribution of capital gains using a total return distribution method.

140.8(1) The principal of a care fund is intended to remain available perpetually as a funding source for care of the cemetery. The principal of a care fund shall not be reduced voluntarily and shall remain inviolable, except for the distribution of income. This rule is intended to encourage investments in appreciating assets that will produce higher income levels created by growth in trust principal. Pursuant to Iowa Code section 523I.811(2), a trustee or, in the event of multiple trustees, a majority of the trustees, may, in the trustee's or trustees' sole discretion and without approval of the court, adopt a total return distribution method, subject to the terms and conditions of this rule.

a. The trust's governing instrument must clearly manifest intent to use a total return distribution method. Conversion to an investment policy utilizing the total return distribution method shall not conflict with or affect any provision of the trust agreement, if any, regarding the distribution of principal. If the trust agreement indicates intent that net appreciation shall not be expended, the trust may not use the total return distribution method unless the trust agreement is amended appropriately.

b. Distributions permitted under the total return distribution method shall be paid in the following order:

- (1) Net income as normally defined;
- (2) Other ordinary income as determined for federal income tax purposes;
- (3) Assets of the trust principal for which there is a readily available market value; and
- (4) Other trust principal.

c. A separate accounting of principal and income shall be maintained for the care fund.

d. The use of distributions under the total return distribution method shall continue to be governed by Iowa Code section 523I.811.

e. The trustee or trustees shall, not less than annually, determine the fair market value of each asset of the trust that consists primarily of real property or other property that is not traded on a regular basis in an active market, by appraisal or other reasonable method or estimate. That determination, if made reasonably and in good faith, shall be conclusive as to all persons interested in the trust.

140.8(2) The trustee or trustees shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision regarding the investment of trust funds. In so doing, the trustee or trustees shall consider present and anticipated financial requirements of the cemetery, including the following: the cemetery's need to fund the current expenses of care and maintenance and the cemetery's long-term need to fund the expenses of care and maintenance; expected total return from income and appreciation of principal; price level trends of equity and fixed income investments; needs for liquidity; regularity of income; preservation or appreciation of capital; general economic conditions; the possible effect of inflation or deflation; and the retention of income and net appreciation to adjust for inflation.

140.8(3) A notice of intent shall be filed with the division 90 days prior to implementation of the total return distribution method. The notice shall include a copy of the trust governing instrument and the written election adopting the total return distribution method.

140.8(4) The trustee or trustees must, prior to implementation of the total return distribution method, adopt a written investment and distribution policy under which future distributions from the trust will be total return distribution amounts rather than net income distribution amounts. A copy of the investment and distribution policy shall be filed with the notice required by subrule 140.8(3). The investment goals and objectives shall be to achieve the following: principal growth through equity investment; current income through income investments; and an appropriate balance between (1) maintaining purchasing power through principal appreciation and (2) generating current income to support the cemetery's current care and maintenance. The trustee or trustees shall treat the net appreciation, realized and unrealized, in the fair value of the assets of a care fund as if it were net income of the trust for purposes of determining the amount available for distributions, from time to time, from the care fund.

140.8(5) In addition to the annual report required by Iowa Code section 523I.813, a perpetual care cemetery using the total return distribution method shall file an annual report with the division about the trust, detailing the asset allocation, the annual payout, any changes in investment policy, an accounting in

INSURANCE DIVISION[191](cont'd)

regard to whether growth of the care fund's trust principal has exceeded an amount needed to compensate for inflation, and other pertinent information.

140.8(6) The division may limit or prohibit the distribution of capital gains in situations where investment returns and distribution practices have not resulted in sufficient protection of the care fund's trust principal from either a middle-term (three to five years) or long-term analysis. The division's review shall consider the presence and stated value of assets that do not have an active market and are not traded on a regular basis, the frequency of appraisals and evaluations, the asset allocation of the trust, and whether trust principal, as adjusted for inflation, is less than it was at the time the cemetery converted to the total return distribution method.

140.8(7) The annual payout shall not exceed the greater of the net ordinary income or 5 percent of the fair market value of the care fund as of the last day of the trust fiscal year immediately preceding the distribution year, unless approved by the division upon a showing of good cause. The determination of payout amounts shall take into consideration the cemetery's need to fund both the current and future expenses of care and the maintenance and preservation of principal. In determining the amounts to be paid out annually, the following factors shall be taken into account: the perpetual duration of the care fund; present and anticipated financial requirements; expected total return from income and appreciation of principal; price level trends of equity and fixed income investments; needs for liquidity; regularity of income; preservation or appreciation of capital; general economic conditions; the possible effect of inflation or deflation; and the retention of income and net appreciation to adjust for inflation.

140.8(8) The trustee or trustees shall maintain records documenting the net fair market values of the assets held in trust at the end of the accounting period immediately prior to adoption of the total return distribution method.

140.8(9) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are readily ascertainable. Reasonable and appropriate valuation methods shall be utilized. As appropriate, assets may be excluded from valuation, provided all income received with respect to such assets is distributed to the extent distributable in accordance with the terms of the trust agreement.

140.8(10) The asset allocation of the care fund shall include a diversified portfolio, and investment decisions shall be made in accordance with Iowa Code section 633A.4302.

140.8(11) The division may limit or prohibit adoption of a total return distribution method by a care fund if the trustee or trustees and any investment manager are not able to demonstrate sufficient knowledge and expertise regarding effective implementation of the total return distribution method.

140.8(12) The election of use of a total return distribution method is irrevocable, unless a reversion is approved by the division. A notice shall be filed with the division 90 days prior to a proposed reversion from the total return distribution method to the traditional net income distribution method. The division may prohibit a reversion from the total return distribution method to the traditional net income distribution method if the trust principal, as adjusted for inflation, is less than it was at the time the cemetery converted to the total return distribution method.

This rule is intended to implement Iowa Code sections 523I.207 and 523I.811(2).

ARC 0997C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.5(1)“m,” the Iowa Finance Authority proposes to amend Chapter 39, “HOME Investment Partnerships Program,” Iowa Administrative Code.

The purpose of these amendments is to clarify the rules and update definitions.

The Authority does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on September 24, 2013. Comments may be addressed to Carolann Jensen, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Carolann Jensen at (515)725-4901 or e-mailed to carolann.jensen@iowa.gov.

The Authority anticipates that it may make changes to the proposed amendments based on comments received from the public.

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

These amendments are intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Sections 12701 et seq.

The following amendments are proposed.

ITEM 1. Amend rule 265—39.1(16) as follows:

265—39.1(16) Purpose. ~~The primary purpose of the HOME investment partnerships program is to expand or retain the supply of decent and affordable housing for low- and moderate income Iowans fund a wide range of activities that build, buy or rehabilitate (or both buy and rehabilitate) affordable housing for rent or homeownership or to provide direct rental assistance to low-income people.~~

ITEM 2. Adopt the following **new** definitions of “Fully accessible unit” and “Qualified veteran” in rule **265—39.2(16)**:

“*Fully accessible unit*” means a unit designed and constructed for full accessibility in accordance with Section 1002 of the International Code Council (ICC) A117.1.

“*Qualified veteran*” means a person who served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable.

ITEM 3. Rescind the definition of “Accessible” in rule **265—39.2(16)**.

ITEM 4. Amend the following definitions in rule **265—39.2(16)**:

“*Contract*” means a binding written agreement between IFA and the recipient or subrecipient for the purpose of utilizing HOME funds to ~~produce affordable housing or provide tenant-based rental assistance build, buy or rehabilitate (or both buy and rehabilitate) affordable housing for rent or homeownership or to provide direct rental assistance to low-income people.~~

“*Local support*” means involvement, endorsement and investment by local citizens, local organizations and or the governing body of the local government in which the housing project is located. ~~that~~ The local support shall promote the objectives of the housing activity or projects assisted through the HOME partnership program.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 5. Amend subrule 39.4(1) as follows:

39.4(1) Eligible activities include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion and preservation), rental housing new construction, homebuyer assistance that includes some form of direct subsidy to the homebuyer (~~including development subsidies~~), and other housing-related activities as may be deemed appropriate by IFA. Assisted housing may be single-family housing or multifamily housing and may be designed for occupancy by homebuyers or tenants.

a. Assisted units shall meet the period of affordability as set forth in the federal program requirements.

b. For homebuyer assistance, the initial purchase price for newly constructed units or the after-rehabilitation value for rehabilitated units shall not exceed the single-family housing mortgage limits as set forth by HUD's most current maximum purchase price or after-rehabilitation value limits.

c. For a rental project, rents shall be limited to the rents allowed by HUD for HOME.

~~*b.*~~ *d.* Assisted households shall meet income limits established by federal program requirements.

(1) For a rental activities project, all assisted units shall be rented to low-income households; at initial occupancy, ~~400~~ at least 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with five or more units, at least 20 percent of the units shall be rented initially to very low-income households.

(2) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; at least 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.

(3) For homebuyer assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted.

~~*e.*~~ *e.* Property standards. All newly constructed housing (single-family and multifamily housing) shall be constructed in accordance with any locally adopted and enforced building codes, standards and ordinances. In the absence of locally adopted and enforced building codes, the requirements of the state building code shall apply.

(1) All rental housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted and enforced building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the state building code shall apply.

(2) All single-family housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the most current version of Iowa's Minimum Housing Rehabilitation Standards shall apply (all communities with populations of 15,000 or less).

~~*d.*~~ *f.* Energy Star. All new rental construction must obtain Energy Star certification verified by an Energy Star rater.

ITEM 6. Amend subrule 39.6(9) as follows:

39.6(9) An application for a homebuyer assistance activity must stipulate that homebuyer assistance is for first-time homebuyers or qualified veterans only and that the assisted unit will remain as the assisted homebuyer's principal residence throughout the required period of affordability, which must be verified annually by the subrecipient. If the assisted homebuyer fails to maintain the home as the principal residence during the period of affordability, then all HOME funds associated with that address must be repaid to IFA.

ITEM 7. Amend subrule 39.7(3) as follows:

39.7(3) Special consideration will be given to applications where 100 percent of the HOME-funded rental units are fully accessible (~~not adaptable~~) units.

ITEM 8. Amend subrules 39.8(6) and 39.8(7) as follows:

39.8(6) ~~An A single~~ award shall be limited to no more than: \$600,000 for single-family housing activities assisting homebuyers. An award shall be limited to no more than \$1,000,000 for multifamily housing rental activities.

a. \$600,000 for single-family housing activity, or

IOWA FINANCE AUTHORITY[265](cont'd)

- b. \$1,000,000 for rental project, or
 c. \$1,000,000 for tenant-based rental assistance activity.

39.8(7) Single-family per-unit subsidies.

a. The maximum per-unit subsidy for all single-family housing activities involving rehabilitation is \$37,500. The \$37,500 per-unit limit includes all applicable costs including, but not limited to, the hard costs of rehabilitation or the acquisition subsidy or both; homebuyer assistance activities; technical services costs, including lead hazard reduction carrying costs; lead hazard reduction costs; and temporary relocation. All rehabilitation hard costs funded with HOME funds are limited to \$24,999. All applicable technical services costs, including any lead hazard reduction carrying costs, are limited to \$4,500 per unit.

b. Assistance for single-family housing activities providing acquisition assistance for ~~newly constructed~~ housing (mortgage buy-down, down payment or closing costs assistance or both, or combinations thereof) is limited to \$35,000 per unit, inclusive of all costs, including technical services costs.

ITEM 9. Amend subrule 39.9(8) as follows:

39.9(8) *Compliance with federal, state and local laws and regulations.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations. IFA may require a construction sign meeting specifications outlined by IFA to be erected on the property at the initiation of construction or rehabilitation of rental projects.

ARC 1009C**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 71, “Administration of the Conveyance Safety Program,” Iowa Administrative Code.

The Elevator Safety Board is charged with responsibility to set conveyance safety program fees at “an amount sufficient to cover costs” of operating the program. The last significant change in the fee schedule was in 2005. In conjunction with the Labor Commissioner, the Elevator Safety Board conducted a careful review of the conveyance safety program’s finances and the fee structures of similar programs in the region. The Elevator Safety Board concluded that fee increases are essential and that the fees proposed in this Notice are appropriate in light of what other states charge.

The purposes of this amendment are to maintain the financial solvency of the program, protect the health and safety of the public, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on September 24, 2013, a public hearing will be held on September 25, 2013, at 9:30 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than September 25, 2013, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

LABOR SERVICES DIVISION[875](cont'd)

No variance procedures are included in this rule. Applicable variance procedures are set forth in 875—Chapter 66.

After analysis and review of this rule making, no impact on jobs will occur.

This amendment is intended to implement Iowa Code chapter 89A.

The following amendment is proposed.

Rescind rule 875—71.16(89A) and adopt the following new rule in lieu thereof:

875—71.16(89A) Fees. Except as noted in this rule, all fees are nonrefundable and due in advance.

71.16(1) *Operating permits.* The annual operating permit fee shall be \$75 per conveyance.

71.16(2) *Periodic inspections.* Fees shall be remitted to the division of labor services within 30 days of the date of inspection. The fees for periodic inspections shall be as follows:

- a. Hydraulic elevator: \$100.
- b. Wind tower lift: \$225.
- c. Hand-powered elevator: \$90.
- d. Television tower elevator: \$500.
- e. Other traction elevator: \$150.
- f. Escalator: \$150.
- g. Dumbwaiter: \$90.
- h. Wheelchair lift: \$90.
- i. CPH.
 - (1) Annual: \$500.
 - (2) Quarterly: \$200.
- j. Moving walk: \$150.

71.16(3) *Installation permits.* The fees in this subrule cover the initial print review, installation permit, initial inspection and first-year operating permit. Each print revision submitted to the division shall be subject to an additional fee of \$100. The fees for new installations shall be as follows:

- a. Wind tower lift: \$500.
- b. Hydraulic elevator: \$750.
- c. Traction elevator: \$1000.
- d. Escalator: \$1000.
- e. Dumbwaiter: \$500.
- f. Wheelchair lift: \$500.
- g. CPH: \$500.
- h. Moving walk: \$500.

71.16(4) *Alteration permits.*

a. The fee for any elevator alteration permit except a CPH extension shall be \$500 and shall cover the initial print review, alteration permit, and initial inspection.

b. The fee for each CPH extension shall be \$150. The total fee required for all planned CPH extensions shall be submitted with the installation permit application pursuant to subrule 71.5(3).

c. For all other conveyances, the fees for new installations shall apply to alterations.

71.16(5) *Construction permits.* The construction permit fee shall be \$200 per conveyance. This fee includes the fee for initial inspection.

71.16(6) *Controller upgrade permits.* The controller upgrade permit fee shall be \$250. This fee includes one inspection.

71.16(7) *Consultative inspections.* Consultative inspections may be performed at the discretion of the labor commissioner for \$125 per hour, including travel time, with a minimum charge of \$250.

71.16(8) *Special inspector commission.* The special inspector commission fee shall be \$60 annually.

71.16(9) *Witness of safety tests.* The fee for division employees to witness safety tests shall be \$125 per hour, including travel time, with a minimum charge of \$250.

71.16(10) *Permit extensions.* The fee to extend an installation permit, alteration permit, or construction permit shall be \$100.

LABOR SERVICES DIVISION[875](cont'd)

71.16(11) Inspections outside of normal business hours. Inspections outside the normal business hours may be performed at the discretion of the labor commissioner. If the owner or contractor requests an inspection outside of normal business hours and the labor commissioner agrees to the schedule, an additional fee will be charged. The additional fee will be calculated at a rate of \$200 per hour, including travel time, with a minimum charge of \$400.

71.16(12) Reinspections. The fees for reinspections are \$400 for television tower elevators and CPHs, \$200 for wind tower lifts, and \$300 for all other conveyances.

71.16(13) Inspection for temporary removal from service. The inspection fee for temporary removal from service pursuant to rule 875—71.20(89A) shall be \$125 per hour, including travel time, with a minimum charge of \$250.

71.16(14) Fee waiver. When a state inspector combines in one visit two different types of inspection on a single conveyance, the commissioner may waive the lesser of the fees.

ARC 1002C**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 421.17, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 40, “Determination of Net Income,” and Chapter 86, “Inheritance Tax,” Iowa Administrative Code.

The proposed amendments are primarily the result of a periodic review of Chapter 86 and will update and clarify current procedures and examples and streamline administration for both the Department and taxpayers. Additional proposed amendments are a result of the passage of 2012 Iowa Acts, House File 609.

Item 1 rescinds and reserves 701—40.59(422). This rule is no longer needed because it interprets Iowa Code section 422.7(4), which was repealed by 2012 Iowa Acts, House File 609.

Item 2 amends subrule 86.1(6) to eliminate the requirement that the Department be notified of the balance in a joint account on the date of a deceased joint owner’s death. This is an unnecessary burden on the public.

Item 3 adopts new subparagraph 86.2(1)“c”(5) to interpret Iowa Code section 450.4(7), which has been a point of confusion for the public.

Item 4 amends subparagraph 86.2(1)“d”(2) to remove the requirement that persons succeeding to an interest in real property—when no Iowa inheritance tax return is required to be filed and the real estate does not pass through probate administration—must file with the Department a copy of the affidavit they are required to file with the county. The requirement that the Department receive a copy of this affidavit is unnecessary to the administration of the applicable law.

Item 5 amends paragraph 86.2(2)“b” to clarify that a preliminary inheritance tax return is not required because this has been a point of confusion for the public.

Item 6 amends paragraph 86.2(2)“d” to add “stepgrandchild” to the list of relationships that are not lineal ascendants or descendants because this relationship has been the subject of several inquiries from the public. This item also amends the language in Schedule G for clarification.

Item 7 amends subrule 86.2(4) to require that “supplemental” returns be clearly labeled to improve the accuracy of processing such returns.

Item 8 amends subrule 86.5(1) to organize it into separate lettered paragraphs for clarification and to add paragraphs “c” and “d” to explain other common issues that arise.

REVENUE DEPARTMENT[701](cont'd)

Item 9 rescinds and reserves subrule 86.5(4) because the related language in Iowa Code section 450.2 has been removed and, therefore, the subrule is no longer relevant.

Item 10 amends paragraph 86.5(7)“d” to update the examples.

Item 11 amends subrule 86.5(9) to eliminate the reference to an outdated annual gift exclusion and replace it with a general term that will remain accurate over time.

Item 12 amends paragraph 86.5(12)“a” to clarify that annuity growth is taxable and to add a reference to new subrule 86.5(13).

Item 13 rescinds paragraph 86.5(12)“b” to reflect the passage of 2012 Iowa Acts, House File 609.

Item 14 renumbers subrules 86.5(13) and 86.5(14) as 86.5(14) and 86.5(15) so that new subrule 86.5(13) can be added. The new subrule is best placed immediately following 86.5(12).

Item 15 adopts new subrule 86.5(13), which explains specific tax treatment of certain types of retirement plans. This subrule is necessary following the repeal of Iowa Code section 450.4(8) by 2012 Iowa Acts, House File 609.

Item 16 rescinds and reserves paragraph 86.6(2)“d” because the language contained in 86.6(2)“d” will be incorporated into rule 701—86.14(450) (see Item 27). The Department believes that rule 701—86.14(450) is a more logical location for this information.

Item 17 amends 86.6(3)“a”(1), numbered paragraph “2,” to remove the reference to an outdated annual gift exclusion and replace it with a more general reference that will remain accurate.

Items 18 and 19 amend the introductory paragraphs of subrules 86.7(4) and 86.7(5), respectively, to explain the fact that the tables are only relevant for decedents dying prior to January 1, 2004.

Items 20 and 21 adopt new subrules 86.7(6) and 86.7(7), respectively, to provide up-to-date mortality tables.

Items 22 and 23 amend subparagraphs 86.9(2)“e”(2) and (3) to provide the Department with 60 days rather than the current 30 days to request an appraisal.

Item 24 amends rule 701—86.11(450) to update the examples to reflect current mortality rates and provide examples of cash rent valuation.

Item 25 amends subrule 86.14(5) to clarify that shares paid out of the residue are not “stepped-up.”

Item 26 amends subrule 86.14(10) to provide examples of credit on prior transfers.

Item 27 adopts new subrule 86.14(11), which sets forth the information on prorated cash bequests (previously contained in paragraph 86.6(2)“d”) in a more logical location.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that the proposed amendments may alleviate some of the burdens on estate administration. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 7, 2013, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 24, 2013. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 24, 2013.

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

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These amendments are intended to implement Iowa Code sections 422.7, 450.2 to 450.4, 450.9, 450.22, 450.27 to 450.37, 450.44 to 450.49, 450.51, 450.52, 633.276, and 633.800 to 633.811.

The following amendments are proposed.

ITEM 1. Rescind and reserve rule **701—40.59(422)**.

ITEM 2. Amend subrule 86.1(6) as follows:

86.1(6) Safe deposit boxes and joint accounts. Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner, or beneficiary. ~~However,~~ Additionally, effective July 1, 2005, there is no longer a requirement that all persons, banks, credit unions, and savings and loan associations are required to notify the department of the balance in a joint account on the date of a deceased joint owner's death and the name and address of the surviving joint owner prior to permitting the withdrawal of funds from the joint account by a surviving joint owner.

