



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

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### CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2009

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
8	Friday, September 18, 2009	October 7, 2009
9	Friday, October 2, 2009	October 21, 2009
10	Friday, October 16, 2009	November 4, 2009

**PLEASE NOTE:**

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

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

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

AGENCY	HEARING LOCATION	DATE AND TIME
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
Lean manufacturing institute; supply chain development program, rescind ch 110; amend ch 111 IAB 8/12/09 <b>ARC 8031B</b>	Second Floor Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	September 11, 2009 10 a.m.
Management talent recruitment program, amendments to ch 112 IAB 8/12/09 <b>ARC 8030B</b>	Second Floor Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	September 11, 2009 10 a.m.
<b>EDUCATIONAL EXAMINERS BOARD[282]</b>		
Filing complaints; service of complaint notices to respondents, 11.4 IAB 9/9/09 <b>ARC 8143B</b> <b>(ICN Network)</b>	ICN Room, Second Floor Grimes State Office Bldg. East 14th & Grand Ave. Des Moines, Iowa	September 29, 2009 1 to 2 p.m.
	Room 818, Smith Wellness Center Iowa Lakes Community College 3200 College Dr. Emmetsburg, Iowa	September 29, 2009 1 to 2 p.m.
	Room 101, Guthrie Center High School 906 School St. Guthrie Center, Iowa	September 29, 2009 1 to 2 p.m.
	Turner Room, Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	September 29, 2009 1 to 2 p.m.
	Room 206, Northwest AEA 1520 Morningside Ave. Sioux City, Iowa	September 29, 2009 1 to 2 p.m.
	Room 402, Building D Northwest Iowa Community College - 1 603 W. Park St. Sheldon, Iowa	September 29, 2009 1 to 2 p.m.
	Room 204, Library Building Prairie Lakes AEA 8 - Fort Dodge Iowa Central Comm. College Campus 1 Triton Circle Fort Dodge, Iowa	September 29, 2009 1 to 2 p.m.
	State Room, AEA 267 Regional Office - Clear Lake 9184B 265th St. Clear Lake, Iowa	September 29, 2009 1 to 2 p.m.
	Nishna Valley Jr-Sr High School 58962 380th St. Hastings, Iowa	September 29, 2009 1 to 2 p.m.
	State Board Room, Second Floor Grimes State Office Bldg. East 14th & Grand Ave. Des Moines, Iowa	September 30, 2009 1 to 2 p.m.
	ICN Room, Second Floor Grimes State Office Bldg. East 14th & Grand Ave. Des Moines, Iowa	October 1, 2009 1 to 2 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>EDUCATIONAL EXAMINERS BOARD[282] (Cont'd)</b>		
<b>(ICN Network)</b>	Room 528, North Campus/Trustee Hall Southeastern Community College - 1 1500 West Agency West Burlington, Iowa	October 1, 2009 1 to 2 p.m.
	Great Prairie AEA - 1 2814 N. Court St. Ottumwa, Iowa	October 1, 2009 1 to 2 p.m.
	Central High School 425 E. 11th St. DeWitt, Iowa	October 1, 2009 1 to 2 p.m.
	Solon Public Library 320 West Main St. Solon, Iowa	October 1, 2009 1 to 2 p.m.
	Area Education Agency 267 Regional Office - Marshalltown 909 S. 12th St. Marshalltown, Iowa	October 1, 2009 1 to 2 p.m.
	West High School Baltimore & Ridgeway Waterloo, Iowa	October 1, 2009 1 to 2 p.m.
	Community Library 104 W. State St. Fayette, Iowa	October 1, 2009 1 to 2 p.m.
Highly qualified teacher (HQT) status, 13.26(2)"b"(4) IAB 9/9/09 <b>ARC 8125B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Highly qualified teacher (HQT) status, 13.26(3)"b"(4) IAB 9/9/09 <b>ARC 8121B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Highly qualified teacher (HQT) status, 13.26(4)"b"(4) IAB 9/9/09 <b>ARC 8126B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Agriculture endorsement, 13.28(1) IAB 9/9/09 <b>ARC 8129B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Agricultural sciences and agribusiness endorsement, 17.1(1)"a" IAB 9/9/09 <b>ARC 8130B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Speech-language pathology (SLP) assistant, 24.4(6) IAB 9/9/09 <b>ARC 8117B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
<b>EDUCATION DEPARTMENT[281]</b>		
Special education, amendments to ch 41 IAB 8/26/09 <b>ARC 8050B</b> <b>(ICN Network)</b>	ICN Room, Second Floor Grimes State Office Bldg. 400 E. 14th St. Des Moines, Iowa	October 13, 2009 2 to 4 p.m.