ITEM 3. Amend paragraph **86.2(1)“c”** as follows:

c. Who is not required to file a return for estate of decedents dying on or after July 1, 2004. Effective for estates with decedents dying on or after July 1, 2004, if an estate has no Iowa inheritance tax due and there is no obligation for the estate to file a federal estate tax return, even though real estate is involved, an Iowa inheritance tax return need not be filed if one of the following situations is applicable:

(1) to (3) No change.

(4) All estate assets are passed by will or intestate succession as set forth in Iowa Code chapter 633, division IV, and beginning with section 633.210, solely to individuals who are statutorily exempt from Iowa inheritance tax as set forth above in ~~subsection~~ subparagraph (3); or

(5) For estates of decedents dying on or after July 1, 2007, if the total aggregate value of all the tangible personal property in the estate is \$5,000 or less and in-kind distributions are made. Any in-kind distribution of personal property is exempt from inheritance tax when the total aggregate value of the tangible personal property in the estate is \$5,000 or less. If the total aggregate amount of tangible personal property is greater than \$5,000, then the exemption for in-kind distributions of tangible personal property does not apply. See Iowa Code section 450.4(7); see also Iowa Code section 633.276 for a description of tangible personal property that qualifies.

EXAMPLE 1: The total aggregate value of the tangible personal property in the estate is \$3,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is not subject to inheritance tax.

EXAMPLE 2: The total aggregate value of the tangible personal property in the estate is \$15,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is subject to inheritance tax because the total aggregate value of tangible personal property is greater than \$5,000.

Paragraph 86.2(1)“c” does not apply to interests in an asset or assets that pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

ITEM 4. Amend subparagraph **86.2(1)“d”(2)** as follows:

(2) If any interest in real estate passes on account of the decedent's death and no Iowa inheritance tax return is required to be filed and the real estate does not pass through probate administration, then one of the persons succeeding to the interest in the real property must file an affidavit in the county in which the real property is located setting forth the legal description of the real property and the fact that an Iowa inheritance tax return is not required to be filed with the department. ~~A copy of this affidavit must also be filed with the department with a schedule showing the value of the property for the purpose of ascertaining the basis of the property.~~ A copy of this affidavit must be retained by the beneficiary that holds the real estate.

ITEM 5. Amend paragraph **86.2(2)“b”** as follows:

b. Estates of decedents dying on or after July 1, 1983. For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance tax return is

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substituted in lieu thereof shall be filed. The return shall provide for schedules listing the assets includable in the gross estate, a listing of the liabilities deductible in computing the net estate, and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the federal estate tax return, Form 706. For information regarding Iowa returns, see subrule 86.1(5). If the estate has filed a federal estate tax return, a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets from the return. However, any Iowa schedules indicating liabilities must be filed with the Iowa return due to proration of liabilities. When Iowa schedules are filed with the return, only those schedules which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of \$25,000 (\$10,000 for estates of decedents dying before July 1, 2001) is not sufficient in nontaxable estates. In this case, the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

ITEM 6. Amend paragraph **86.2(2)“d”** as follows:

d. Estates of decedents dying on or after July 1, 1999. In addition to the special rule for surviving spouses set forth in paragraph “c” of this subrule, effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and a lineal ascendant of the decedent, lineal descendant of the decedent, a child legally adopted in compliance with the laws of this state by the decedent or a stepchild of the decedent, or any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance tax return, unless such an estate has an obligation to file a federal estate tax return. Property of the estate passing by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the title of property is held by persons other than a lineal ascendant, lineal descendant, a child legally adopted in compliance with the laws of this state, or a stepchild of the decedent or by any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

The exemption granted to stepchildren is limited to that class of step relationships exclusively. The exemption is not extended to include any lineal ascendants or descendants of the step relationship, such as stepgrandchild, stepparent or stepgrandparent. For a definition of “stepchild” for estates of decedents dying on or after July 1, 2003, please see the definition found in 701—86.1(450).

The rate of Iowa inheritance tax imposed on a share is based upon the relationship of the beneficiary to the decedent or the type of entity that is the beneficiary. For estates of decedents dying before July 1, 2001, a net estate that is less than \$10,000 does not have an Iowa inheritance tax obligation. For estates of decedents dying on or after July 1, 2001, the net estate that is less than \$25,000 does not have an Iowa inheritance tax obligation. The following is the most current Iowa inheritance tax rate schedule for net estates over \$25,000:

SCHEDULE B			
Brother, sister (including half-brother, half-sister), son-in-law, and daughter-in-law. There is no exemption.			
If the share is:			
Not over \$12,500, the tax is 5% of the share.			
If over	But not over	Tax is	Of excess over
\$ 12,500	\$ 25,000	\$ 625 + 6%	\$ 12,500
25,000	75,000	1,375 + 7%	25,000
75,000	100,000	4,875 + 8%	75,000

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100,000 150,000	150,000 and up	6,875 + 9% 11,375 + 10%	100,000 150,000								
SCHEDULE C											
<p>Uncle, aunt, niece, nephew, foster child, cousin, brother-in-law, sister-in-law, stepgrandchild, and all other individual persons. There is no exemption.</p> <p>If the share is: Not over \$50,000, tax is 10% of the share.</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">If over</th> <th style="text-align: center;">But not over</th> <th style="text-align: center;">Tax is</th> <th style="text-align: center;">Of excess over</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">\$ 50,000 100,000</td> <td style="text-align: center;">\$100,000 and up</td> <td style="text-align: center;">\$ 5,000 + 12% 11,000 + 15%</td> <td style="text-align: center;">\$ 50,000 100,000</td> </tr> </tbody> </table>				If over	But not over	Tax is	Of excess over	\$ 50,000 100,000	\$100,000 and up	\$ 5,000 + 12% 11,000 + 15%	\$ 50,000 100,000
If over	But not over	Tax is	Of excess over								
\$ 50,000 100,000	\$100,000 and up	\$ 5,000 + 12% 11,000 + 15%	\$ 50,000 100,000								
SCHEDULE D											
<p>A firm, corporation or society organized for profit, including an organization failing to qualify as a charitable, educational or religious organization:</p> <p>Effective July 1, 2001, any fraternal and social organization which does not qualify for exemption under IRC Section 170(c) and <u>or</u> 2055:</p> <p>15% of the amount.</p>											
SCHEDULE E											
<p>Any society, institution or association incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to a cemetery association, including a humane society not organized under the laws of this state, or to a resident trustee for use without this state, the rate of tax imposed in excess of \$500:</p> <p>10% of the amount.</p>											
SCHEDULE F											
<p>An unknown heir, as distinguished from an heir who is not presently ascertainable, due to contingent events:</p> <p>5% of the amount.</p>											
SCHEDULE G											
<p>A public library or public art gallery within this state, open to the use of the public and not operated for gain, or to a hospital within this state, or a trustee for such use within this state, or to a municipal corporation for purely public purposes:</p> <p>Entirely exempt: No tax.</p> <p>(Also included in this class are bequests for the care and maintenance of the cemetery or burial lot of a decedent or the decedent's family.)</p> <p><u>A charitable, religious, educational, or veterans organization as defined in IRC Section 170(c) or 2055.</u></p>											

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All other shares to income tax exempt organizations that are not defined in IRC Section 170(c) must provide their IRS letter of determination. Organizations may also be required to provide evidence that the bequest has restricted the funds to a conforming activity.

Public libraries, public art galleries, hospitals, humane societies, municipal corporations, bequests for care of cemetery or burial lots of the decedent or the decedent's family, and bequests for religious services the total of which does not exceed \$500.

Entirely exempt: No tax.

ITEM 7. Amend subrule 86.2(4) as follows:

86.2(4) Supplemental return—deferred interest. When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation. At the top of the front page of the return, the word “SUPPLEMENTAL” shall be printed.

ITEM 8. Amend subrule 86.5(1) as follows:

86.5(1) Iowa real and tangible personal property.

a. Real estate and tangible personal property with a situs in the state of Iowa and in which the decedent had an interest at the time of death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common.

b. Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, life interest, interest or the power of revocation, property or interest in property in trust, and gifts made within three years of death in excess of the federal gift tax exclusion. These constitute transfers of property in which the decedent may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. *In re Dieleman's Estate v. Dept. of Revenue*, 222 N.W.2d 459 (Iowa 1974); *In re English's Estate*, 206 N.W.2d 305 (Iowa 1973); and *Lincoln's Estate v. Briggs*, 199 N.W.2d 337 (Iowa 1972).

c. A nonresident decedent's interest in a corporation, limited liability company, or partnership that owns real or tangible personal property with an Iowa situs that is titled in the name of that business entity is not subject to inheritance tax. An interest in a business entity is intangible personal property which follows the residence of the decedent for the purposes of inheritance tax.

d. Tangible personal property as defined in Iowa Code section 633.276 with an Iowa situs which is distributed in kind from the estate is not subject to inheritance tax if the aggregate value of all tangible personal property in the estate does not exceed \$5,000. See 86.2(1) “c”(5).

ITEM 9. Rescind and reserve subrule **86.5(4)**.

ITEM 10. Amend paragraph **86.5(7)“d”** as follows:

d. *Gifts made within three years prior to death—for estates of decedents dying on or after July 1, 1984.* All gifts made by the donor within three years prior to death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional gift, the date of valuation is the date of the death of the decedent, unless alternative valuation is chosen. Effective for estates of decedents dying on or after July 1, 2003, valuation of property transferred by the

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grantor or donor is based on the net market value at the date of transfer. The fact alone that the transfer is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purposes is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, are subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

EXAMPLE. The decedent-donor, A, died July 1, ~~1995~~ 2012. The three-year period during which gifts may be subject to inheritance tax begins July 1, ~~1992~~ 2009. During the calendar year ~~1992~~ 2009, A made a cash gift to nephew B of ~~\$11,000~~ \$14,000 on May 1, ~~1992~~ 2009, and a second gift to B of \$4,000 on August 1, ~~1992~~ 2009. In this example, none of the ~~\$11,000~~ \$14,000 gift made on May 1, ~~1992~~ 2009, is includable for inheritance tax purposes because it was made before the three-year period began, based on A's date of death. All of the \$4,000 gift made on August 1, ~~1992~~ 2009, is includable for inheritance tax purposes because it is in excess of the calendar year ~~1992~~ 2009 federal gift tax exclusion of ~~\$10,000~~ \$13,000.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual federal gift tax exclusion (~~\$10,000 for 1994~~) which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

(2) Types of transfers which may result in a gift. Whether a transfer of property constitutes a gift depends on the facts and circumstances surrounding each individual transfer. Transfers which may result in a gift, in whole or in part, include, but are not limited to: sales of property where the purchase price, or terms of sale, are less than fair market value; a loan of money, interest free, even though the loan is payable on demand; the release of a retained life use of property; and the payment of a debt or other obligation of another person.

(3) Types of transfers that are not a gift. However, certain transfers which in property law would be considered a present transfer of an interest in property may not be considered gifts within the Iowa three-year rule under Iowa Code section 450.3(2). Rather the transfers may be transfers intended to take effect in possession or enjoyment at death. Examples of this kind of transfer would include, but are not limited to, transfers in trust or otherwise, with a retained life use or interest; commercial annuities where payments are made to a beneficiary upon the death of the primary annuitant; transfers that place property in joint tenancy; irrevocable transfers of real or personal property where the deed or bill of sale is placed in escrow to be delivered only upon the grantor's death. Transfers of this kind are subject to inheritance tax under Iowa Code section 450.3(3) as a transfer to take effect in possession or enjoyment at death, even though under property law an interest in the property may have been transferred prior to death. Different kinds of transfers that may constitute a taxable gift, in whole or in part, include but are not limited to the following:

EXAMPLE A. Grantor-decedent, A, on July 1, 1992, transferred to nephew B, without consideration, a 160-acre Iowa farm, reserving the life use. On the date of transfer, the farm had a fair market value of \$2,000 per acre, or \$320,000. On August 1, 1994, A released the retained life estate without any

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consideration being given and then died on December 1, 1994. The release on August 1, 1994, constitutes a gift, for inheritance tax purposes, of the value of the entire farm (less the annual gift tax exclusion), within the three-year period prior to death. What is taxable is what would have been taxable had the release not been given. *United States v. Allen*, 293 F.2d 916 (10th Cir. 1961); Rev. Ruling 56-324, 1956 2 C.B. 999. In this example, the gift is not to be valued at the time of the release of the life use, but rather at its fair market value at the time of death. See subrule 86.9(1). The real estate cannot be valued at its alternate valuation date because it is not included in the federal gross estate for federal estate tax purposes, but rather it constitutes an adjusted taxable gift not eligible for the alternate valuation date. See rule 701—86.10(450) and Federal Estate Tax Regulation Section 20.2032-1(a) and (d).

EXAMPLE B. A, on August 1, ~~1992~~ 2009, loaned brother B \$450,000 which was evidenced by a non-interest-bearing promissory note, payable on demand. A died on October 1, ~~1994~~ 2011, with no part of the loan having been repaid. The principal amount of the note is includable in A's gross estate. The free use of money is a valuable property right to the debtor. *Dickman v. Commissioner*, 465 U.S. 330 (1984). Thus, in effect, A has made a gift of the value of the interest to B each year the debt remains unpaid. Assuming for purposes of illustration that the applicable federal short-term rate for the entire year is 9 percent for each year and no other gifts were made to B, A has made a gift to B of \$40,500 through August ~~1993~~ 2010 (one year after the note was executed) and an additional gift of \$40,500 through August 1, ~~1994~~ 2011, and two months' interest of \$6,750 from August 1, ~~1994~~ 2011, to the date of death on October 1, ~~1994~~ 2011. Therefore, in calendar year ~~1992~~ 2009 A has made a gift of 5/12 of \$40,500, or \$16,875. After deducting the annual calendar year exclusion of ~~\$10,000~~ \$13,000, ~~\$6,875~~ \$3,875 is subject to inheritance tax. Since the loan was outstanding for all of calendar year ~~1993~~ 2010, \$40,500, less the ~~\$10,000~~ \$13,000 exclusion, or ~~\$30,500~~ \$27,500, is subject to inheritance tax. For calendar year ~~1994~~ 2011 the loan was outstanding for nine months. Three-fourths of \$40,500, less ~~\$10,000~~ \$13,000, or ~~\$20,375~~ \$17,375, is subject to inheritance tax.

In this example it is not necessary that the loan be made within the three-year period prior to death. It is the free use of the loan during the three-year period prior to death that constitutes the gift.

EXAMPLE C. On March 1, ~~1992~~ 2010, A sold a 160-acre Iowa farm to niece B for \$1,500 per acre, or \$240,000. On the date of sale, the fair market value of the farm was \$2,500 per acre, or \$400,000. A died on August 1, ~~1994~~ 2012. This sale is, in part, a gift. It is not a bona fide sale for an adequate and full consideration in money or money's worth, and as a result, the difference between the sale price and the fair market value of the farm on the date of sale constitutes a gift. The sale price in this example represents only 60 percent of the farm's fair market value; therefore, 40 percent of the farm is a gift. However, the gift percentage to apply to the farm's value at death is ~~38~~ 37 percent, not 40 percent, because the ~~\$10,000~~ \$13,000 annual gift tax exclusion must be deducted from the value of the gift. See the computation of this percentage in Example D immediately following.

EXAMPLE D. On March 1, ~~1992~~ 2010, A sold a 160-acre Iowa farm to niece B for \$2,500 per acre, or \$400,000, which was also the fair market value of the farm on the date of sale. The sale was an installment sale contract, payable in 20 equal annual installments of principal and interest. The unpaid principal balance is to draw interest at one-half of the prevailing Federal Land Bank loan rate, which for purposes of illustration we will assume to be the rate of 12 percent, or 6 percent per year. The annual payments of principal and interest are \$34,873.82 per year. A died on August 1, ~~1994~~ 2012. In this example, the sale price in and of itself does not constitute a gift because the sale price was also the fair market value of the farm. However, the difference between the prevailing Federal Land Bank loan rate of 12 percent and the contract rate of 6 percent constitutes a gift from A to B.

The amount of the gift that is includable in the gross estate is computed by determining the present value of the future annual payments of \$34,873.82 discounted to reflect a 12 percent return on the investment. The discounted value is then divided by the fair market value of the farm on the date of the sale to determine the percentage of the sale price that is a bona fide sale for full consideration and the percentage of the sale price that represents a gift before the annual exclusion. The gift percentage is then applied to the fair market value of the farm (or special use value, if applicable) at death, to determine the amount that is includable in the gross estate.

The computation in this example is as follows:

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The present value of the future annual payments of \$34,873.82 for 20 years to reflect a 12 percent return on an investment is \$260,488.05. That is, an investor who desires to earn the market rate of return of 12 percent on an investment would only pay \$260,488.05 for this 6 percent \$400,000 contract of sale.

Bona Fide Sale Percentage

Present value: 260,488.05 = 65%

Sale price: 400,000.00

This is the percentage of the sale price of \$400,000 that represents a bona fide sale for full consideration.

Gift Percentage

The sale price of \$400,000 - \$260,488.05 or \$139,511.95 is the gift portion of the sale price due to the 6 percent interest rate on the contract, before the ~~\$10,000~~ \$13,000 annual exclusion is deducted.

The gift percentage is computed as follows:

$$\frac{\$139,511.95 - \cancel{\$10,000} \underline{\$13,000}}{400,000.00} = \frac{\cancel{129,511.95} \underline{\$126,511.95}}{400,000.00} = 32\%$$

In this example the gift percentage used to determine the amount of the farm value at death that is taxable is only 32 percent of the value because deducting the ~~\$10,000~~ \$13,000 exclusion reduced the gift percentage from 35 percent to 32 percent. The gift took place in the year of sale, not in the year of death. As a result, 32 percent of fair market value (or special use value, if applicable) of the farm at the time of the donor's death is includable in the gross estate for inheritance tax purposes.

ITEM 11. Amend subrule 86.5(9) as follows:

86.5(9) *Transfers reserving a life income or interest.* If the grantor transfers property, except in the case of a bona fide sale for fair consideration, reserving the income, use, possession, or a portion thereof for life, the property is includable in the gross estate for inheritance tax purposes. *In re Sayres' Estate*, 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973). If there is a full reservation of income, the entire value of the property in which the reservation exists is includable for tax purposes. If only a portion of the income is reserved, the amount subject to tax is the full value of the property at death multiplied by a fraction of which the total income reserved is the numerator and the total average earning capacity of like property is the denominator. See *In re Estate of English*, 206 N.W.2d at 310.

The reservation of the life income, or portion thereof, need not necessarily be stated or contained in the instrument of transfer to be includable for taxation. The transfer of property may contain no reservation of income or other incidents of ownership in the grantor, but if there is a contemporaneous agreement between the grantor and grantee to pay the income, or portion thereof, to the grantor for life, the two instruments or agreements when considered together may be construed to be reservation of the income from the transferred property. See *In re Sayres' Estate*, 245 Iowa 132 at 141, 142, 60 N.W.2d 120 (1953) for a full discussion of the subject.

The instrument need not be in any special form. For example, it may take the form of a contract of sale to terminate at death where the payments consist of the income from the property only. In addition, the transfer to be includable for taxation is not limited to income-producing property. For example, the transfer of the grantor's dwelling, reserving the life occupancy, falls within the meaning of a reserved life income or interest. Generally, revocable trusts can be classified as reserving a life income or interest. This type of transfer does not fall within the ~~\$10,000~~ annual gift exclusion.

ITEM 12. Amend paragraph **86.5(12)"a"** as follows:

a. *General rule.* Annuities in general, including the earnings, are considered to be taxable under Iowa Code section 450.3(3) as a transfer made or intended to take effect in possession or enjoyment

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after the death of the grantor or donor. *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973); *In re Endemann's Estate*, 307 N.Y. 100, 120 N.E.2d 514 (1954); *Cochrane v. Commission of Corps & Taxation*, 350 Mass.237, 214 N.E.2d 283 (1966). For exceptions for employee-sponsored retirement plans, including annuities, see 86.5(13).

ITEM 13. Rescind paragraph **86.5(12)“b.”**

ITEM 14. Renumber subrules **86.5(13)** and **86.5(14)** as **86.5(14)** and **86.5(15)**.

ITEM 15. Adopt the following new subrule 86.5(13):

86.5(13) *Employer-provided or employer-sponsored retirement plans and individual retirement accounts.* Iowa Code section 450.4(5) provides an exemption on that portion of the decedent's interest in an employer-provided or employer-sponsored retirement plan or on that portion of the decedent's individual retirement account that will be subject to federal income tax when paid to the beneficiary. This exemption applies regardless of the identity of the beneficiary and regardless of the number of payments to be made after the decedent's death.

For the purposes of this exemption:

a. An “individual retirement account” includes an individual retirement annuity or any other arrangement as defined in Section 408 of the Internal Revenue Code.

b. An “employer-provided or employer-sponsored retirement plan” includes a qualified retirement plan as defined in Section 401 of the Internal Revenue Code, a governmental or nonprofit employer's deferred compensation plan as defined in Section 457 of the Internal Revenue Code, and an annuity as defined in Section 403 of the Internal Revenue Code.

EXAMPLE 1. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the retirement plan is the decedent's niece. The balance in the retirement plan will be fully subject to federal income tax and included as net income pursuant to Iowa Code section 422.7 when paid to the beneficiary. As a result, Iowa inheritance tax would not be imposed on the value of the retirement plan.

EXAMPLE 2. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the pension is the decedent's niece. A portion of the payments received by the niece will be fully subject to federal income tax and included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of payments included as net income. However, the remaining portion of the payments not reported as net income pursuant to Iowa Code section 422.7 would be subject to Iowa inheritance tax. See Iowa Code section 450.4.

An exemption from Iowa inheritance tax for a qualified plan does not depend on the relationship of the beneficiary to the decedent. Payments under a qualified plan made to the estate of the decedent are exempt from Iowa inheritance tax. See *In re Estate of Heuermann*, Docket No. 88-70-0388 (September 21, 1989). In addition, for the purpose of determining the taxable or exempt status of payments under a qualified plan, it is not relevant that the decedent rolled over or changed the terms of payment prior to death. Taxation or exemption of payments made under a qualified plan is determined at the date of the decedent's death.

ITEM 16. Rescind and reserve paragraph **86.6(2)“d.”**

ITEM 17. Amend subparagraph **86.6(3)“a”(1)**, numbered paragraph **“2,”** as follows:

2. The liability can be deducted only from property that is included in the gross estate for Iowa inheritance tax purposes. This rule would exclude, among others, that portion of joint tenancy property which is excluded from the gross estate, wrongful death proceeds, the first \$10,000 in gifts to each donee made within three years of death up to an amount equal to the annual federal gift tax exclusion, and property with a situs outside Iowa.

ITEM 18. Amend subrule 86.7(4), introductory paragraph, as follows:

86.7(4) *Tables for life estates and remainders for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* For estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004, the following tables are to be used in computing the value of a life estate, an annuity

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for life and the value of a remainder in property. The table is based on the commissioners' standard ordinary mortality tables of life expectancy, with no distinction being made between the life expectancy of males and females of the same age. As a result, the sex of the recipient is not relevant in computing the value of the property interest received. *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073, 103 S.Ct. 3492, 77 L.Ed.2d 1236 (1983). Valuation is based on the age at the nearest birthday. The following ~~tables are~~ table is to be applied in the same manner as specified in subrule 86.7(1).

ITEM 19. Amend subrule 86.7(5), introductory paragraph, as follows:

86.7(5) *Table for an annuity for life—for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004. The table is to be used in the same manner as the table listed in subrule 86.7(2).

ITEM 20. Adopt the following **new** subrule 86.7(6):

86.7(6) *Tables for life estates and remainders for estates of decedents dying on or after January 1, 2004.* For estates of decedents dying on or after January 1, 2004, the following table is to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The following table is to be applied in the same manner as specified in subrule 86.7(1).

2001 CSO-D MORTALITY TABLE
 BASED ON BLENDING 50% MALE—50% FEMALE
 (PIVOTAL AGE 45)
 AGE NEAREST BIRTHDAY
 4% INTEREST

The two factors across the page equal 100 percent. Multiply the corpus of the estate by the first factor to obtain value of the life estate.

Use the second factor to obtain the remainder interest if the tax is to be paid at the time of probate or to determine if there would be any tax due.

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
0	0.94022	0.05978	60	0.54240	0.45760
1	0.93854	0.06146	61	0.52918	0.47082
2	0.93653	0.06347	62	0.51579	0.48421
3	0.93431	0.06569	63	0.50229	0.49771
4	0.93192	0.06808	64	0.48868	0.51132
5	0.92939	0.07061	65	0.47495	0.52505
6	0.92676	0.07324	66	0.46112	0.53888
7	0.92402	0.07598	67	0.44717	0.55283
8	0.92119	0.07881	68	0.43306	0.56694
9	0.91825	0.08175	69	0.41882	0.58118
10	0.91519	0.08481	70	0.40442	0.59558
11	0.91202	0.08789	71	0.38991	0.61009
12	0.90874	0.09126	72	0.37533	0.62467
13	0.90537	0.09463	73	0.36081	0.63919
14	0.90192	0.09808	74	0.34633	0.65367
15	0.89837	0.10163	75	0.33189	0.66811
16	0.89475	0.10525	76	0.31751	0.68249
17	0.89107	0.10893	77	0.30318	0.69682

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<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
18	0.88731	0.11269	78	0.28898	0.71102
19	0.88344	0.11656	79	0.27495	0.72505
20	0.87944	0.12056	80	0.26116	0.73884
21	0.87529	0.12471	81	0.24761	0.75239
22	0.87098	0.12902	82	0.23452	0.76548
23	0.86651	0.13349	83	0.22188	0.77812
24	0.86186	0.13814	84	0.20962	0.79038
25	0.85704	0.14296	85	0.19778	0.80222
26	0.85205	0.14795	86	0.18642	0.81358
27	0.84688	0.15312	87	0.17540	0.82460
28	0.84154	0.15846	88	0.16507	0.83493
29	0.83599	0.16401	89	0.15544	0.84456
30	0.83022	0.16978	90	0.14650	0.85350
31	0.82421	0.17579	91	0.13802	0.86198
32	0.81798	0.18202	92	0.12909	0.87091
33	0.81151	0.18849	93	0.12008	0.87992
34	0.80480	0.19520	94	0.11133	0.88867
35	0.79786	0.20214	95	0.10320	0.89680
36	0.79068	0.20932	96	0.09618	0.90382
37	0.78326	0.21674	97	0.09014	0.90986
38	0.77559	0.22441	98	0.08532	0.91468
39	0.76767	0.23233	99	0.07952	0.92048
40	0.75949	0.24051	100	0.07338	0.92662
41	0.75104	0.24896	101	0.06745	0.93255
42	0.74233	0.25767	102	0.06160	0.93840
43	0.73335	0.26665	103	0.05590	0.94410
44	0.72412	0.27588	104	0.05042	0.94958
45	0.71463	0.28537	105	0.04523	0.95477
46	0.70490	0.29510	106	0.04045	0.95955
47	0.69491	0.30509	107	0.03604	0.96396
48	0.68468	0.31532	108	0.03199	0.96801
49	0.67415	0.32585	109	0.02823	0.97177
50	0.66333	0.33667	110	0.02479	0.97521
51	0.65223	0.34777	111	0.02174	0.97826
52	0.64086	0.35914	112	0.01899	0.98101
53	0.62926	0.37074	113	0.01643	0.98357
54	0.61743	0.38257	114	0.01357	0.98643
55	0.60539	0.39461	115	0.01107	0.98893
56	0.59317	0.40683	116	0.00869	0.99131
57	0.58077	0.41923	117	0.00638	0.99362
58	0.56821	0.43179	118	0.00437	0.99563
59	0.55542	0.44458	119	0.00246	0.99754
			120	0.00000	1.00000

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ITEM 21. Adopt the following **new** subrule 86.7(7):

86.7(7) *Table for an annuity for life—for estates of decedents dying on or after January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 2004. The table is to be used in the same manner as the table listed in subrule 86.7(2).

2001 CSO-D MORTALITY TABLE
 BASED ON BLENDING 50% MALE—50% FEMALE
 (PIVOTAL AGE 45)
 AGE NEAREST BIRTHDAY
 4% INTEREST

To find the present value of an annuity or a given amount (specified sum) for life, multiply the annuity by the annuity factor opposite the age at the nearest birthday of the person receiving the annuity.

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES \$1.00
0	78.65	23.505
1	77.73	23.464
2	76.78	23.413
3	75.81	23.358
4	74.84	23.298
5	73.86	23.235
6	72.87	23.169
7	71.89	23.101
8	70.91	23.030
9	69.92	22.956
10	68.94	22.880
11	67.95	22.801
12	66.97	22.718
13	65.99	22.634
14	65.01	22.548
15	64.04	22.459
16	63.07	22.369
17	62.11	22.277
18	61.15	22.183
19	60.19	22.086
20	59.23	21.986
21	58.27	21.882
22	57.32	21.774
23	56.36	21.663
24	55.40	21.547
25	54.45	21.426
26	53.49	21.301
27	52.53	21.172
28	51.58	21.038
29	50.63	20.900
30	49.67	20.755

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<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
31	48.72	20.605
32	47.76	20.449
33	46.81	20.288
34	45.85	20.120
35	44.90	19.946
36	43.95	19.767
37	43.00	19.581
38	42.05	19.390
39	41.11	19.192
40	40.16	18.987
41	39.22	18.776
42	38.28	18.558
43	37.35	18.334
44	36.42	18.103
45	35.49	17.866
46	34.57	17.623
47	33.65	17.373
48	32.74	17.117
49	31.84	16.854
50	30.94	16.583
51	30.04	16.306
52	29.15	16.021
53	28.27	15.731
54	27.40	15.436
55	26.54	15.135
56	25.68	14.829
57	24.84	14.519
58	24.01	14.205
59	23.19	13.886
60	22.38	13.560
61	21.57	13.229
62	20.78	12.895
63	20.00	12.557
64	19.24	12.217
65	18.49	11.874
66	17.75	11.528
67	17.02	11.179
68	16.31	10.827
69	15.60	10.470
70	14.91	10.110
71	14.23	9.748
72	13.56	9.383
73	12.91	9.020

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<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
74	12.28	8.658
75	11.66	8.297
76	11.06	7.938
77	10.47	7.580
78	9.91	7.224
79	9.36	6.874
80	8.83	6.529
81	8.32	6.190
82	7.84	5.863
83	7.38	5.547
84	6.94	5.240
85	6.52	4.944
86	6.13	4.660
87	5.75	4.385
88	5.41	4.127
89	5.09	3.886
90	4.79	3.662
91	4.51	3.451
92	4.23	3.227
93	3.94	3.002
94	3.67	2.783
95	3.43	2.580
96	3.21	2.405
97	3.03	2.253
98	2.88	2.133
99	2.71	1.988
100	2.53	1.835
101	2.35	1.686
102	2.18	1.540
103	2.02	1.398
104	1.87	1.260
105	1.72	1.131
106	1.59	1.011
107	1.47	0.901
108	1.35	0.800
109	1.25	0.706
110	1.16	0.620
111	1.08	0.544
112	1.00	0.475
113	0.93	0.411
114	0.86	0.339

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	LIFE	
AGE IN YEARS	EXPECTANCY IN YEARS	ANNUITIES \$1.00
115	0.79	0.277
116	0.73	0.217
117	0.67	0.159
118	0.61	0.109
119	0.56	0.062
120	0.50	0.000

ITEM 22. Amend subparagraph **86.9(2)“e”(2)** as follows:

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or
2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or
3. The department does not request an appraisal within ~~30~~ 60 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail, and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 86.9(2)“e”(3) for the rule governing values listed as “unknown” or “undetermined.” See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

ITEM 23. Amend subparagraph **86.9(2)“e”(3)** as follows:

(3) Values listed on the return as “undetermined” or “unknown.” If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as “unknown” or “undetermined.” The return must contain a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until ~~30~~ 60 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that ~~both~~ the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent’s death.

ITEM 24. Amend rule 701—86.11(450) as follows:

701—86.11(450) Valuation—special problem areas.

86.11(1) *Valuation of life estate and remainder interests—in general.* ~~In general.~~ Life or term estates and remainders in property cannot be valued separately for inheritance tax purposes without reference to the value of the property in which the life or term estate and remainder exists. The first valuation step is to determine the value of the property as a whole. This rule applies equally to fair market value in the ordinary course of trade, whether it be valued at death or on the alternate valuation date six months after death, or at its special use value under Iowa Code chapter 450B. The second step is to apply the life estate-remainder or term tables in rule 701—86.7(450) to the whole value of the property in which the life estate-remainder or term exists. Iowa Code section 450.51 requires that value of annuities, life or term, deferred or future estates in property be computed on the basis that the use of the property is worth a return of 4 percent per year. The life estate-remainder tables in rule 701—86.7(450) make no distinction between the life expectancy of males and females. See *City of Los Angeles v. Manhart*, 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed. 657 (1978) and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 51 U.S. Law Week 5243, 77 L.Ed.2d 1238 (1983)

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for the requirement that retirement annuities must not discriminate on the basis of sex. However, the actual life expectancy of the particular person receiving the life estate is not relevant in determining the value of the life estate for inheritance tax purposes. *In re Estate of Evans*, 255 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.2d 62.

86.11(2) Single life estate and remainder. The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in rule 701—86.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to surviving spouse B, aged 68, a life estate in a 160-acre farm, with the remainder at B's death to niece C. Special use value and the alternate value were not elected. The 160-acre farm at the time of the decedent's death had a fair market value of \$2,000 per acre, or \$320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under 701—86.7(450) is ~~.37936~~ .43306; that is, the use of the \$320,000 for life at the statutory rate of return of 4 percent is worth ~~37.936~~ 43.306 percent of the value of the farm. Niece C's remainder factor is ~~.62064~~ .56694. The life estate-remainder factors when combined equal 100 percent of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

Value of B's Life Estate	$\$320,000 \times \text{.37936}$	$\text{.43306} =$	\$121,395.20	<u>\$138,579.20</u>
Value of C's Remainder	$\$320,000 \times \text{.62064}$	$\text{.56694} =$	\$198,604.80	<u>\$181,420.80</u>
Total Value				<u>\$320,000.00</u>

86.11(3) Joint and succeeding life estates. If property includable in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. There can be no greater value assigned to all of the life estate interests than the value of the life estate of the youngest life tenant. The value of the life estate of the youngest life tenant fixes the value of the remainder interest in the property.

b. If two or more persons share in a life estate, the life tenants are presumed to share equally in the life estate during the life of the older life tenant, unless the will or trust instrument specifically directs that the income or use may be allocated otherwise.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. *In re Estate of Evans*, 225 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.62. As a result, if a succeeding life tenant is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised a 160-acre farm to surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45, for life, and the remainder upon C's death to nephews, D and E, in equal shares. The 160-acre farm had a fair market value at A's death of \$320,000. Neither the alternate valuation date nor special use value was elected.

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COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

1. Value of B's Life Estate:		
Life estate factor for age 68 is .37936 <u>.43306</u>		
$\$320,000 \times \text{.37936} \text{ .43306} =$		\$121,395.20
		<u>\$138,579.20</u>
2. Value of C's Succeeding Life Estate		
Life estate factor for age 45 is .67131 <u>.71463</u>		
$\$320,000 \times \text{.67131} \text{ .71463} =$	\$214,819.20	
	<u>\$228,681.60</u>	
Less: B's life estate	\$121,395.20	
	<u>\$138,579.20</u>	
Value of C's life estate		\$ 93,424.00
		<u>\$ 90,102.40</u>
3. Value of D's 1/2 remainder		
Remainder factor for a life tenant aged 45 is .32869 <u>.28537</u>		
as 1/2 of $\$320,000 \times \text{.32869} \text{ .28537} =$		\$ 52,590.40
		<u>\$ 91,318.40</u>
4. Value of E's 1/2 remainder		
1/2 of $\$320,000 \times \text{.32869} \text{ .28537}$		\$ 52,590.40
		<u>\$ 91,318.40</u>
Total Value — life estates and remainders		<u>\$320,000.00</u>

NOTE: In this example, the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983) if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240-acre Iowa farm to her nephew, B, aged 52, and the nephew's wife, C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of \$2,200 per acre, or \$528,000; the alternate value of the farm six months after death was \$2,100 per acre, or \$504,000. Its special use value is \$1,000 per acre or \$240,000. The life estates and the remainder are computed on the basis of the special use value of \$240,000.

COMPUTATION OF JOINT LIFE ESTATE — REMAINDER VALUES

1. B's share of joint life estate.		
$\$240,000 \times \text{.59399} \text{ .64086}$ (life estate factor, age 52) =	\$142,557.60	
	<u>\$153,806.40</u>	
1/2 as B's share =		\$ 71,278.80
		<u>\$ 76,903.20</u>
2. C's share of joint life estate.		
$\$240,000 \times \text{.63966} \text{ .68468}$ (life estate factor, age 48) =	\$153,518.40	
	<u>\$164,323.20</u>	
Less: 1/2 value of life estate for B's life	\$ 71,278.80	\$ 82,239.60
	<u>\$ 76,903.20</u>	<u>\$ 87,420.00</u>

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3. Value of the remainder.

The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is ~~.36034~~ .31532, based on C's age of 48.

D's share of the remainder.

$$\frac{1}{2} \$240,000 \times \del{.36034} \underline{.31532} = \begin{array}{r} \$ 43,240.80 \\ \$ 37,838.40 \end{array}$$

E's share of the remainder.

Same as D's

$$\begin{array}{r} \$ 43,240.80 \\ \underline{\$ 37,838.40} \end{array}$$

$$\text{Total value of joint life estates and the remainder} \quad \underline{\$240,000.00}$$

NOTE: In this example, B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant's share during B's life is worth ~~\$71,278.80~~ \$76,903.20. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

86.11(4) Fixed sum annuity for life or for a term of years. The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4 percent annuity tables in rule ~~701—86.7(450)~~. A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property, and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of the annuity does not necessarily bear any relationship to the earning capacity or value of the property which funds the annuity. The fixed sum annuity may be for an amount larger than the 4 percent used to compute a life estate. As a result, the present value of the fixed sum annuity, computed at the statutory rate of 4 percent per year, may exceed the value of the property which funds the fixed annuity. In this case, the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A devises a 240-acre farm to daughter B, with the provision that B pay the sum \$5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A's death is \$2,000 per acre, or \$480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE \$5,000 ANNUITY AND THE REMAINDER REVERSION TO B. Under rule ~~701—86.7(450)~~, the 4 percent annuity factor for life at age 54 is ~~14.245~~ 15.436 for each dollar of the annuity received. Therefore, C's life annuity is computed as follows:

C's Annuity

$$\$5,000 \times \del{14.245} \underline{15.436} = \begin{array}{r} \$ 71,225 \\ \underline{\$ 77,180} \end{array}$$

B's Reversionary — Remainder Interest

Value of farm	\$480,000	
Less: C's annuity	\$ 71,225	\$408,775
	<u>\$ 77,180</u>	<u>\$402,820</u>

$$\text{Total annuity and reversion — Remainder} \quad \underline{\$480,000}$$

REVENUE DEPARTMENT[701](cont'd)

NOTE: In this example, the \$5,000 annuity is worth less than a life estate in the farm. A life estate would be worth \$273,499.20 because the use of \$480,000 at 4 percent per year would return \$19,200 per year, which is much greater than the \$5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of \$100,000 be set aside from the residuary estate to be held in trust to pay \$500 per month to B for life, and upon B's death, the remaining principal and income, if any, is are to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under rule 701—86.7(450), the annuity factor for a person 35 years of age is ~~19.048~~ 19.946 for each dollar of the annuity. The annuity factor is multiplied by the annual amount of the annuity, which in this case is \$6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B'S \$6,000 ANNUITY

$\$500.00 \times 12 = \$6,000 \times \del{19.048} \u{19.946} = \del{\$114,288} \u{\$119,676}$, which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is \$100,000, the maximum amount allowed by subrule 86.11(4). The remainder to C and D has no value for inheritance tax purposes.

86.11(5) Valuation of remainder interests. Iowa Code section 450.51 and rule 701—86.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in rule 701—86.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. *In re Estate of Millard*, 251 Iowa 1282, 105 N.W. 2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

a. to f. No change.

These rules can be illustrated by the following examples:

For an example of computing remainder interests, see Examples 1 and 2 in ~~701~~—subrule 86.11(3).

EXAMPLE 1: Decedent A died July 1, ~~1993~~ 2009, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B's death to two nephews, C and D, in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was \$2,000 per acre, or \$480,000 on the date of A's death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, ~~1994~~ 2010, the tax on B's life estate was paid. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, ~~1995~~ 2011, due to adverse economic circumstances, B, C, and D voluntarily sold the 240-acre farm at public auction to an unrelated person for \$2,100 per acre, or \$504,000. B's life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph "b," when the life estate is terminated before the life tenant's death. The sale price of the farm and the life estate remainder factor reflecting B's age on October 15, ~~1995~~ 2011, (B's age is now 76) control the value of the remainder.

COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in rule ~~701~~—86.7(450) for a life tenant aged 76 is ~~.73595~~ .68249.

REVENUE DEPARTMENT[701](cont'd)

C's ½ remainder interest	½ (\$504,000 × .73595 .68249) =	\$185,459.40	\$171,987.48
D's ½ remainder interest	same as C's	185,459.40	\$171,987.48
Total value of remainder		\$370,918.80	\$343,974.96

NOTE: In this example, the value of C's and D's remainder interest in the sale proceeds is greater than the value of the remainder at the time of A's death due to the increase in the remainder factor because of B's increased age and the increase in the fair market value of the farm. However, if B's life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C's and D's remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE 2: Decedent A at the time of her death on July 1, ~~1993~~ 2005, owned a vested remainder in a 240-acre Iowa farm, which was subject to the life use of her mother, B, who was 87 years old when A died. A's ownership of the remainder interest was not discovered until after life tenant B's death on October 15, ~~1995~~ 2007. The fair market value of the farm was \$2,000 per acre or \$480,000 on July 1, ~~1993~~ 2005, and \$2,200 per acre or \$528,000 on October 15, ~~1995~~ 2007. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See rule 701—86.10(450) and subrule 86.8(4), paragraph "c." A's estate was reopened to include the omitted remainder in the 240-acre farm. An amended inheritance tax return was filed December 10, ~~1995~~ 2007, basing the tax on the fair market value and the remainder factor corresponding with the life tenant's age (87) on July 1, ~~1993~~ 2005. In this fact situation, the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of \$2,200 per acre and a remainder factor of 100 percent of the value of the farm. No penalty or interest would be assessed if the correct tax is paid prior to July 15, ~~1996~~ 2008, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

86.11(6) Valuation of contingent property interests. Contingent remainders, succeeding life estates and other contingent property interests must be valued as if no contingency exists. Factors to be considered to determine if a contingency interest exists include, but are not limited to, the interest is generally a future interest, it is not a vested interest, and vesting of the interest depends upon the occurrence of a specific event or condition being met. As a result, 701—subrule 86.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay tax on a property interest to which a vested right has not been received. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting that the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 86.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E, who own the remainder, will come into possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see *In re Estate of Schnepf*, 258 Iowa 33, 138 N.W.2d 886 (1965).

REVENUE DEPARTMENT[701](cont'd)

86.11(7) Valuation of growing crops owned by the decedent. Valuation of growing crops owned by the decedent is determined by using a proration formula. Based on the formula, the cash value of the actual crop realized in the fall of the year is prorated by attributing a portion of the value to the period before death and a portion after death. The portion attributed to the period before death is the value for Iowa inheritance tax purposes. The numerator of the ratio expresses the number of days the decedent lived during the growing season. In Iowa, the growing season for corn and beans is generally considered to be from May 15 through October 15, or 153 days. This 153-day period is the denominator of the ratio. This ratio should then be multiplied by the number of bushels realized in the fall, and then multiplied by the local elevator price at the time of maturity. However, if the estate sells the crop within a reasonable time after harvest, and the sale is an “arm’s-length transaction,” then the sale price of the crop can be used as a fair market value basis.

EXAMPLE: The decedent grew crops consisting of corn and beans. The decedent died August 15. The decedent lived 92 days of the growing season. In the fall of the year, 2,000 bushels of corn were harvested by the estate and sold to the local elevator for \$3.10 per bushel. The value of the crop for the purpose of Iowa inheritance tax purposes is calculated as follows:

$$\frac{92}{153} \times 2,000 \text{ bushels} \times \$3.10 \text{ per bushel} = \$3,728.10$$

86.11(8) Valuation of cash rent farm leases. If the decedent at the time of death owns farm property that was subject to lease, or if the decedent rents such property, the value of the cash rent farm for inheritance tax purposes must be determined. The formula to be used is the total cash rent for the entire rental period prorated over the entire year. The proration percentage is the number of days the decedent lived during the rental period, divided by 365 days. This percentage shall then be applied to the total cash rent for the entire year. Deductions from the resulting sum are allowed for rent payments made prior to the death of the decedent. If the deduction results in a negative amount, no refund or credit is allowed.

This valuation formula is to be utilized whether the decedent is the lessor or lessee of such property.

EXAMPLES: The decedent has a cash rent farm lease agreement (beginning March 1 through the end of February of the next year) with farmer X for automatic yearly rentals. The rent is due in two installments: \$10,000 on March 1 and \$10,000 on September 1.

1. Decedent dies February 1, 2011. $\$20,000 \times 338/365 = \$18,520.55$. Farmer X had paid his two installments in 2010. His next installment is due March 1, 2011, for the new farm rental year. Farmer X has overpaid by \$1,479.45 ($\$18,520.55 - \$20,000 = -\$1,479.45$). No refund or credit is allowed.

2. Decedent dies April 20, 2011. $\$20,000 \times 51/365 = \$2,794.52$. Farmer X has paid his March 1 installment of \$10,000.00. Farmer X has overpaid by \$7,205.48. ($\$2,794.52 - \$10,000 = -\$7,205.48$). No refund or credit is allowed.

3. Decedent dies October 10, 2011. $\$20,000 \times 224/365 = \$12,273.97$. Farmer X paid his March installment but has not paid his September installment. Farmer X has underpaid at the date of death. $\$12,273.97 - \$10,000 = \$2,273.97$. This amount must be reported as an asset. It is an accounts receivable due at date of decedent’s death.

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

ITEM 25. Amend subrule 86.14(5) as follows:

86.14(5) “Stepped-up” basis. If a decedent’s will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a “stepped-up” basis will be utilized when computing the shares which will result in the appropriate beneficiaries’ shares to include the tax obligation that was paid as an additional inheritance. A “stepped-up” basis is based on gifts prior to the residual share; shares paid out of the residue are not stepped-up.

EXAMPLE: Decedent’s will gives \$1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax: $\$1,000 \times 10\% = \100 . Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example): $\$100 \text{ divided by } 90\% = \111.11 . Add the stepped-up tax of \$111.11 to the

REVENUE DEPARTMENT[701](cont'd)

original bequest of \$1,000. This results in a stepped-up share of \$1,111.11, which allows the nephew to keep \$1,000 after the tax is paid.

ITEM 26. Amend subrule 86.14(10) as follows:

86.14(10) Credit on prior transfers. A credit is allowed for inheritance tax paid by certain beneficiaries that have received shares from a prior estate. The credit can be claimed only by the brother, sister, son-in-law and daughter-in-law of the decedent. The decedent in whose estate the credit is to be used must have died within two years of the death of the decedent in whose estate the tax for which the credit is requested was paid and the property inherited. The credit is subject to two limitations:

a. The maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate. In other words, the inheritance tax the present decedent paid on the property in the prior estate must be prorated on the basis such property bears to the total property inherited in the prior estate; and

b. The amount of the credit cannot exceed the tax generated in the current estate on the property which was inherited from the ~~earlier~~ prior estate. This means that the tax in the current estate must be apportioned on the basis the prior estate property bears to the total property inherited by the beneficiary in the second estate. The credit cannot exceed this apportioned amount.

EXAMPLE 1: Limitation—maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate.

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

<u>Real estate</u>	<u>\$400,000</u>
<u>Cash, etc.</u>	<u>\$250,000</u>
<u>Expenses</u>	<u>\$150,000</u>

Each brother inherits \$250,000. The tax due from each brother is \$21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

<u>½ interest in Sister's real estate (current value)</u>	<u>\$225,000</u>
<u>Full interest in his own real estate</u>	<u>\$500,000</u>
<u>½ interest in Sister's cash, etc.</u>	<u>\$ 50,000</u>
<u>Full interest in his own cash, etc.</u>	<u>\$500,000</u>
<u>Expenses</u>	<u>\$200,000</u>

Brother A inherits \$1,075,000 with a current tax due of \$103,875. Reduce the current tax due, \$103,875, by the amount of tax paid in the prior estate, \$21,375. The result is \$82,500.

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Percentage of Brother A's tax of \$103,875 generated by Sister's property included in Brother B's estate:

$$\underline{\$275,000/\$1,075,000 = 25.58\%}$$

$$\underline{\$103,875 \times 25.58\% = \$26,571.23}$$

Maximum credit cannot be more than the tax paid in the prior estate, \$21,375. The tax due in this estate is \$82,500.

EXAMPLE 2: Limitation—amount of credit cannot exceed the tax generated in the current estate on the property which was inherited from the prior estate.

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

<u>Real estate</u>	<u>\$400,000</u>
<u>Cash, etc.</u>	<u>\$250,000</u>
<u>Expenses</u>	<u>\$150,000</u>

Each brother inherits \$250,000. The tax due from each brother is \$21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

<u>½ interest in Sister's real estate (current value)</u>	<u>\$225,000</u>
<u>Full interest in his own real estate</u>	<u>\$500,000</u>
<u>½ interest in Sister's cash, etc.</u>	<u>\$ 50,000</u>
<u>Full interest in his own cash, etc.</u>	<u>\$500,000</u>
<u>Expenses</u>	<u>\$200,000</u>

Brother A inherits \$1,075,000 with a current tax due of \$103,875. Reduce the amount of the current tax due, \$103,875, by the tax paid in the prior estate, \$21,375. The result is \$82,500.

\$1,075,000 less prior estate properties worth \$275,000 equals \$800,000. Tax would equal \$76,375.

The greater of the two computations (\$82,500 v. \$76,375) is the tax due in the estate. \$82,500 would be due.

EXAMPLE 3: Two-year requirement. Same facts as above, except that Brother B dies two years and two months after the date of death of Sister. Tax is \$103,875 with no reduction since it is over the two-year limitation.

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EXAMPLE 4: Multiple beneficiary issues. Same facts as above, except that beneficiaries of Brother B have changed. If there are multiple beneficiaries in the second estate, only the beneficiaries that are brother, sister, son-in-law, or daughter-in-law relationships to the prior decedent can utilize the credit. The credit is then determined by the property value passing in this estate that can be identified as being inherited by this decedent from a prior estate.

Brother B dies one year and two months after his Sister. He leaves his real estate to Brother A and the residual assets to his two nieces.

Brother B's share of prior decedent's (Sister's) estate equals \$725,000. Tax equals \$68,875. Reduce the current tax due, \$68,875, by the tax paid in the prior estate, \$21,375. The result is \$47,500.

Niece 1's share equals \$175,000. Tax equals \$22,250.

Niece 2's share equals \$175,000. Tax equals \$22,250.

Total tax for Brother B's estate with no reductions equals \$113,375.

Total tax with Brother B's reduced tax is \$92,000.

Computation without the prior decedent's (Sister's) property that passes to a qualified heir:

Brother B's share would be \$500,000. Tax equals \$46,375.

Niece 1's share remains the same since she is not a qualified heir. Tax equals \$22,250.

Niece 2's share remains the same since she is not a qualified heir. Tax equals \$22,250.

Total tax for this computation is \$90,875.

The greater of the two computations is \$92,000. \$92,000 would be due.

ITEM 27. Adopt the following **new** subrule 86.14(11):

86.14(11) Prorated cash bequests. If the distribution of an estate includes pecuniary legacies with an estate with property located in and outside Iowa, or the estate includes specific bequests from a fund containing property located in and outside Iowa, then the Iowa inheritance tax liability for those legacies or bequests will be based on the pro rata portion of the property of the estate located in Iowa. For further details see *Estate of Dennis M. Billingsley*, Iowa District Court of Emmet County, Case No. 13394 (July 15, 1982).

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REVENUE DEPARTMENT[701]

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 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 41, “Determination of Taxable Income,” Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 46, “Withholding,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

These amendments are proposed as a result of 2013 Iowa Acts, House Files 599 and 620, and 2013 Iowa Acts, Senate Files 433, 436 and 452.

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Item 1 adopts new subrule 41.5(17) to explain that a person who claims the from farm to food donation tax credit for individual income tax purposes cannot claim an itemized deduction for Iowa tax purposes.

Item 2 amends subrule 42.19(3) to reflect changes made to the historic preservation and cultural and entertainment district tax credit for individual income tax pursuant to 2013 Iowa Acts, Senate File 436.

Item 3 amends the implementation sentence for rule 701—42.19(404A,422).

Item 4 amends rule 701—42.24(15E,422) to reflect the increase in the endow Iowa tax credit for individual income tax for tax years beginning on or after January 1, 2012.

Item 5 updates the implementation sentence for rule 701—42.24(15E,422).

Item 6 amends rule 701—42.36(175,422) to reflect changes made to the agricultural assets transfer tax credit and the addition of a new custom farming contract tax credit for individual income tax for tax years beginning on or after January 1, 2013.

Item 7 adopts new rule 701—42.51(422,85GA,SF452), which explains the new from farm to food donation tax credit for individual income tax for tax years beginning on or after January 1, 2014, established pursuant to 2013 Iowa Acts, Senate File 452.

Item 8 amends rule 701—46.10(403) to reflect changes made to the targeted jobs withholding tax credit pursuant to 2013 Iowa Acts, Senate File 433.

Item 9 updates the implementation sentence for rule 701—46.10(403).

Item 10 amends subrule 52.18(3) to reflect changes made to the historic preservation and cultural and entertainment district tax credit for corporate income tax pursuant to 2013 Iowa Acts, Senate File 436. This change is similar to Item 2.

Item 11 updates the implementation sentence for rule 701—52.18(404A,422).

Item 12 amends rule 701—52.23(15E,422) to reflect the increase in the endow Iowa tax credit for corporation income tax for tax years beginning on or after January 1, 2012. This change is similar to Item 4.

Item 13 updates the implementation sentence for rule 701—52.23(15E,422).

Item 14 amends rule 701—52.33(175,422) to reflect changes made to the agricultural assets transfer tax credit and the addition of a new custom farming contract tax credit for corporation income tax for tax years beginning on or after January 1, 2013. This change is similar to Item 6.

Item 15 adopts new rule 701—52.45(422,85GA,SF452), which explains the new from farm to food donation tax credit for corporation income tax for tax years beginning on or after January 1, 2014, established pursuant to 2013 Iowa Acts, Senate File 452. This change is similar to Item 7.

Item 16 amends rule 701—58.13(15E,422) to reflect the increase in the endow Iowa tax credit for franchise tax for tax years beginning on or after January 1, 2012. This change is similar to Items 4 and 12.

Item 17 updates the implementation sentence for rule 701—58.13(15E,422).

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 7, 2013, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 24, 2013. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at

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the Department of Revenue offices on the fourth floor of the Hoover State Office Building. Comments may be submitted electronically to idrpolicy@iowa.gov.

Requests for a public hearing must be received by September 24, 2013.

After analysis and review of this rule making, no adverse impact on jobs has been found. The tax credits may positively impact job and economic growth for businesses and individuals in the state of Iowa.

These amendments are intended to implement Iowa Code sections 422.11M and 422.33 as amended by 2013 Iowa Acts, House File 599; Iowa Code section 15E.305 as amended by 2013 Iowa Acts, House File 620; Iowa Code section 403.19A as amended by 2013 Iowa Acts, Senate File 433; Iowa Code sections 404A.1 and 404A.3 as amended by 2013 Iowa Acts, Senate File 436; and 2013 Iowa Acts, Senate File 452, division XVIII.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 41.5(17):

41.5(17) Charitable contributions relating to the from farm to food donation tax credit. For tax years beginning on or after January 1, 2014, a taxpayer who claims a from farm to food donation tax credit in accordance with rule 701—42.51(422,85GA,SF452) cannot claim an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

ITEM 2. Amend subrule **42.19(3)**, first unnumbered paragraph, as follows:

In the case of commercial property, qualified rehabilitation costs must equal at least \$50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of ~~residential property or barns~~ other than commercial property, the qualified rehabilitation costs must equal at least \$25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project are qualified rehabilitation costs.

ITEM 3. Amend rule **701—42.19(404A,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 404A as amended by ~~2011 Iowa Acts, Senate Files 517 and 521~~ 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.11D ~~as amended by 2012 Iowa Acts, House File 2465, section 31.~~

ITEM 4. Amend rule **701—42.24(15E,422)**, first unnumbered paragraph, as follows:

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 ~~and subsequent calendar years~~ is \$3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For the 2012 calendar year ~~and subsequent calendar years~~, the total amount of endow Iowa tax credits is ~~\$4,642,945~~ \$6 million; the maximum amount of tax credit authorized to a single taxpayer

REVENUE DEPARTMENT[701](cont'd)

is ~~\$232,147.25~~ \$300,000 (~~\$4,642,945~~ \$6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

ITEM 5. Amend rule **701—42.24(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 15E.305 as amended by ~~2011 Iowa Acts, Senate File 302~~ 2013 Iowa Acts, House File 620, and section 422.11H.

ITEM 6. Amend rule 701—42.36(175,422) as follows:

701—42.36(175,422) Agricultural assets transfer tax credit and custom farming contract tax credit.

42.36(1) Agricultural assets transfer tax credit. ~~Effective for~~ For tax years beginning on or after January 1, 2007, but before January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax. ~~The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements.~~ Effective for tax years beginning on or after January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax equal to 7 percent of the rental income received by the owner for cash rental agreements and 17 percent of the rental income received by the owner for commodity share agreements.

Also effective for tax years beginning on or after January 1, 2013, if the beginning farmer is a veteran, the credit is equal to 8 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 18 percent of the rental income received by the owner for commodity share agreements for the first year that the credit is allowed. However, the taxpayer may only claim 7 percent of the rental income for cash rental agreements and 17 percent of the rental income for commodity share agreements in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. The tax credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2009, but before July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$6 million, ~~and the credit certificates will be issued on a first-come, first-served basis.~~ For fiscal years beginning on or after July 1, 2013, the amount of the tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$8 million and the amount of the credit issued to an individual taxpayer cannot exceed \$50,000.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for the termination, the

REVENUE DEPARTMENT[701](cont'd)

authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

42.36(2) Custom farming contract tax credit. Effective for tax years beginning on or after January 1, 2013, a landowner that hires a beginning farmer to custom farm agricultural land in this state may claim a custom farming contract tax credit for Iowa individual income tax. The credit is equal to 7 percent of the value of the contract. If the beginning farmer is a veteran, the credit is equal to 8 percent of the value of the contract for the first year. However, the taxpayer may only claim 7 percent of the value of the contract in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the custom farming contract tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, the taxpayer must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the taxpayer and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the taxpayer which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the custom farming contract tax credit program cannot exceed \$4 million, and the credit certificates will be issued on a first-come, first-served basis. The amount of the credit issued to an individual taxpayer cannot exceed \$50,000.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If the party entering into the custom farming contract with the beginning farmer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The custom farming contract may be terminated by either the taxpayer or the beginning farmer. If the agricultural development authority determines that the taxpayer is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the taxpayer is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the taxpayer will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 175.37 as amended by 2009 Iowa Acts, Senate File 483 2013 Iowa Acts, House File 599, sections 8 to 17; 2013 Iowa Acts, House File 599, sections 7, 18 and 19; and Iowa Code section 422.11M as amended by 2013 Iowa Acts, House File 599, section 20.

ITEM 7. Adopt the following **new** rule 701—42.51(422,85GA,SF452):

701—42.51(422,85GA,SF452) From farm to food donation tax credit. Effective for tax years beginning on or after January 1, 2014, a taxpayer that donates a food commodity that the taxpayer produces may claim a tax credit for Iowa individual income tax. The credit is equal to 15 percent of the value of the commodities donated during the tax year for which the credit is claimed or \$5,000, whichever is less. The value of the commodities shall be determined in the same manner as a charitable contribution of food for federal tax purposes under Section 170(e)(3)(C) of the Internal Revenue Code.

REVENUE DEPARTMENT[701](cont'd)

To qualify for the tax credit, the taxpayer (1) must produce the donated food commodity; (2) must transfer title to the donated food commodity to an Iowa food bank or Iowa emergency feeding organization recognized by the department; and (3) shall not receive remuneration for the transfer. The donated food commodity cannot be damaged or out-of-condition and declared to be unfit for human consumption by a federal, state, or local health official. A food commodity that meets the requirements for donated foods pursuant to the federal Emergency Food Assistance Program satisfies this requirement.

To be recognized by the department, a food bank or emergency feeding organization must either be a recognized affiliate of one of the eight partner food banks with the Iowa Food Bank Association or must register with the department. To register with the department, the organization must meet the definition of “emergency feeding organization,” “food bank,” or “food pantry” as defined by the department of human services in 441—66.1(234). The department of revenue will make registration forms available on the department’s Web site. The department will maintain a list of recognized organizations on the department’s Web site.

Food banks and emergency feeding organizations that receive eligible donations shall be required to issue receipts in a format prescribed by the department for all donations received and must annually submit to the department a receipt log of all the receipts issued during the tax year. The receipt log must be submitted in the form of a spreadsheet with column specifications as provided by the department. Receipt logs showing the donations for the previous calendar year must be delivered electronically or mailed to the department postmarked by January 15 of each year. If a receipt for a taxpayer’s claim is not provided by the organization, the taxpayer’s claim will be denied.

To claim the credit, a taxpayer shall submit to the department the original receipts that were issued by the food bank or emergency feeding organization. The receipt must include quantity information completed by the food bank or emergency feeding organization, taxpayer information, and a donation valuation consistent with Section 170(e)(3)(C) of the Internal Revenue Code completed by the taxpayer. Claims must be postmarked on or before January 15 of the year following the tax year for which the claim is requested. Once the department verifies the amount of the tax credit, a letter will be sent to the taxpayer providing the amount of the tax credit and a tax credit certificate number.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer’s estate or trust upon the death of the taxpayer.

If the producer is a partnership, limited liability company, S corporation, estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2013 Iowa Acts, Senate File 452, division XVIII.

ITEM 8. Amend rule 701—46.10(403), introductory paragraph, as follows:

701—46.10(403) Targeted jobs withholding tax credit. For employers that ~~created targeted jobs in an urban renewal area and that~~ enter into a withholding agreement with pilot project cities approved by the ~~Iowa department~~ of economic development authority and create or retain targeted jobs in a pilot project city, a credit equal to 3 percent of the gross wages paid to employees under the withholding agreement can be taken on the Iowa withholding tax return. The employer shall remit the amount of the credit to the pilot project city. The administrative rules for the targeted jobs withholding tax credit program administered by the ~~Iowa department~~ of economic development authority may be found in 261—Chapter 71.

ITEM 9. Amend rule **701—46.10(403)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~Supplement~~ section 403.19A as amended by 2013 Iowa Acts, Senate File 433.

REVENUE DEPARTMENT[701](cont'd)

ITEM 10. Amend subrule **52.18(3)**, first unnumbered paragraph, as follows:

In the case of commercial property, qualified rehabilitation costs must equal at least \$50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of residential property or barns other than commercial property, the qualified rehabilitation costs must equal at least \$25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation costs.

ITEM 11. Amend rule **701—52.18(404A,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 404A as amended by ~~2011 Iowa Acts, Senate Files 517 and 524~~ 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.33.

ITEM 12. Amend rule **701—52.23(15E,422)**, first unnumbered paragraph, as follows:

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 ~~and subsequent calendar years~~ is \$3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For calendar year 2012 ~~and subsequent calendar years~~, the total amount of endow Iowa tax credits is ~~\$4,642,945~~ \$6 million; the maximum amount of tax credit authorized to a single taxpayer is ~~\$232,147.25~~ \$300,000 (~~\$4,642,945~~ \$6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

ITEM 13. Amend rule **701—52.23(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 15E.305 as amended by ~~2011 Iowa Acts, Senate File 302~~ 2013 Iowa Acts, House File 620, and Iowa Code section 422.33.

ITEM 14. Amend rule 701—52.33(175,422) as follows:

701—52.33(175,422) Agricultural assets transfer tax credit and custom farming contract tax credit.

52.33(1) Agricultural assets transfer tax credit. ~~Effective for~~ For tax years beginning on or after January 1, 2007, but before January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax. ~~The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements.~~ Effective for tax years beginning on or after January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax equal to 7 percent of the rental income received by the owner for cash rental agreements and 17 percent of the rental income received by the owner for commodity share agreements.

Also effective for tax years beginning on or after January 1, 2013, if the beginning farmer is a veteran, the credit is equal to 8 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 18 percent of the rental income received by the owner for commodity share agreements for the first year that the credit is allowed. However, the taxpayer may only claim 7 percent

REVENUE DEPARTMENT[701](cont'd)

of the rental income for cash rental agreements and 17 percent of the rental income for commodity share agreements in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. The tax credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2009, but before July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$6 million, and the credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$8 million and the amount of the credit issued to an individual taxpayer cannot exceed \$50,000.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

52.33(2) Custom farming contract tax credit. Effective for tax years beginning on or after January 1, 2013, a landowner that hires a beginning farmer to custom farm agricultural land in this state may claim a custom farming contract tax credit for Iowa individual income tax. The credit is equal to 7 percent of the value of the contract. If the beginning farmer is a veteran, the credit is equal to 8 percent of the value of the contract for the first year. However, the taxpayer may only claim 7 percent of the value of the contract in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the custom farming contract tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, the taxpayer must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the taxpayer and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the taxpayer which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural

REVENUE DEPARTMENT[701](cont'd)

development authority for the custom farming contract tax credit program cannot exceed \$4 million, and the credit certificates will be issued on a first-come, first-served basis. The amount of the credit issued to an individual taxpayer cannot exceed \$50,000.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If the party entering into the custom farming contract with the beginning farmer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The custom farming contract may be terminated by either the taxpayer or the beginning farmer. If the agricultural development authority determines that the taxpayer is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the taxpayer is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the taxpayer will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 175.37 as amended by 2009 Iowa Acts, Senate File 483, 2013 Iowa Acts, House File 599, sections 8 to 17; 2013 Iowa Acts, House File 599, sections 7, 18 and 19; and Iowa Code section 422.33 as amended by 2013 Iowa Acts, House File 599, section 21.

ITEM 15. Adopt the following **new** rule 701—52.45(422,85GA,SF452):

701—52.45(422,85GA,SF452) From farm to food donation tax credit. Effective for tax years beginning on or after January 1, 2014, a taxpayer that donates a food commodity that the taxpayer produces may claim a tax credit for Iowa corporation income tax. The credit is equal to 15 percent of the value of the commodities donated during the tax year for which the credit is claimed or \$5,000, whichever is less. The value of the commodities shall be determined in the same manner as a charitable contribution of food for federal tax purposes under Section 170(e)(3)(C) of the Internal Revenue Code.

To qualify for the tax credit, the taxpayer (1) must produce the donated food commodity; (2) must transfer title to the donated food commodity to an Iowa food bank or Iowa emergency feeding organization recognized by the department; and (3) shall not receive remuneration for the transfer. The donated food commodity cannot be damaged or out-of-condition and declared to be unfit for human consumption by a federal, state, or local health official. A food commodity that meets the requirements for donated foods pursuant to the federal Emergency Food Assistance Program satisfies this requirement.

To be recognized by the department, a food bank or emergency feeding organization must either be a recognized affiliate of one of the eight partner food banks with the Iowa Food Bank Association or must register with the department. To register with the department, the organization must meet the definition of "emergency feeding organization," "food bank," or "food pantry" as defined by the department of human services in 441—66.1(234). The department of revenue will make registration forms available on the department's Web site. The department will maintain a list of recognized organizations on the department's Web site.

Food banks and emergency feeding organizations that receive eligible donations shall be required to issue receipts in a format prescribed by the department for all donations received and must annually submit to the department a receipt log of all the receipts issued during the tax year. The receipt log must be submitted in the form of a spreadsheet with column specifications as provided by the department. Receipt logs showing the donations for the previous calendar year must be delivered electronically or mailed to the department postmarked by January 15 of each year. If a receipt for a taxpayer's claim is not provided by the organization, the taxpayer's claim will be denied.

REVENUE DEPARTMENT[701](cont'd)

To claim the credit, a taxpayer shall submit to the department the original receipts that were issued by the food bank or emergency feeding organization. The receipt must include quantity information completed by the food bank or emergency feeding organization, taxpayer information, and a donation valuation consistent with Section 170(e)(3)(C) of the Internal Revenue Code completed by the taxpayer. Claims must be postmarked on or before January 15 of the year following the tax year for which the claim is requested. Once the department verifies the amount of the tax credit, a letter will be sent to the taxpayer providing the amount of the tax credit and a tax credit certificate number.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit.

If the producer is a partnership, limited liability company, S corporation, estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2013 Iowa Acts, Senate File 452, division XVIII.

ITEM 16. Amend rule **701—58.13(15E,422)**, first unnumbered paragraph, as follows:

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 ~~and subsequent calendar years~~ is \$3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For calendar year 2012 ~~and subsequent calendar years~~, the total amount of endow Iowa tax credits is ~~\$4,642,945~~ \$6 million; the maximum amount of tax credit authorized to a single taxpayer is ~~\$232,147.25~~ \$300,000 (~~\$4,642,945~~ \$6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

ITEM 17. Amend rule **701—58.13(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 15E.305 as amended by ~~2011 Iowa Acts, Senate File 302~~ 2013 Iowa Acts, House File 620, and section 422.60.

USURY

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

September 1, 2012 — September 30, 2012	3.50%
October 1, 2012 — October 31, 2012	3.75%
November 1, 2012 — November 30, 2012	3.75%
December 1, 2012 — December 31, 2012	3.75%
January 1, 2013 — January 31, 2013	3.75%
February 1, 2013 — February 28, 2013	3.75%
March 1, 2013 — March 31, 2013	4.00%

USURY(cont'd)

April 1, 2013 — April 30, 2013	4.00%
May 1, 2013 — May 31, 2013	4.00%
June 1, 2013 — June 30, 2013	3.75%
July 1, 2013 — July 31, 2013	4.00%
August 1, 2013 — August 31, 2013	4.25%
September 1, 2013 — September 30, 2013	4.50%

ARC 1003C

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 481A.38, 481A.39, 481A.48, and 455A.5(6), the Natural Resource Commission hereby amends Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

This chapter contains the regulations for hunting waterfowl and coot and includes season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 1, 2013, as **ARC 0721C**. A public hearing was held on May 23, 2013. Sixteen comments were received. All except 1 supported the dates in general; 3 of the 16 asked that the early duck season be reduced to two days while 4 asked that it stay at five days.

The amendments to adjust the season dates to reflect changes in calendar dates and remove the bag limit on light geese during the conservation order season remain unchanged from the Notice. Since the Notice of Intended Action was published, amendments were added to change the daily bag limit from four scaup and one canvasback to three scaup and two canvasbacks and to increase the possession limit from two times the daily bag limit to three times the daily bag limit for all applicable species to conform to changes made in the United States Fish and Wildlife Service's regulations for hunting waterfowl. These changes reflect the most recent population information on these species.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and that these amendments should be made effective upon filing as they confer a benefit on the public by establishing a September 7 start date for the waterfowl hunting season.

After analysis and review of this rule making, no impact on jobs has been found since changes are due to shifts in the calendar dates or minor changes in bag limits. The change in the bag limit for light geese during the conservation order will not affect license sales or hunter effort.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48. These amendments became effective August 15, 2013.

The following amendments are adopted.

ITEM 1. Amend subrules 91.1(2) to 91.1(6) as follows:

91.1(2) Season dates - north zone. For all ducks: September ~~22~~ 21 through September ~~26~~ 25 and October ~~13~~ 12 through December ~~6~~ 5.

91.1(3) Season dates - south zone. For all ducks: September ~~22~~ 21 through September ~~26~~ 25 and October ~~20~~ 19 through December ~~13~~ 12.

91.1(4) Season dates - Missouri River zone. For all ducks: September ~~22~~ 21 through September ~~26~~ 25 and October ~~27~~ 26 through December ~~20~~ 19.

91.1(5) Bag limit. The daily bag limit of ducks is 6, and may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 3 wood ducks, 2 pintails, 1 mottled duck, 4 ~~canvasback~~ 2 canvasbacks, 2 redheads, and 4-~~3~~ scaup. The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers.

91.1(6) Possession limit. Possession limit is ~~twice~~ three times the daily bag limit.

ITEM 2. Amend subrule 91.2(1) as follows:

91.2(1) Bag and possession limits. Daily bag limit is 15 and possession limit is ~~30~~ three times the daily bag limit.

ITEM 3. Amend subrules 91.3(2) to 91.3(4) and 91.3(6) as follows:

91.3(2) Season dates - north zone. Canada geese and brant: September ~~29~~ 28 through January 4, ~~2013~~ 3, 2014. White-fronted geese: September ~~29~~ 28 through December ~~11~~ 10. Light geese (white and blue-phase snow geese and Ross' geese): September ~~29~~ 28 through January ~~13, 2013~~ 12, 2014.

NATURAL RESOURCE COMMISSION[571](cont'd)

91.3(3) Season dates - south zone. Canada geese and brant: October ~~6~~ 5 through January ~~11, 2013~~ 10, 2014. White-fronted geese: October ~~6~~ 5 through December ~~18~~ 17. Light geese (white and blue-phase snow geese and Ross' geese): October ~~6~~ 5 through January ~~18, 2013~~ 17, 2014.

91.3(4) Season dates - Missouri River zone. Canada geese and brant: October ~~13~~ 12 through January ~~18, 2013~~ 17, 2014. White-fronted geese: October ~~13~~ 12 through December ~~25~~ 24. Light geese (white and blue-phase snow geese and Ross' geese): October ~~13~~ 12 through January ~~18, 2013~~ 17, 2014.

91.3(6) Possession limit. The possession limit is ~~twice~~ three times the daily bag limit for Canada geese, brant and white-fronted geese. There is no possession limit for light geese.

ITEM 4. Amend subrules 91.3(8) to 91.3(11) as follows:

91.3(8) Light goose conservation order season. Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January ~~19, 2013~~ 18, 2014, through April 15, ~~2013~~ 2014.

- a. *Zone boundaries.* Statewide.
- b. *Shooting hours.* One-half hour before sunrise to one-half hour after sunset.
- c. *Bag limit.* ~~Bag limit is 20 light geese.~~ No bag limit.
- d. *Possession limit.* No possession limit.
- e. *Other regulations.* Methods of take approved by the U.S. Fish and Wildlife Service for hunting light geese during the conservation order season shall be permitted.

91.3(9) Cedar Rapids/Iowa City goose hunting zone.

- a. *Season dates.* September ~~1~~ 7 through September ~~9~~ 15.
- b. No change.
- c. *Possession limit.* ~~Twice~~ Three times the daily bag limit.
- d. No change.

91.3(10) Des Moines goose hunting zone.

- a. *Season dates.* September ~~1~~ 7 through September ~~9~~ 15.
- b. No change.
- c. *Possession limit.* ~~Twice~~ Three times the daily bag limit.
- d. No change.

91.3(11) Cedar Falls/Waterloo goose hunting zone.

- a. *Season dates.* September ~~1~~ 7 through September ~~9~~ 15.
- b. No change.
- c. *Possession limit.* ~~Twice~~ Three times the daily bag limit.
- d. No change.

ITEM 5. Amend rule 571—91.6(481A) as follows:

571—91.6(481A) Youth waterfowl hunt. A special youth waterfowl hunt will be held on October ~~6 and 7, 2012,~~ 5 and 6 in the north duck hunting zone, ~~and October 13 and 14, 2012,~~ 12 and 13 in the south duck hunting zone, ~~and October 20 and 21, 2012,~~ 19 and 20 in the Missouri River duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

[Filed Emergency After Notice 8/15/13, effective 8/15/13]

[Published 9/4/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 0984C

DENTAL BOARD[650]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Dental Board hereby adopts amendments to Chapter 13, "Special Licenses," and Chapter 15, "Fees," Iowa Administrative Code.

The amendments rescind the application fee for a temporary permit for volunteer services and reduce the amount of information required to apply for a permit for volunteer services. These amendments are in response to a petition for rule making filed by the Iowa Dental Association Foundation on October 23, 2012.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 1, 2013, as **ARC 0724C**.

A public hearing was held on June 5, 2013. There were no attendees. No written comments were received concerning the proposed amendments.

One revision was made to the proposed amendments due to the high cost that would be incurred to change the current online application system to accommodate an application for which no fee is charged. The new online system does not allow an application to be submitted if there is no application fee collected. It is estimated that it would cost \$5,000 to have the vendor revise the database/public portal online system to allow for electronic filing for this type of application. Therefore, paragraph 13.3(3)"b" of the adopted amendments does not provide for a volunteer permit application to be filed electronically.

These amendments were approved at the August 1, 2013, quarterly meeting of the Dental Board.

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

These amendments are intended to implement Iowa Code section 153.19.

These amendments will become effective on October 9, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 13.3(3) as follows:

13.3(3) Eligibility for a temporary permit to provide volunteer services.

a. A temporary permit to provide volunteer services is intended for dentists and dental hygienists who will provide volunteer services at a free or nonprofit dental clinic and who will not receive compensation for dental services provided. A temporary permit issued under this subrule shall be valid only at the location specified on the permit, which shall be a free clinic or a dental clinic for a nonprofit organization, as described under Section 501(c)(3) of the Internal Revenue Code.

b. An application for a temporary permit shall be filed on the paper form provided by the board, ~~and must be completely answered, including required credentials and documents. To be eligible for a temporary permit to provide volunteer services, an applicant shall provide all of the following:~~ The application form will collect the name, address, and telephone number of the applicant, the location of the free clinic or dental clinic for a nonprofit organization, and the dates on which the volunteer services will be provided. The application form must be accompanied by each of the following:

(1) The nonrefundable application fee for a temporary permit to provide volunteer services as specified in 650—Chapter 15. A verification of license (or substantially similar document) from the appropriate licensing board of the applicant's home jurisdiction.

(2) A statement:

1. Confirming that the applicant possesses a valid certificate from a nationally recognized course in cardiopulmonary resuscitation (CPR) that included a "hands-on" clinical component;

2. Providing the expiration date of the CPR certificate; and

3. Acknowledging that the CPR certificate will be retained and made available to board office staff as part of routine auditing and monitoring.

(3) A statement disclosing and explaining any pending disciplinary actions, ~~investigations, complaints, malpractice claims, judgments, settlements, or criminal charges~~ against the applicant.

DENTAL BOARD[650](cont'd)

~~(4) Evidence that the applicant holds an active, permanent license in good standing to practice in at least one United States jurisdiction and that no formal disciplinary action is pending or has ever been taken.~~

~~(5) Evidence from the appropriate examining board from each jurisdiction in which the applicant has ever held a license. At least one license must be issued on the basis of clinical examination.~~

~~(6) A request for the temporary permit from those individuals or organizations seeking the applicant's services that establishes, to the board's satisfaction, the justification for the temporary permit, the dates the applicant's services are needed, and the location or locations where those services will be delivered.~~

(7) (4) A statement from the applicant seeking the temporary permit that the applicant shall practice only in a free dental clinic or dental clinic for a nonprofit organization and that the applicant shall not receive compensation directly or indirectly for providing dental services.

ITEM 2. Rescind and reserve subrule **15.3(17)**.

[Filed 8/6/13, effective 10/9/13]

[Published 9/4/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 0985C

DENTAL BOARD[650]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Dental Board adopts an amendment to Chapter 20, "Dental Assistants," Iowa Administrative Code.

The amendment modifies the requirements for training in expanded functions if an applicant is from a state that does not require dental assistants to be registered. Registration is not required in all states, and currently the Board's rule requires Dental Assisting National Board (DANB) certification or a minimum of two years of clinical experience as a registered dental assistant. Dental assistants who have more than two years of clinical experience but were not registered in another state must either wait two years after becoming registered in Iowa or another state or submit a rule waiver for approval to start expanded function training sooner. The amendment permits an applicant with at least two years of dental assisting experience in a state where registration is not required to be eligible for expanded function training.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 1, 2013, as **ARC 0723C**.

A public hearing was held on June 5, 2013. There were no attendees. No written comments were received concerning the proposed amendment. This amendment is identical to that published under Notice.

The amendment was approved at the August 1, 2013, quarterly meeting of the Dental Board.

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

This amendment is intended to implement Iowa Code sections 153.38 and 153.39.

This amendment will become effective on October 9, 2013.

The following amendment is adopted.

Amend rule 650—20.15(153) as follows:

650—20.15(153) Expanded function training approval. Expanded function training shall be eligible for board approval if the training is offered through a program accredited by the Commission on Dental Accreditation of the American Dental Association or another program prior-approved by the board, which may include on-the-job training offered by a dentist licensed in Iowa. Training must consist of the following:

DENTAL BOARD[650](cont'd)

1. An initial assessment to determine the base entry level of all participants in the program. At a minimum, participants must be meet one of the following:
 - Be currently certified by the Dental Assisting National Board, or
 - must have Have two years of clinical dental assisting experience as a registered dental assistant, or
 - Have two years of clinical dental assisting experience as a dental assistant in a state that does not require registration;
2. A didactic component;
3. A laboratory component, if necessary;
4. A clinical component, which may be obtained under the personal supervision of the participant's supervising dentist while the participant is concurrently enrolled in the training program; and
5. A postcourse competency assessment at the conclusion of the training program.

[Filed 8/6/13, effective 10/9/13]

[Published 9/4/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 0986C

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

These changes to the endorsements for health, music, and physical education are adopted following reviews of the current endorsement requirements by committees composed of practicing educators, presidents of the relevant professional organizations, and representatives of institutions of higher education.

The health endorsement requirements currently include 24 credit hours in community or public health, consumer health, substance abuse, family life education, mental/emotional health, and human nutrition. In these amendments, "consumer health" is changed to "personal wellness" to reflect current language, and a requirement for a current certificate of CPR training is added. Additionally, holders of the physical education endorsement or family and consumer science endorsement can now obtain the health endorsement with 18 credit hours, thus acknowledging that much of the educators' coursework is parallel. These candidates will now also be able to obtain the Class B license with 9 credit hours in health.

In regard to the music endorsement, coursework requirements are changed to reflect the fact that many school districts in the state require music teachers to teach in more than one area (i.e., not just choral, instrumental, or general music).

Finally, in regard to the physical education endorsement, "adapted physical education" is changed to "adaptive physical education" to reflect current language. The amendments also eliminate the phrase "physical education in the elementary school" because this is covered through the required elementary physical education methods coursework, add the term "personal wellness" to reflect best practice, and require a current certificate of CPR training. The changes to the secondary physical education requirements remove "assessment processes in physical education" as a separate requirement and include this requirement in "curriculum, assessment, and administration of physical education." "Personal wellness" is added, as well as a current certificate of CPR training.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0762C** on May 29, 2013.

A public hearing was held on June 19, 2013, with written comment accepted until June 21, 2013. No one attended the public hearing, and no written comments were received.

There has been only one change from the amendments published under Notice of Intended Action. In subrule 13.28(13) regarding the music endorsement, the word "vocal" was changed to "choral." This

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

change was based on conversations between Board staff and those in the field who assisted in drafting the amendments.

After analysis and review of this rule making, there is no anticipated impact on jobs.

These amendments are intended to implement Iowa Code section 272.2(1)“a.”

These amendments will become effective October 9, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 13.28(8) as follows:

13.28(8) Health. K-8 and 5-12. Completion of 24 semester hours in health to include coursework in public or community health, ~~consumer health~~ personal wellness, substance abuse, family life education, mental/emotional health, and human nutrition. A current certificate of CPR training is required in addition to the coursework requirements.

For holders of physical education or family and consumer science endorsements, completion of 18 credit hours in health to include coursework in public or community health, personal wellness, substance abuse, family life education, mental/emotional health, and human nutrition. A current certificate of CPR training is required in addition to the coursework requirements.

ITEM 2. Amend subrule 13.28(13) as follows:

13.28(13) Music.

a. K-8. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history, and applied music, and a methods course in each of the following: general, choral, and instrumental music.

b. 5-12. Completion of 24 semester hours in music to include coursework in music theory (at least two courses), music history (at least two courses), applied music, and conducting, and a methods course in each of the following: general, choral, and instrumental music.

ITEM 3. Amend subrule 13.28(14) as follows:

13.28(14) Physical education.

a. K-8. Completion of 24 semester hours in physical education to include coursework in human anatomy, human physiology, movement education, ~~adapted~~ adaptive physical education, ~~physical education in the elementary school~~ personal wellness, human growth and development of children related to physical education, and first aid and emergency care. A current certificate of CPR training is required in addition to the coursework requirements.

b. 5-12. Completion of 24 semester hours in physical education to include coursework in human anatomy, kinesiology, human physiology, human growth and development related to maturational and motor learning, ~~adapted~~ adaptive physical education, curriculum and administration of physical education, ~~assessment processes in physical education~~ personal wellness, and first aid and emergency care. A current certificate of CPR training is required in addition to the coursework requirements.

[Filed 8/12/13, effective 10/9/13]

[Published 9/4/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 0991C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2001 Iowa Acts, chapter 192, section 4(6), the Department of Human Services amends Chapter 54, “Facility Participation,” Iowa Administrative Code.

These amendments provide clarification of the treatment of related-party compensation in the setting of rates for residential care facilities (RCFs). The amendments also clarify the Department’s treatment of legal, accounting, consulting, and other professional fees, including association dues, and penalties and

HUMAN SERVICES DEPARTMENT[441](cont'd)

finer. These amendments change which cost report is to be submitted, what is required to be submitted to the Department with the cost report, and how the cost report is to be submitted. The amendments also more clearly define the timing for submitting an amended cost report and clarify the Department's position on the penalty period for late submission of cost reports. The amendments also change language to reflect current operations of the Iowa Medicaid Enterprise.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0790C** on June 12, 2013.

The Department received comments from two respondents on these amendments.

Comment one: The first comment received was a question and a request for an explanation of the amendments. The question was, "Does this rule making apply to privately owned for-profit facilities?" The respondent also wanted an explanation of new paragraph 54.3(11)"n" that was proposed for adoption in the amendments.

Department response: In response to the question, this rule making applies to any residential care facility (RCF) which receives reimbursement from Iowa Medicaid.

The amendment in Item 7 rescinds current paragraph 54.3(11)"n" and adopts a new paragraph in its place. Current paragraph 54.3(11)"n" allows a broad definition of allowable legal fees which may be included in the provider's rate. New paragraph "n" deals not only with legal fees, but with accounting, consulting, and other professional fees as well. The new paragraph sets out certain types of fees that are explicitly not allowed costs for Medicaid reimbursement, including lobbying fees and legal fees for administrative or judicial proceedings in which the facility does not prevail on the disputed issue.

Comment two: A residential care facility (RCF) cost report is filed for each RCF. If a provider operates more than one facility (which is very common), it files a separate cost report for each facility. Each cost report is done for that physical facility, not for the entire provider agency. Compilations, reviews, and audits are typically done for the entire provider agency, not by individual facility. Therefore, in most cases there is no compilation, review, or audit that covers only the facility on the cost report. Also, in many cases the compilation, review, or audit is not completed within three months after the end of the fiscal year, so it will be impossible to submit it with the cost report.

Department response: When a financial statement is still being prepared at the time a cost report is required to be submitted, there would be an expectation that the facility disclose the type of financial statement being prepared and an expected date it would be available. The Iowa Medicaid Enterprise provider cost audit and rate setting contractor will take that information into consideration during the review process. The expectation is that, once completed, the financial statement would be submitted.

There are entities that have an exception to policy to be able to file one report for all individual homes. While the Department understands that the financial reports do combine operations for several entities, there is information within a financial statement that will help the Iowa Medicaid Enterprise provider cost audit and rate setting contractor understand transactions.

Comment three: The proposed amendments would deny a provider the right to even request a review of a financial and statistical report after the facility is notified of its per diem rate. This unfairly denies the provider all rights to remedy an error no matter what the source of the problem.

Department response: A facility can notify the Department if a significant financial change related to a cost report has been submitted by the facility certifying that the information is correct; a review has been completed, including correspondence between the Department and the provider; a payment rate has been calculated; and the appeal time frame has elapsed. The Department will consider factors including, but not limited to, the nature of the changes and the circumstances that led to the discovery of the issue to determine if a new review is warranted. Also, a provider will still have the ability to file an appeal of any final rate determinations made by the Department.

Due to the comments received by the Department and internal review, one change was made to the proposed amendments. In Item 7, the word "directly" was added in the first sentence of the introductory paragraph of 54.3(11)"n" to ensure clarity as follows: "Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care."

The Council on Human Services adopted these amendments on August 14, 2013.

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

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

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

These amendments will become effective November 1, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 441—54.1(249) as follows:

441—54.1(249) Application and contract agreement. Each facility desiring to participate in the state supplementary assistance program must enter into a contract with the department of human services and agree to the provisions as enumerated in Form ~~PA-1108-6~~ 470-0443, Application and Contract Agreement for Residential Care Facilities. The effective date of the contract shall be the first of the month that the Application and Contract Agreement for Residential Care Facilities, signed by the administrator of the facility, is received by the department. No payment shall be made for care provided before the effective date of the contract. The contract shall be in effect until the department ceases to participate in the program, until either party gives 60 days' notice of termination in writing to the other party, or until there is a change in ownership. The facility shall notify the department within 30 days of a change in ownership, a change in the number of beds or a change in administrator.

This rule is intended to implement Iowa Code section 249.12.

ITEM 2. Amend rule 441—54.2(249) as follows:

441—54.2(249) Maintenance of case records. A facility must maintain a case folder for each individual residing in the facility which contains the following:

1. Contract between the facility and the resident on Form ~~PA-2365-6~~ 470-0477, RCF Admission Agreement.

2. Physician's statement certifying that the resident does not require nursing services.

3. Proof of expenditures from resident's "personal needs" allowance.

This rule is intended to implement Iowa Code section 249.12.

ITEM 3. Amend rule 441—54.3(249), introductory paragraph, as follows:

441—54.3(249) Financial and statistical report. All facilities wishing to participate in the program shall submit a Financial and Statistical Report, Form ~~AA-4036-0~~ 470-0030, to the department. The reports shall be based on the following rules.

ITEM 4. Amend subrule 54.3(3) as follows:

54.3(3) Submission of reports. The report shall be ~~submitted to~~ received by the department of human services Iowa Medicaid enterprise provider cost audit and rate setting unit no later than three months after the close of the facility's established fiscal year. If the residential care facility is associated with a nursing facility, the cost report shall be due no later than five months after the close of the provider's reporting year.

a. The financial and statistical report shall be submitted in an electronic format approved by the department.

b. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid enterprise provider cost audit and rate setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the residential care facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 54.3(3) "d."

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report.

d. Failure to timely submit the complete report within the three-month period shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective the first day of the fourth month following the facility's fiscal year end and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments shall be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

e. Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem payment rate following a review of a financial and statistical report.

f. When a residential care facility continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid enterprise provider cost audit and rate setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

g. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 5. Amend subparagraph **54.3(11)“h”(1)** as follows:

(1) Compensation means the total benefit received by the owner or immediate relative for the services rendered to the facility. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor; the cost of assets and services which the proprietor receives from the facility; and deferred compensation. Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and rate setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 54.3(3)“d.”

ITEM 6. Adopt the following **new** subparagraph **54.3(11)“h”(5)**:

(5) The maximum allowed compensation for employees as set forth in subparagraph 54.3(11)“h”(4) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the residential care facility for the fiscal year of the financial and statistical report.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. If an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the facility. In no case shall the amount of salary for one employee allocated to multiple facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

ITEM 7. Rescind paragraph **54.3(11)“n”** and adopt the following **new** paragraph in lieu thereof:

n. Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are not allowable expenses:

- (1) Any fees or portion of fees used or designated for lobbying.
- (2) Nonrefundable and unused retainers.
- (3) Fees paid by the facility for the benefit of employees.

(4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the following conditions are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.

1. The costs have actually been incurred and paid,
2. The costs are reasonable expenditures for the services obtained,
3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and
4. The facility prevails on the disputed issue.

ITEM 8. Adopt the following **new** paragraphs **54.3(11)“o”** and **“p”**:

o. Penalties or fines imposed by federal or state agencies are not allowable expenses.

p. Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

ITEM 9. Amend subrule 54.8(1) as follows:

54.8(1) *Audit of financial and statistical report.* Authorized representatives of the department of human services or the Department of Health and Human Services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report, Form AA-4036-0 470-0030, are reasonable and proper according to the ~~rules~~ conditions set forth in rule 441—54.3(249). These audits may be done either on the basis of an on-site visit to the facility, ~~their~~ to the facility's central accounting office, or ~~office(s) to an office of their agent(s) the facility's agent.~~

a. When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department of human services that the indicated per diem be reduced to 75 percent of the established payment rate for the ensuing six-month period and if the situation is not remedied on the subsequent Financial and Statistical Report, Form AA-4036-0 470-0030, the health facility shall be suspended and eventually canceled from the residential care facility program, or

b. No change.

[Filed 8/14/13, effective 11/1/13]

[Published 9/4/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 0990C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

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

The purpose of this amendment is to revise Medicaid eligibility rules for the Iowa Family Planning Network. Specifically, this amendment:

1. Deletes the requirement concerning health insurance coverage.
2. Deletes the requirement concerning HAWK-I coverage.
3. Revises the maximum income standard to reflect the Modified Adjusted Gross Income (MAGI) deduction of 5 percent of the gross income effective January 1, 2014.

This amendment allows Iowa residents to qualify for the Iowa Family Planning Network when:

- They have other health insurance coverage.
- They are covered by the HAWK-I program.
- Their MAGI is 305 percent of the federal poverty level for their household size.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0746C** on May 15, 2013.

The Department held five public hearings on this amendment on June 4, June 5, and June 6, 2013. Through the course of the hearings and the comment period, the Department received only two comments, both of which supported the proposed amendment.

This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on August 14, 2013.

This amendment does not provide for waivers in specific situations because all members should be subject to the same eligibility requirements. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

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

This amendment will become effective January 1, 2014.

The following amendment is adopted.

Amend paragraph **75.1(41)“a”** as follows:

a. Eligibility. The following are eligible for assistance under this coverage group if they ~~are uninsured or have health insurance that does not include family planning services~~, are not otherwise enrolled in Medicaid (other than IowaCare), ~~and are not enrolled in the Children’s Health Insurance Program (HAWK-I)~~:

- (1) Women who were Medicaid members when their pregnancy ended and who are capable of bearing children but are not pregnant. Eligibility for these women extends for 12 consecutive months after the month when their 60-day postpartum period ends.
- (2) Women who have reached childbearing age, are under 55 years of age, are capable of bearing children but are not pregnant, and have income that does not exceed ~~300~~ 305 percent of the federal poverty level, as determined according to paragraph 75.1(41)“c.”
- (3) Men who are under 55 years of age, who are capable of fathering children, and who have income that does not exceed ~~300~~ 305 percent of the federal poverty level, as determined according to paragraph 75.1(41)“c.”

[Filed 8/14/13, effective 1/1/14]

[Published 9/4/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 0994C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2001 Iowa Acts, chapter 192, section 4(6), the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

The purpose of these amendments is to provide clarification for the treatment of prescription drugs, X-ray, lab, and related-party compensation in the setting of rates for nursing facilities (NFs). The amendments also clarify the Department's treatment of legal, accounting, consulting and other professional fees, including association dues, management fees, penalties and fines, and therapy expenses. These amendments change what is required to be submitted to the Department with the cost report, change the timing for submission of the cost report, better define the timing for submitting an amended cost report, and clarify the Department's position regarding the penalty period for late submission of cost reports. This rule making also includes an amendment to elaborate on Medicaid's ability to recoup outstanding debts of facilities whose ownership changes and includes changes to language in the rules to reflect current operations of the Iowa Medicaid Enterprise.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0789C** on June 12, 2013. The Department received a number of comments from four persons on these amendments. The comments received by the Department are compiled as follows:

General comments on professional fees: There were two comments on professional fees. In the first comment, there was a question about inclusion of costs associated with professional fees, including association dues, penalties and fines that do not directly impact the quality of care and thus are items that should not be funded by taxpayers. The second comment was a request to add specificity to the cost reports specifically with regard to fees paid to trade associations, to attorneys, to accountants, and to consultants.

Department response: Professional fees for attorneys, accountants, and other professionals may be a valid administrative cost of doing business for any type of health care provider, and appropriate professional fees are factored into the reimbursement rate for many types of providers, including nursing facilities. There is a limit on the amount of non-direct costs, including on administrative costs, for which a provider may receive payment.

Professional fees are currently all reported on one line in the cost report; however, the cost report also includes optional supplemental schedules which many providers use to provide further detail about these costs. Additionally, the amendment to subrule 81.6(3) in Item 7 of this rule making includes new requirements for facilities to submit a working trial balance which corresponds to the data on the cost report. This change will allow for review of the types of costs that go into a specific line, including the different accounts that are added together to be reported on Line 14. Facilities that accept Medicare payment will also be required to submit a copy of their Medicare cost report, and facilities with audited financial statements will be required to submit those as well. These requirements will provide the Department with ample information for reviewing nursing facility cost reports.

The Department plans to convene a stakeholder group in the second half of 2013 to discuss possible revisions to the cost report form and will invite representatives of both the Iowa Caregivers Association and the nursing facility associations to participate. It is anticipated that any revisions to the cost report which result from stakeholder discussions will not require further rule making.

General comments on legal fees: There was one comment in this area, which stated that the current rule allows for legal fees to be submitted regardless of whether the nursing home prevails on the matter for which the fees are changed. In addition, the comment stated that the rule does not specify how "reasonableness" of legal fee claims will be measured.

Department response: The amendments increase the limitations on legal expenses that may be allowed in a facility's rate calculation. Under the current rule, litigation costs could be allowable even

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if the facility does not prevail in the matter; however, under these amendments, litigation costs will only be allowable after a case is decided and will then only be allowable if the facility prevails on the disputed issue, regardless of whether the facility is the plaintiff or defendant or whether the issue is heard in a criminal or administrative proceeding. The term “reasonable” is widely used in both statutes and rules to represent what is appropriate under usual or ordinary circumstances. In reviewing cost reports, the Department considers a reasonable cost as one which would be paid by a prudent, cost-conscious buyer. As such, reasonable legal fees may vary depending upon the nature of the work; for example, legal fees for drafting a policy on performing background checks would likely be different than legal fees for defending a case in court. While further defining reasonableness may serve to limit facility costs, it also may limit the Department’s ability to exclude other costs that were not anticipated in rule. The Department needs the latitude provided by these amendments to fairly and prudently examine costs dependent upon the situation in which they are incurred.

General comments on association dues: The following questions were asked. Should expenses of a nursing facility to fund its membership in an industry trade association be deemed as a necessary expense and used as an expense that leads to higher revenue in the form of Medicaid dollars from the state? In addition, if the expenditures for, and of, a trade association are deemed to be warranted, and therefore result in increases in Medicaid costs, should limits exist on association expenditures to ensure that they are both appropriate and reasonable?

Another comment stated that very little is known about association dues but that association dues have a significant impact on Medicaid costs. The person commenting wanted to know specifically if Medicaid dollars were used to purchase land, buildings, and equipment for a professional association.

Department response: Under these amendments, association dues may be an allowable cost for nursing facilities if the dues are related to patient care. Professional provider associations provide to member facilities many services that do have a direct impact on nursing home residents. Associations present staff training, promote best practices, and provide technical assistance to nursing facilities and are equipped to provide this type of training and information to a large number of providers in an efficient manner. While it is true that provider associations also often serve as lobbyists for their members’ interests, the Department already treats their lobbying costs as unallowable, as required by federal law. The adopted amendments, however, state this practice more explicitly than does the current rule.

Comments on costs “directly” related to patient care: Two respondents were concerned that the key word “directly” has been proposed for removal from the existing regulation, specifically in paragraph 81.6(11)“o.” The removal of the word “directly” is significant and problematic. The argument could be made that many fees are related to patient care, but not directly related.

Department response: After reviewing these comments, the Department agrees that the word “directly” should not be omitted from paragraph 81.6(11)“o” and has revised the first sentence of the paragraph to read: “Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care.” It should be noted that this change does not mean that these costs will be automatically considered unallowable; rather, all reported costs in this category will still be reviewed to determine which ones are allowable or unallowable.

Comments on the definition of “reasonable” costs: Three of the respondents expressed concern that expenses must be reasonable in order to be reimbursed. To make the policy effective, a process must be in place that identifies the level of detail needed to determine whether the “reasonable” test is met. In addition, reporting instructions should require that amounts for legal, accounting, and consulting fees should be reported in hourly and total amounts rather than reported as a lump sum.

Department response: The term “reasonable” is widely used in both statutes and rules to represent what is appropriate under usual or ordinary circumstances. In reviewing cost reports, the Department considers a reasonable cost as one which would be paid by a prudent, cost-conscious buyer. This determination not only pertains to the amount of the reported costs, but also to whether a cost is allowable or not allowable in its entirety. While further defining reasonableness may serve to limit facility costs, it also may limit the Department’s ability to exclude other costs that were not anticipated

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in rule. The Department needs the latitude provided by these amendments to fairly and prudently examine costs dependent upon the situation in which they are incurred.

Comments on auditing and data resources: Three respondents provided commentary in this area. All of the respondents generally agreed that adequate resources do not exist within DHS to allow for comprehensive capture of data from multiple sources in order for appropriate analysis to be done. The respondents asked the Department to request those staff or contract resources in the next budget cycle, and for the Legislature to grant that request.

Department response: The Department's provider cost audit and rate setting contractor performs a desk review of cost reports for all 450+ nursing facilities within the state. This review typically includes not only consideration of the data reported on the cost report form but also includes other data that the Department requests from the facility, such as a working trial balance, audited financial statements, or original source documentation of costs. Under these amendments, much of this additional documentation will be required from facilities at the time the cost report is submitted. The Department works with its contractor to develop procedures to implement the rules so that significant misstatements are not missed. Any increase in reviewing or auditing activity beyond the current level would require the appropriation of additional funds by the Legislature.

Requests to modify the proposed language in the amendments: Specifically, the respondents requested changes to Items 4 and 15 of the proposed rule making for the purpose of adding clarity.

Department response: The intent of the provisions in those items is to clarify that these costs are allowable for residents of a facility, but not allowable for outpatient services provided to persons not residing in the facility. In order to better convey this distinction, the Department has revised the definition of "direct care component" in Item 4 to read as follows:

"Direct care component" means the portion of the Medicaid reimbursement rates that is attributable to the salaries and benefits of registered nurses, licensed practical nurses, certified nursing assistants, rehabilitation nurses, and contracted nursing services. 'Direct care component' also includes costs related to therapy services provided to residents during inpatient stays and not billed as an outpatient service."

The Department revised the introductory paragraph of 81.6(11)"r" in Item 15 to read as follows:

"r. Inpatient therapy services provided by nursing facilities are included in the established rate as a direct care cost and subject to the normalization process and quarterly case-mix index adjustments."

The Department also added the word "outpatient" before the word "therapy" in the next to last sentence of subparagraph (2) of 81.6(11)"r." The subparagraph now reads as follows:

"(2) For purposes of determining allowable therapy costs, the Iowa Medicaid enterprise provider cost audit and rate setting unit shall adjust each provider's reported cost of therapy services, including any employee benefits prorated based on total salaries and wages, to account for nonfacility patients including patients with costs paid by Medicare. Such adjustments shall be applied to each cost report in order to remove reported costs attributable to outpatient therapy services reimbursed for non-inpatient services. When the costs of the services are not determinable, an adjustment shall be calculated based on an allocation of reported therapy revenues and shall be subject to field audit verification."

In addition to the changes made in response to comments received, the Department has revised paragraph "1" of the home health agencies provider category in Item 2 so that the paragraph reflects the amendments adopted in Item 1 of **ARC 0964C**, which was published in the July 24, 2013, Iowa Administrative Bulletin.

The Council on Human Services adopted these amendments on August 14, 2013.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

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

These amendments will become effective November 1, 2013.

The following amendments are adopted.

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ITEM 1. Amend subparagraph **78.19(1)“a”(1)** as follows:

(1) Services are provided in the recipient's member's home or in a care facility (other than a hospital) by a speech therapist, physical therapist, or occupational therapist employed by or contracted by the agency. Services provided to a recipient member residing in a nursing facility or residential care facility are payable when the facility submits a signed statement ~~is submitted signed by the facility~~ that the facility does not have these services available. The statement need only be submitted at the start of care unless the situation changes. Payment will not be made to a rehabilitation agency for therapy provided to a recipient member residing in a nursing facility or an intermediate care facility for ~~the mentally retarded persons with an intellectual disability~~ since these facilities are responsible for providing or paying for services required by recipients members.

ITEM 2. Amend subrule **79.1(2)**, provider categories “Home health agencies,” “Occupational therapists,” “Physical therapists,” and “Rehabilitation agencies,” as follows:

Provider category	Basis of reimbursement	Upper limit
Home health agencies		
1. Skilled nursing, physical therapy, occupational therapy, speech therapy, home health aide, and medical social services; home health care for maternity patients and children	Fee schedule. See 79.1(26). <u>For members living in a nursing facility, see 441—paragraph 81.6(11)“r.”</u>	Effective 7/1/13: Medicare LUPA rates in effect on July 1, 2013, updated July 1 every two years.
2. Private-duty nursing and personal care for persons <u>members</u> aged 20 or under	No change.	No change.
3. Administration of vaccines	No change.	No change.
Occupational therapists	Fee schedule. <u>For members residing in a nursing facility, see 441—paragraph 81.6(11)“r.”</u>	No change.
Physical therapists	Fee schedule. <u>For members residing in a nursing facility, see 441—paragraph 81.6(11)“r.”</u>	No change.
Rehabilitation agencies	Fee schedule. <u>For members residing in a nursing facility, see 441—paragraph 81.6(11)“r.”</u>	No change.

ITEM 3. Rescind the definition of “Department’s accounting firm” in rule **441—81.1(249A)**.

ITEM 4. Amend rule **441—81.1(249A)**, definition of “Direct care component,” as follows:

“*Direct care component*” means the portion of the Medicaid reimbursement rates that is attributable to the salaries and benefits of registered nurses, licensed practical nurses, certified nursing assistants, rehabilitation nurses, and contracted nursing services. “Direct care component” also includes costs related to therapy services provided to residents during inpatient stays and not billed as an outpatient service.

ITEM 5. Amend rule 441—81.6(249A), introductory paragraph, as follows:

441—81.6(249A) Financial and statistical report and determination of payment rate. With the exception of hospital-based nursing facilities that are Medicare-certified and provide only the skilled level of care, herein referred to as Medicare-certified hospital-based nursing facilities, all facilities in Iowa wishing to participate in the program shall submit a Financial and Statistical Report, Form 470-0030, to the department’s accounting firm Iowa Medicaid enterprise provider cost audit and rate setting unit. All Medicare-certified hospital-based nursing facilities shall submit a copy of their Medicare cost report to the department’s accounting firm. ~~Costs for patient care services shall be reported, divided into the subcategories of “Direct Patient Care Costs” and “Support Care Costs.” Costs associated with food and dietary wages shall be included in the “Support Care Costs” subcategory. The~~

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~~financial and statistical report shall be submitted in an electronic format approved by the department. These reports shall be based on the following rules.~~

ITEM 6. Amend subrule 81.6(2) as follows:

81.6(2) *Accounting procedures.* Financial information shall be based on that appearing in the audited financial statements of the facility. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report. Adjustments to convert to the accrual basis of accounting shall be made when the records are maintained on other accounting bases.

a. Facilities which are a part of a larger health facility extending short-term, intensive, or other health care not generally considered nursing care may submit a cost apportionment schedule prepared in accordance with recognized methods and procedures. A schedule shall be required when necessary for a fair presentation of expense attributable to nursing facility patients.

b. Costs for patient care services shall be divided into the subcategories of "direct patient care costs" and "support care costs." Costs associated with food and dietary wages shall be included in the "support care costs" subcategory.

ITEM 7. Amend subrule 81.6(3) as follows:

81.6(3) *Submission of reports.* All nursing facilities, except the Iowa Veterans Home, shall submit reports to the department's accounting firm no later than three months after the close of the facility's established fiscal year electronically, in a format approved by the department, to the Iowa Medicaid enterprise provider cost audit and rate setting unit not later than the last day of the fifth calendar month after the close of the provider's reporting year. The Iowa Veterans Home shall submit the report to the department's accounting firm electronically, in a format approved by the department, no later than three months after the close of each six-month period of the facility's established fiscal year. The annual financial report shall coincide with the fiscal year used by the provider to report federal income taxes for the operation unless the provider requests in writing that a different reporting period be used. Such a request shall be submitted within 60 days after the initial certification of a provider. The option to change the reporting period may be exercised only one time by a provider, and the reporting period shall coincide with the fiscal year end for Medicare cost-reporting purposes. If a reporting period other than the tax year is established, audit trails between the periods are required, including reconciliation statements between the provider's records and the annual financial report.

a. Nursing facilities that are certified to provide Medicare-covered skilled nursing facility services are required to submit a copy of their Medicare cost report that covers their most recently completed historical reporting period as submitted to the Medicare fiscal intermediary.

b. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid enterprise provider cost audit and rate setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the nursing facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 81.6(3) "e."

c. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report as set forth in subrule 81.6(2).

d. For nursing facilities, except the Iowa Veterans Home, an extension of the five-month filing period shall not be granted unless one is granted for the filing of the Medicare cost report. If the Medicare filing deadline for submitting the Medicare cost report is delayed by the Medicare fiscal intermediary, the Medicaid cost report and all required forms shall be submitted on the date Medicare requires submission of its report. Notice of the extension shall be presented to the department within ten days of a decision by Medicare.

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e. A complete submission shall include all of the items identified in this subrule. Failure to submit a complete report that meets the requirements of this rule within ~~this~~ the stated time shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective the first day of the sixth month following the provider's fiscal year end and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

f. When a nursing facility continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the provider may include the cost, but must include sufficient detail so that the Iowa Medicaid enterprise provider cost audit and rate setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

g. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

h. A facility may change its fiscal year one time in any two-year period. If the facility changes its fiscal year, the facility shall notify the ~~department's accounting firm~~ Iowa Medicaid enterprise cost audit and rate setting unit 60 days prior to the first date of the change.

ITEM 8. Amend paragraph **81.6(10)"a"** as follows:

a. Routine daily services shall represent the established charge for daily care. Routine daily services ~~are those services which~~ include room, board, nursing services, therapies, and such services as supervision, feeding, pharmaceutical consulting, over-the-counter drugs, incontinency, and similar services, for which the associated costs are in nursing service. Routine daily services shall not include:

(1) Laboratory or X-ray services, unless the service is provided by facility staff using facility equipment, and

(2) Prescription (legend) drugs.

ITEM 9. Amend subparagraph **81.6(11)"e"(3)** as follows:

(3) ~~Each~~ At the time of annual contract renewal with the Iowa department of transportation, each facility which supplies transportation services as defined in Iowa Code section 601J.1, subsection 1, 324A.1 shall provide current documentation of compliance with or exemption from public transit coordination requirements as found in Iowa Code chapter 601J section 324A.5 and 820—[09,A] chapter 2 761—Chapter 910 of the Iowa department of transportation transportation's rules at the time of annual contract renewal. Failure to cooperate in obtaining or in providing the required documentation of compliance or exemption after receipt from the Iowa department of transportation, ~~public transit division~~ shall, result in disallowance of vehicle costs and other costs associated with transporting residents.

ITEM 10. Amend subparagraph **81.6(11)"h"(1)** as follows:

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. It includes ~~salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation.~~ Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and

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deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and rate setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 81.6(3) "e."

ITEM 11. Adopt the following **new** subparagraph **81.6(11)“h”(7)**:

(7) The maximum allowed compensation for anyone working for another entity (e.g., home office) that allocates cost to the nursing facility and is involved in ownership of the facility or allocating entity or who is an immediate relative of an owner of the facility or allocating entity is 60 percent of the amount allowed for the administrator. An employee working for another entity that allocates cost to the nursing facility is considered to be involved in ownership of a facility when that individual has ownership interest of 5 percent or more of the home office or the nursing facility.

ITEM 12. Adopt the following **new** subparagraph **81.6(11)“h”(8)**:

(8) The maximum allowed compensation for employees as set forth in subparagraphs 81.6(11)“h”(4) to 81.6(11)“h”(7) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the nursing facility for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. In the case that an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the nursing facility. In no case shall the amount of salary for one employee allocated to multiple nursing facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

ITEM 13. Amend paragraph **81.6(11)“i”** as follows:

i. Management fees paid to a related party shall be limited on the same basis as the owner administrator's salary, but shall have the amount paid the resident administrator deducted. When the parent company can separately identify accounting costs, the costs are allowed.

ITEM 14. Rescind paragraph **81.6(11)“o”** and adopt the following **new** paragraph in lieu thereof:

o. Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are unallowable:

- (1) Any fees or portion of fees used or designated for lobbying.
- (2) Nonrefundable and unused retainers.
- (3) Fees paid by the facility for the benefit of employees.
- (4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the conditions below are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.
 1. The costs have actually been incurred and paid,
 2. The costs are reasonable expenditures for the services obtained,
 3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and

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4. The facility prevails on the disputed issue.

ITEM 15. Adopt the following **new** paragraphs **81.6(11)“q”** to **“t”**:

q. Prescription (legend) drug costs are excluded from services covered as part of the nursing facility per diem rate as set forth in paragraph 81.10(5)“c.” The Iowa Medicaid program will provide direct payment for drugs covered pursuant to 441—subrule 78.1(2) to relieve the facility of payment responsibility. As Medicaid reimburses pharmacy providers only for the cost and dispensation of legend drugs included on the Medicaid preferred drug list, no drug costs will be recognized for other payor sources.

r. Inpatient therapy services provided by nursing facilities are included in the established rate as a direct care cost and subject to the normalization process and quarterly case-mix index adjustments.

(1) Under no circumstances shall therapies for Medicaid members residing in a nursing facility be billed to Medicaid through any provider other than the nursing facility. Therapy services for nursing facility residents that are reimbursed by other payment sources shall not be reimbursed by Medicaid.

(2) For purposes of determining allowable therapy costs, the Iowa Medicaid enterprise provider cost audit and rate setting unit shall adjust each provider’s reported cost of therapy services, including any employee benefits prorated based on total salaries and wages, to account for nonfacility patients including patients with costs paid by Medicare. Such adjustments shall be applied to each cost report in order to remove reported costs attributable to outpatient therapy services reimbursed for non-inpatient services. When the costs of the services are not determinable, an adjustment shall be calculated based on an allocation of reported therapy revenues and shall be subject to field audit verification.

s. Penalties or fines imposed by federal, state or local agencies are not allowable expenses.

t. Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

ITEM 16. Amend paragraph **81.6(12)“a”** as follows:

a. A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department of human services with at least 60 days’ prior notice. A transfer of ownership or operation terminates the participation agreement. A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. The new owner shall be responsible for all Medicaid debts incurred by the previous owner, including those incurred due to changes in rates, fines, penalties and quality assurance fees, from the first day of the quarter until the date the change occurs. No payment to the new owner will be made until formal notification is received. The following situations are defined as a transfer of ownership:

(1) to (4) No change.

ITEM 17. Rescind subrule 81.6(13) and adopt the following **new** subrule in lieu thereof:

81.6(13) Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem summary and adjustments following a review of a financial and statistical report. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 18. Amend subrule 81.6(15) as follows:

81.6(15) Payment to new owner: An existing facility with a new owner shall continue to be reimbursed using the previous owner’s per diem rate adjusted quarterly for changes in the Medicaid average case-mix index. The facility shall submit a financial and statistical report for the period from beginning of actual operation under new ownership to the end of the facility’s fiscal year. Subsequent

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financial and statistical reports shall be submitted annually for a 12-month period ending with the facility's fiscal year. The facility shall notify the department's accounting firm Iowa Medicaid enterprise provider cost audit and rate setting unit of the date its the facility's fiscal year will end.

[Filed 8/14/13, effective 11/1/13]

[Published 9/4/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 0995C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2001 Iowa Acts, chapter 192, section 4(6), the Department of Human Services amends Chapter 82, "Intermediate Care Facilities for Persons With an Intellectual Disability," Iowa Administrative Code.

These amendments provide clarification of the treatment of related-party compensation in the setting of rates for intermediate care facilities for persons with an intellectual disability (ICF/ID). The amendments also serve to clarify the Department's treatment of legal, accounting, consulting and other professional fees, including association dues, and penalties and fines. These amendments change what is required to be submitted to the Department with the cost report and how the cost report is to be submitted, better define the timing for submitting an amended cost report, and clarify the Department's policy on the penalty period for late submission of cost reports. The Department is also making changes to language to reflect current operations of the Iowa Medicaid Enterprise.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0788C** on June 12, 2013.

The Department received comments from two respondents on these amendments.

Comment one: The first comment was a query and a request for information, "Does this rule making apply to privately owned for-profit facilities? Could you briefly explain new paragraph 82.5(11)"m"?"

Department response: This rule making applies to any intermediate care facility for persons with an intellectual disability (ICF/ID) which receives reimbursement from Iowa Medicaid.

Item 4 rescinds current paragraph 82.5(11)"m" and adopts a new paragraph in its place. Current paragraph 82.5(11)"m" allows a broad definition of allowable legal fees which may be included in the provider's rate. New paragraph "m" deals not only with legal fees, but with accounting, consulting, and other professional fees as well. The new paragraph sets out certain types of fees that are explicitly not allowed costs for Medicaid reimbursement, including lobbying fees and legal fees for administrative or judicial proceedings in which the facility does not prevail on the disputed issue.

Comment two: Currently all intermediate care facility (ICF) cost reports except as described in subrule 82.5(14) are filed for the fiscal year July 1 through June 30 and are due no later than September 30. The proposal would change the due date to "three months after the end of the facility's established fiscal year." Assuming that the new due date implies that those facilities would use their fiscal year for the report, then those facilities would have to make a transition from the June 30 report date to their fiscal year-end report date. Has adequate consideration been given to the methodology of changing the year end on reports, when this will take place, what inflation index will be used, what data will be used in the 80th percentile calculation, etc. Are the benefits of making this change sufficient to justify the problems and cost of making the change? Also, when this has been fully implemented, comparisons of ICF costs among facilities will not be possible as the time periods reported will not be the same.

Department response: 2011 Iowa Acts, House File 649, directed the Department to develop a uniform cost report that would be used by several different types of Medicaid providers. An issue was identified in the development of the report that some entities report based on a regulatory mandated year end and some do not have that requirement. As part of this rule making, the Department added language to make the transition to the uniform cost report easier.

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However, because implementation of the uniform cost report will not be complete during the upcoming year, the Department did not adopt the proposed language in subrule 82.5(3) requiring the cost report submission by three months after the provider's fiscal year end and restored the September 30 due date. As the uniform cost report becomes closer to being implemented, the Department will work with providers on a transition plan to include due dates, comparisons and limit calculations.

Comment three: An ICF cost report is filed for each ICF. If a provider operates more than one facility (which is very common), it files a separate cost report for each facility. Each cost report is done for that physical facility, not for the entire provider agency. Compilations, reviews, and audits are typically done for the entire provider agency, not by individual facility. Therefore, in most cases there is no compilation, review, or audit that covers only the facility on the cost report. Also, in many cases the compilation, review, or audit is not completed within three months after the end of the fiscal year, so it will be impossible to submit it with the cost report.

Department response: When a financial statement is still being prepared at the time a cost report is required to be submitted, there would be an expectation that the facility disclose the type of financial statement being prepared and an expected date it would be available. The Iowa Medicaid Enterprise provider cost audit and rate setting contractor will take that information into consideration during the review process. The expectation is that, once completed, the financial statement would be submitted.

There are entities that have an exception to policy to be able to file one report for all individual homes. While the Department understands that the financial reports do combine operations for several entities, there is information within a financial statement that will help the Iowa Medicaid Enterprise provider cost audit and rate setting contractor understand transactions.

Comment four: The proposed amendments would deny a provider the right to even request a review of a financial and statistical report after the facility is notified of its per diem rate. This unfairly denies the provider all rights to remedy an error no matter what the source of the problem.

Department response: A facility can notify the Department if a significant financial change related to a cost report has been submitted by the facility certifying that the information is correct; a review has been completed, including correspondence between the Department and the provider; a payment rate has been calculated; and the appeal time frame has elapsed. The Department will consider factors including, but not limited to, the nature of the changes and the circumstances that led to the discovery of the issue to determine if a new review is warranted. Also, a provider will still have the ability to file an appeal of any final rate determinations made by the Department.

As a result of the comments received and internal review of the Notice, two changes were made to the amendments published under Notice.

The first change to the proposed amendments has been made in the first sentence of subrule 82.5(3) in Item 1. The sentence now reads as follows: "The facility's cost report shall be received by the Iowa Medicaid enterprise provider cost audit and rate setting unit no later than September 30 each year except as described in subrule 82.5(14)." This change is necessary to add clarity to the rule.

The second change is to add the word "directly" to the first sentence of new paragraph 82.5(11)"m" in Item 4. This change is necessary to add clarity to the amendment. The word "directly" was included in the rescinded paragraph that new 82.5(11)"m" replaces.

The Council on Human Services adopted these amendments on August 14, 2013.

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

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

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

These amendments will become effective November 1, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 82.5(3) as follows:

82.5(3) *Submission of reports.* The facility's cost report shall be ~~submitted to~~ received by the department Iowa Medicaid enterprise provider cost audit and rate setting unit no later than September 30 each year except as described in subrule 82.5(14).

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid enterprise provider cost audit and rate setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 82.5(3) "c."

b. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report.

c. Failure to timely submit the complete report within this time shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective October 1 and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate setting unit.

d. Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem payment rate following a review of a financial and statistical report.

e. When an intermediate care facility for persons with an intellectual disability continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid enterprise provider cost audit and rate setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

f. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 2. Amend subparagraph **82.5(11) "e" (1)** as follows:

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation. Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum

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allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and rate setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 82.5(3) "c."

ITEM 3. Adopt the following **new** subparagraph **82.5(11)"e"(7)**:

(7) The maximum allowed compensation for employees as set forth in subparagraphs 82.5(11)"e"(4) to 82.5(11)"e"(6) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the intermediate care facility for persons with an intellectual disability for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. If an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the facility. In no case shall the amount of salary for one employee allocated to multiple facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

ITEM 4. Rescind paragraph **82.5(11)"m"** and adopt the following **new** paragraph in lieu thereof:

m. Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are directly related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are not allowable expenses:

- (1) Any fees or portion of fees used or designated for lobbying.
- (2) Nonrefundable and unused retainers.
- (3) Fees paid by the facility for the benefit of employees.

(4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the following conditions are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.

1. The costs have actually been incurred and paid,
2. The costs are reasonable expenditures for the services obtained,
3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and
4. The facility prevails on the disputed issue.

ITEM 5. Adopt the following **new** paragraphs **82.5(11)"n"** and **"o"**:

n. Penalties or fines imposed by federal or state agencies are not allowable expenses.
o. Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

[Filed 8/14/13, effective 11/1/13]

[Published 9/4/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 0996C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 237A.5, the Department of Human Services amends Chapter 109, "Child Care Centers," and Chapter 110, "Child Development Homes," Iowa Administrative Code.

These amendments update provider immunization requirements for both child care centers and child development homes. The amendments require all child care providers to have a signed statement, new Form 470-5152, from a licensed physician, stating they are free from communicable disease, are in good health, and should not be prevented from providing child care services. Form 470-5152 will serve as documentation of a conversation between a physician and child care provider in which current Advisory Committee on Immunization Practices (ACIP) immunization guidelines are reviewed and the risks and benefits associated with the provider's receiving such immunizations are discussed.

These amendments also change the Department's form required for authorizing mandated state record checks for child development home providers. There are currently two forms listed in the rules; however, due to previous changes in the rules and in the Iowa Code, both of these forms are no longer necessary and are causing confusion for Department staff and child care providers. A new form has been developed that replaces both of the old forms. As a result of the change, the requirements for provider file documentation for child development home providers have been updated.

These amendments also correct an erroneous reference in subparagraph 110.5(2)"d"(5).

Finally, these amendments add a new form addressing the currently mandated documentation of the health of pets in registered child development homes.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0787C** on June 12, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on August 14, 2013.

These amendments do not provide for waivers in specified situations because Iowa Code section 237A.5 dictates all providers must have good health as evidenced by a report following a preemployment physical examination taken within six months prior to beginning employment. The examination shall include communicable disease tests by a licensed physician as defined in Iowa Code section 135C.1 and shall be repeated every three years. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 237A.5.

These amendments will become effective November 1, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **109.9(1)"d"** as follows:

d. A physical examination report. Personnel shall have good health as evidenced by a preemployment physical examination, including. Acceptable physical examinations shall be documented on Form 470-5152, Child Care Provider Physical Examination Report. The examination shall include any necessary testing for communicable diseases which shall include testing for tuberculosis; shall include a discussion regarding current Advisory Committee on Immunization Practices (ACIP)-recommended vaccinations; shall be performed within six months prior to beginning employment by a licensed medical doctor, doctor of osteopathy, ~~physician's~~ physician assistant or advanced registered nurse practitioner; and shall be repeated at least every three years after initial employment.

ITEM 2. Amend paragraph **110.5(1)"q"** as follows:

q. Providers shall inform parents of the presence of any pet in the home.

(1) Each dog or cat in the household shall undergo an annual health examination by a licensed veterinarian ~~and be issued a veterinary health certificate.~~ Acceptable veterinary examinations shall be

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documented on Form 470-5153, Veterinary Health Certificate. This ~~certificate~~ examination shall verify that the animal's routine immunizations, particularly rabies, are current and that the animal ~~is free~~ shows no evidence of endoparasites (e.g., roundworms, hookworms, whipworms) and ectoparasites (e.g., fleas, mites, ticks, lice).

(2) Each pet bird in the household shall be purchased from a dealer licensed by the Iowa department of agriculture and land stewardship and shall be examined by a veterinarian to verify that it is free of infectious diseases. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. Children shall not handle pet birds.

(3) to (5) No change.

ITEM 3. Amend subrule 110.5(2) as follows:

110.5(2) Provider files. A provider file shall be maintained and shall contain the following:

~~a.~~ A physician's signed statement that the provider and members of the provider's household are free of diseases or disabilities that would prevent good child care. This statement shall:

~~(1) Be obtained at the time of the first registration and at least every two years thereafter on all members of the provider's household that may be present when children are in the home.~~

~~(2) Include immunization or immune status for measles, mumps, rubella, diphtheria, tetanus, and polio. Providers may consult with their physician regarding recommendations for varicella, influenza, pneumonia, hepatitis A, and hepatitis B immunizations.~~

a. A physical examination report. Providers and all members of a provider's household shall have good health as evidenced by a preregistration physical examination. Acceptable physical examinations shall be documented on Form 470-5152, Child Care Provider Physical Examination Report. The examination shall include any necessary testing for communicable diseases; shall include a discussion regarding current Advisory Committee on Immunization Practices (ACIP)-recommended vaccinations; shall be performed within six months prior to registration by a licensed medical doctor, doctor of osteopathy, physician assistant or advanced registered nurse practitioner; and shall be repeated at least every three years.

~~b. Certificates or other documentation from the department verifying required training as set forth in subrule 110.5(11): the following:~~

~~(1) Required training as set forth in subrule 110.5(11).~~

~~(2) Completion of all record checks as required in subrule 110.7(3), at initial application, at each application for change and at each application for renewal.~~

~~c. An individual file for each staff assistant that contains:~~

~~(1) A completed Form 595-1396, DHS Criminal History Record Check Documentation from the department confirming the record checks required under subrule 110.7(3) have been completed and authorizing or conditionally limiting the person's involvement with child care.~~

~~(2) A completed Form 470-0643, Request for Child Abuse Information.~~

~~(3) (2) A physician's signed statement completed Form 470-5152, Child Care Provider Physical Examination Report, that meets the requirements of paragraph 110.5(2) "a."~~

~~(4) (3) Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse, completed within six months of employment and every five years thereafter, as required by Iowa Code section 232.69.~~

~~d. An individual file for each substitute that contains:~~

~~(1) A completed Form 595-1396, DHS Criminal History Record Check Documentation from the department confirming the record checks required under subrule 110.7(3) have been completed and authorizing or conditionally limiting the person's involvement with child care.~~

~~(2) A completed Form 470-0643, Request for Child Abuse Information.~~

~~(3) (2) A physician's signed statement completed Form 470-5152, Child Care Provider Physical Examination Report, that meets the requirements of paragraph 110.5(2) "a."~~

~~(4) (3) Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse, completed within six months of employment and every five years thereafter, as required by Iowa Code section 232.69.~~

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~~(5)~~ (4) Certification in first aid that meets the requirements of ~~subparagraph 110.5(2)“b”(2).~~
paragraph 110.5(11)“b.”

[Filed 8/14/13, effective 11/1/13]

[Published 9/4/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 0989C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby rescinds Chapter 36, “Egg Handlers,” Iowa Administrative Code.

This rule making rescinds current Chapter 36 as the Department is no longer responsible for the inspection or licensing of egg handlers. 2011 Iowa Acts, chapter 16, transferred the responsibility for egg production from the Department of Inspections and Appeals to the Department of Agriculture and Land Stewardship.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 10, 2013, as **ARC 0832C**. No comments were received; no changes were made to the amendment published under Notice of Intended Action.

The Department of Inspections and Appeals does not believe that the amendment imposes any financial hardship on any regulated entity, body, or individual. Rather, the adopted amendment brings the Department’s administrative rules into compliance with Iowa law.

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

This amendment is intended to implement Iowa Code section 10A.104(5) and Iowa Code chapter 196 as amended by 2011 Iowa Acts, House File 453.

This amendment shall become effective October 9, 2013.

The following amendment is adopted.

Rescind and reserve **481—Chapter 36**.

[Filed 8/14/13, effective 10/9/13]

[Published 9/4/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

ARC 1005C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Hearing Aid Dispensers hereby amends Chapter 121, “Licensure of Hearing Aid Dispensers,” Chapter 122, “Continuing Education for Hearing Aid Dispensers,” Chapter 123, “Practice of Hearing Aid Dispensing,” and Chapter 124, “Discipline for Hearing Aid Dispensers,” Iowa Administrative Code.

These amendments revise the definition of the national examination and the examination requirements to be consistent with changes in the national examination; clarify the services required of a licensed hearing aid dispenser following a client medical examination and provide a technical correction in the definition of a sales receipt; remove online programs from the independent study requirements pertaining to continuing education; and modify the requirement for listing the business address in advertisements to be consistent with the requirement for the display of license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 12, 2013, as **ARC 0792C**. A public hearing was held on July 2, 2013, from 10 to 11 a.m. in the Fifth Floor Board

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

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

These amendments are intended to implement Iowa Code chapters 154A and 272C and Iowa Code sections 147.34 and 147.36.

These amendments will become effective October 9, 2013.

The following amendments are adopted.

ITEM 1. Amend rule **645—121.1(154A)**, definition of “National examination,” as follows:

“*National examination*” means the ~~written~~ standardized licensing examination of the International Hearing Society (IHS) or its successor organization.

ITEM 2. Amend subrule 121.4(3) as follows:

121.4(3) Each application shall be accompanied by the ~~appropriate fees, which include the following:~~ application fee payable to the Board of Hearing Aid Dispensers. The board shall also receive the examination fee payable to the International Hearing Society, for any examination held prior to the implementation of the on-line examination.

~~a. Application fee payable to the Board of Hearing Aid Dispensers; and~~

~~b. Examination fee payable to the International Hearing Society.~~

ITEM 3. Amend subrule 121.4(4) as follows:

121.4(4) Examination score results must be received from the ~~testing service~~ International Hearing Society.

ITEM 4. Rescind rule 645—121.5(154A) and adopt the following new rule in lieu thereof:

645—121.5(154A) Examination requirements. The following criteria shall apply to the national standardized licensing examination:

121.5(1) Applicants must pass the national standardized licensing examination. The passing score is the score established by the International Hearing Society.

121.5(2) The applicant shall not take the examination more than three times. If the applicant fails a third examination, the applicant is required to submit a request to the board with a proposed course of study. The board will determine whether the request will be granted.

ITEM 5. Amend subrule 121.6(5) as follows:

121.6(5) Provides official verification of one of the following:

~~a. A passing score on the national examination. For the written ten-part examination, the passing score is 70 percent on in each subject or 75 percent overall. The International Hearing Society sets establishes the passing score for the five-part competency examination national standardized licensing examination;~~

~~b. and c. No change.~~

ITEM 6. Amend paragraph **122.3(2)“b”** as follows:

~~b. A maximum of 8 hours of credit may be obtained by independent study, including on-line instruction. Independent study hours are subject to the requirements stated in the rules in this chapter and in 645—Chapter 4.~~

ITEM 7. Amend rule **645—123.1(154A)**, definition of “Sales receipt,” as follows:

“*Sales receipt*” means a written record that is provided to a person who purchases a hearing aid, ~~that complies~~ The sales receipt must be in compliance with these these rules; and ~~that is~~ signed by the purchaser and the licensed hearing aid dispenser. The requirements for the sales receipt may be found in rule 645—123.3(154A).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 8. Rescind rule 645—123.2(154A) and adopt the following new rule in lieu thereof:

645—123.2(154A) Requirements prior to sale of a hearing aid.

123.2(1) Except as otherwise stated in these rules, no hearing aid shall be sold to an individual 18 years of age or older unless the individual:

a. Provides a health history to a licensed hearing aid dispenser who is responsible for reducing the history to written form;

b. Presents a physician statement verifying that a medical evaluation, preferably by a physician specializing in diseases of the ear, has been done within the previous six months and stating the individual's hearing loss and that the individual may benefit from a hearing aid. In lieu of this requirement, the individual may verify in writing that the individual has been informed that it is in the individual's best health interests to obtain a medical evaluation by a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician, and that the individual chooses to waive said evaluation; and

c. Is given a hearing examination that utilizes appropriate established procedures and instrumentation for the measurement of hearing and the fitting of hearing aids and that includes, but is not limited to, an assessment of the following: air conduction; bone conduction; masking capability; speech reception thresholds; speech discrimination; uncomfortable loudness levels (UCL) and most comfortable levels (MCL).

123.2(2) Any medical evaluation completed by a licensed physician in accordance with these rules requires all of the following prior to the sale of a hearing aid to an individual: receipt of the physician statement and clearance for amplification; and completion by the licensed hearing aid dispenser of a current written health history and hearing examination that includes all of the procedures required in these rules, unless the physician order specifies otherwise. In the event an audiogram is provided by the physician, this testing requirement is waived. All records provided to the licensed hearing aid dispenser shall be maintained in the individual's records in accordance with the record-keeping requirements in these rules.

123.2(3) Whenever any of the following conditions are found to exist either from observations by the licensed hearing aid dispenser or person holding a temporary permit or on the basis of information furnished by a prospective hearing aid user, the hearing aid dispenser or person holding a temporary permit shall, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that the individual's best interests would be served if the individual would consult a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician:

- a.* Visible congenital or traumatic deformity of the ear.
- b.* History of, or active drainage from the ear within the previous 90 days.
- c.* History of sudden or rapidly progressive hearing loss within the previous 90 days.
- d.* Acute or chronic dizziness.
- e.* Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- f.* Significant air-bone gap (greater than or equal to 15dB ANSI 500, 1000 and 2000 Hz. average).
- g.* Obstruction of the ear canal, by structures of undetermined origin, such as foreign bodies, impacted cerumen, redness, swelling, or tenderness from localized infections of the otherwise normal ear canal.

123.2(4) Testing shall not be required in cases in which replacement hearing aids of the same make or model are sold within one year of the original sale, unless a medical evaluation occurs during this period, which requires compliance with the requirements stated in 123.2(2).

123.2(5) Except as otherwise provided in these rules, for individuals younger than 18 years of age, all of the requirements stated in these rules are applicable. In addition, the following are required:

a. Written authorization of a parent or legal guardian consenting to the services covered in these rules, and

b. An original signature on all documents required by law or these rules to be signed, including but not limited to all sales transactions and receipts, required notifications, and warranty agreements.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

123.2(6) For individuals 12 years of age or younger, all of the requirements stated in these rules are applicable. In addition, the parent or legal guardian must first present a written, signed recommendation for a hearing aid from a licensed physician specializing in otolaryngology. The recommendation must have been made within the preceding six months. In the event of a lost or damaged hearing aid, a replacement of an identical hearing aid may be provided within one year, unless a medical evaluation occurs during this period, which requires compliance with the requirements stated in 123.2(2).

ITEM 9. Amend subrule 124.2(6) as follows:

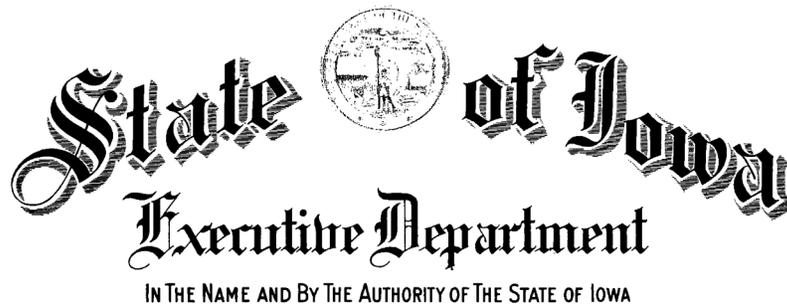
124.2(6) Failure to place all of the following in an advertisement relating to hearing aids:

- a. Hearing aid dispenser's name.
- b. Hearing aid dispenser's ~~office~~ address of primary site of practice.
- c. Hearing aid dispenser's telephone number.

[Filed 8/16/13, effective 10/9/13]

[Published 9/4/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/4/13.

**EXECUTIVE ORDER NUMBER 81**

- WHEREAS,** the Governor's Science, Technology, Engineering and Math (STEM) Advisory Council has made significant progress toward the ambitious goal of raising student interest and achievement in STEM; and
- WHEREAS,** from scale-up programs, to regional hubs, to community involvement, the STEM initiative has expanded to every county in every corner of the state; and
- WHEREAS,** Iowa has more than 900 educators, club and faith-based leaders, and others implementing STEM scale-up programs in the 2012-13 school year, which deliver first-rate STEM education to students all over the state; and
- WHEREAS,** STEM initiatives and programs existed in Iowa prior to formation of the Governor's STEM Advisory Council in July 2011, but access depended on where students lived and now the STEM scale-up programs have expanded access across Iowa; and
- WHEREAS,** the Lieutenant Governor and I are committed to restoring Iowa's education system to best in the nation and this goal cannot be achieved without stronger STEM education; and
- WHEREAS,** the Governor's STEM Advisory Council's priorities moving forward include establishing STEM-focused schools or classrooms to offer students more STEM opportunities, building an online best practices STEM clearinghouse, and increasing of the number of top STEM teachers; and
- WHEREAS,** STEM provides an important intersection among K-12 education, higher education, vocational training, job creators, job seekers and communities, and the initiative's growth will continue to foster these important relationships; and
- WHEREAS,** the STEM initiative is engaging business and community leaders, educators from early childhood through higher education, and parents as partners in this initiative to create new education and economic opportunities in Iowa; and
- WHEREAS,** the Iowa Constitution encourages a strong educational foundation by providing that "[t]he General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement" (Iowa Const. art. IX, 2d, § 3); and
- WHEREAS,** the rapid rise of awareness and activity of the STEM initiative demonstrates its popularity and the demand for further growth; and
- WHEREAS,** to that end, I am expanding the Governor's STEM Advisory Council in response to continued rapid growth.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare that science, technology, engineering and mathematics education should be strengthened as part of creating world-class schools, encouraging innovation and enhancing economic development. I hereby order the expansion of the Governor's Science Technology, Engineering and Mathematics ("STEM") Advisory Council.

1. **Purpose:** The Governor's STEM Advisory Council shall advise the Governor on ways to improve STEM education, STEM innovation and STEM careers in the public and private sectors.
2. **Organization:** The Council shall be composed of members appointed by the Governor. Each member will serve at the pleasure of the Governor without compensation and in an advisory capacity. The Council shall be led by an Executive Committee. In addition to the Executive Committee, the Governor may appoint to the Council:
 - a. representatives with STEM qualifications from the following sectors, including but not limited to: advanced manufacturing, agribusiness, biotechnology, clean energy, engineering, healthcare and information technology, higher education, post-secondary training institutions, early childhood, elementary and secondary education, and vocational-technical education.
 - b. additional qualifying members, including representatives of national STEM organizations as appropriate.
 - c. two members of the Iowa Senate to serve as non-voting, ex-officio members, one majority party member and one minority party member.
 - d. two members of the Iowa House of Representatives to serve as non-voting, ex-officio members, one majority party member and one minority party member.

The Governor's STEM Advisory Council shall be co-chaired by the Lieutenant Governor of Iowa. The other co-chair shall be selected by the Governor for a two-year term. After that, the Lieutenant Governor will continue as co-chair with the other co-chair position to be selected by the Governor and to rotate on a biennial basis.

The co-chairs, or the executive director with the approval of the co-chairs, may direct the Council to form subcommittees to address particular issues facing STEM education and other STEM matters in the State of Iowa. The makeup and nature of each committee shall be determined by the co-chairs.

Administrative operations of the Council shall vest with an Executive Director who will serve at the pleasure of the Council. The Executive Director and Staff shall be housed at the University of Northern Iowa, unless otherwise transferred to another location by the Governor. The Department of Education shall provide staff support to the Council, as needed, to enable the Council to fulfill its responsibilities.

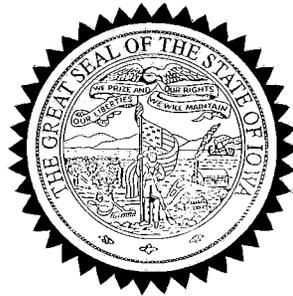
3. **Executive Committee:** Membership for the Governor's Science Technology, Engineering and Mathematics Advisory Council Executive Committee may include the following members appointed by the Governor, or their respective designees:
 - a. Lieutenant Governor of the State of Iowa
 - b. Director of the Iowa Department of Education
 - c. Director of the Iowa Partnership for Economic Progress (Iowa Economic Development Authority)
 - d. Director of the Iowa Department of Workforce Development
 - e. President of Iowa State University
 - f. President of the University of Iowa
 - g. President of the University of Northern Iowa
 - h. Community college president
 - i. Independent college president
 - j. Two representatives of preschool, elementary or secondary education
 - k. Two representatives of private employers who hire job candidates with STEM skills
 - l. Any other individuals that the Governor may appoint.

The Executive Committee shall conduct business on behalf of the full Advisory Council including, but not limited to, launching initiatives, making final recommendations and scheduling meetings.

- 4. **Goals:** The Council shall have the following objectives:
 - a. collaborate with participants and parties from the public and private sectors to promote STEM education, innovation and careers statewide; and
 - b. work to dramatically increase students' interest and achievement in STEM subjects so they will have a greater opportunity to pursue STEM careers; and
 - c. recommend how to better recruit and prepare teachers to teach STEM; and
 - d. map STEM education to economic development with an emphasis on fostering innovation in research and entrepreneurship; and
 - e. build on the outstanding work of the Iowa Mathematics and Science Education Partnership and the Iowa STEM Education Roadmap to advise on development and implementation of a statewide STEM plan with clear goals; and
 - f. reach other goals and objectives as requested by the office of the Governor.

- 5. **Activities:** The Council shall undertake the following actions:
 - a. Continue creating a campaign to generate public support for STEM subjects and careers by reaching out to parents, students and others; and
 - b. the Council shall report any findings or recommendations to the Governor, at the request of the Governor, and at such periods as determined by the Co-Chairs; and
 - c. commission reports on issues related to STEM education, innovation and careers to promote an important public conversation about STEM issues; and
 - d. recommend policy changes that will better position Iowa's young people, educational institutions and business and industry to compete in STEM areas; and
 - e. undertake other activities as requested by the office of the Governor.

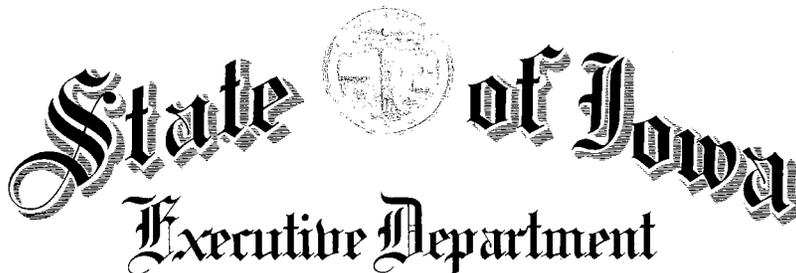
All agencies, departments and boards of the State of Iowa shall cooperate fully with the Council. The Council may seek the expertise and services of individuals and entities outside its membership for research, advice and other needs, as required to accomplish its mission. Executive Order Number 74, dated July 26, 2011, issued by Governor Terry E. Branstad, shall be rescinded because this order expands and replaces Executive Order Number 74.



IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SUBSCRIBED MY NAME
AND CAUSED THE GREAT SEAL OF
THE STATE OF IOWA TO BE AFFIXED.
DONE AT DES MOINES THIS 15th DAY
OF MAY IN THE YEAR OF OUR LORD
TWO THOUSAND THIRTEEN.


TERRY E. BRANSTAD
GOVERNOR OF IOWA

ATTEST: 
MATT SCHULTZ
SECRETARY OF STATE



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER EIGHTY-TWO

WHEREAS, protecting the health, safety and welfare of Iowa's children is of the utmost importance; and

WHEREAS, all Iowa children deserve the best care and education we can provide; and

WHEREAS, the Iowa Juvenile Home is a comprehensive residential facility for children and is entrusted to provide effective interventions for the most troubled youth in the State; and

WHEREAS, the culture at the Iowa Juvenile Home must focus on high quality care and education; and

WHEREAS, treatment for children, including the use of seclusion or restraint, should only be employed in a safe and transparent manner consistent with the highest standards and practices set for similar private sector facilities.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare that the interests of Iowa's youth are best served by holding the Iowa Juvenile Home to the same standards for restraints and use of control rooms as private comprehensive residential facilities for children and outlined in 441-Iowa Administrative Code chapter 115.6-115.7. I hereby order the Department of Human Services to schedule trauma-informed care training for staff at the Iowa Juvenile Home within thirty (30) days and I hereby order the creation of the Iowa Juvenile Home Protection Task Force ("Task Force").

The Task Force shall be composed of no more than five members appointed by the Governor. Each member will serve at the pleasure of the Governor without compensation and in an advisory capacity. The Task Force shall include the Director of the Iowa Department of Human Services and four individuals with expertise in child advocacy, special education, behavioral issues and other relevant experience. The Task Force's meetings shall be open pursuant to Iowa Code chapter 21. The Department of Human services shall provide staff support to the Task Force, as needed, to enable the Task Force to fulfill its responsibilities. The Task Force shall:

- a. Make recommendations about how to improve services for residents;
- b. Review incident data to ensure a high-level of care is delivered at the Iowa Juvenile Home;
- c. Recommend a strategy for the permanent elimination of seclusion rooms outside the cottage setting;
- d. Recommend a strategy outlining the transition of the Iowa Juvenile Home's education plan from being managed from the Department of Human Services to Area Education Agency 267; and
- e. Reach other goals and objectives as requested by the Office of the Governor.

All agencies, departments and boards of the State of Iowa shall cooperate fully with the Task Force. The Task Force may seek the expertise and services of individuals and entities outside its membership for research, advice and other needs as required, and shall collect input and feedback from members of the public to accomplish its mission. The Task Force shall report its findings and make them available to the public no later than October 15, 2013.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 20th day of August, in the year of our Lord two thousand thirteen.

A handwritten signature in black ink, appearing to read "Terry E. Branstad", written over a horizontal line.

TERRY E. BRANSTAD
GOVERNOR

ATTEST:

MATT SCHULTZ
SECRETARY OF STATE