	Mississippi Bend Area Education Agency Louisa Room 729 21st St. Bettendorf, Iowa	October 13, 2009 2 to 4 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>EDUCATION DEPARTMENT[281]</b> (Cont'd)		
<b>(ICN Network)</b>		
	Great Prairie Area Education Agency 3601 West Ave. Burlington, Iowa	October 13, 2009 2 to 4 p.m.
	Area Education Agency 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	October 13, 2009 2 to 4 p.m.
	Kirkwood Community College Room 202, Linn Hall 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	October 13, 2009 2 to 4 p.m.
	Loess Hills Area Education Agency 24997 Hwy. 92 Council Bluffs, Iowa	October 13, 2009 2 to 4 p.m.
	Keystone Area Education Agency Room 2 2310 Chaney Rd. Dubuque, Iowa	October 13, 2009 2 to 4 p.m.
	Keystone Area Education Agency 1400 2nd Street NW Elkader, Iowa	October 13, 2009 2 to 4 p.m.
	Great Prairie Area Education Agency 2814 N. Court St. Ottumwa, Iowa	October 13, 2009 2 to 4 p.m.
	Area Education Agency 267 State Room 9184B 265th St. Clear Lake, Iowa	October 13, 2009 2 to 4 p.m.
	Graphic Arts Technology Ctr. of Iowa Room 16 1951 Manufacturing Dr. Clinton, Iowa	October 13, 2009 2 to 4 p.m.
	Green Valley Area Education Agency Turner Room 1405 N. Lincoln Creston, Iowa	October 13, 2009 2 to 4 p.m.
	Prairie Lakes Area Education Agency 500 NE 6th St. Pocahontas, Iowa	October 13, 2009 2 to 4 p.m.
	Northwest Area Education Agency Room 103 1382 4th Ave. NE Sioux Center, Iowa	October 13, 2009 2 to 4 p.m.
	Department of Human Services Fourth Floor, Trospar-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	October 13, 2009 2 to 4 p.m.
	Iowa Lakes Community College Room 118 1900 N. Grand Ave. Spencer, Iowa	October 13, 2009 2 to 4 p.m.
Gifted and talented programs, 59.1 to 59.8 IAB 8/26/09 <b>ARC 8052B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 15, 2009 1 to 2 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>EDUCATION DEPARTMENT[281] (Cont'd)</b>		
Programs and funding for students with limited English proficiency, 60.2, 60.3, 60.5, 60.6 IAB 8/26/09 <b>ARC 8051B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 15, 2009 2 to 3 p.m.
Statewide local option sales and services tax for school infrastructure, 96.1 to 96.8 IAB 8/26/09 <b>ARC 8048B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 15, 2009 11 a.m. to 12 noon
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Compensation for damages to natural resources—fish loss, 133.2, 133.6(3)“b”(3) IAB 9/9/09 <b>ARC 8122B</b>	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 6, 2009 2 p.m.
<b>HUMAN SERVICES DEPARTMENT[441]</b>		
Nursing facility quality assurance assessment and payments, ch 36 div II, 81.6 IAB 8/26/09 <b>ARC 8086B</b>	Room 129, Medicaid Enterprise Bldg. 100 Army Post Rd. Des Moines, Iowa	September 15, 2009 2 to 4 p.m.
Child care centers—record checks, licensing fees, 109.1, 109.2, 109.4, 109.6, 109.7(2), 109.9(1) IAB 9/9/09 <b>ARC 8118B</b>	Assembly Room, Dept. for the Blind 524 4th St. Des Moines, Iowa	September 29, 2009 1 to 3 p.m.
<b>INSPECTIONS AND APPEALS DEPARTMENT[481]</b>		
Boarding homes, ch 66 IAB 8/26/09 <b>ARC 8047B</b> <b>(ICN Network)</b>	ICN Room, Sixth Floor Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa	September 18, 2009 3 p.m.
	Room 106, Activity Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	September 18, 2009 3 p.m.
	Room 118 Iowa Lakes Community College 1900 N. Grand Ave. Spencer, Iowa	September 18, 2009 3 p.m.
	Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	September 18, 2009 3 p.m.
	Room 024, Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	September 18, 2009 3 p.m.
	Room 528, Trustee Hall Southeastern Community College 1500 West Agency West Burlington, Iowa	September 18, 2009 3 p.m.
	Room 2, Keystone Area Education Agency 2310 Chaney Rd. Dubuque, Iowa	September 18, 2009 3 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>INSPECTIONS AND APPEALS DEPARTMENT[481] (Cont'd)</b>		
<b>(ICN Network)</b>	Meeting Room D, Public Library 123 South Linn St. Iowa City, Iowa	September 18, 2009 3 p.m.
	Public Library 529 Pierce St. Sioux City, Iowa	September 18, 2009 3 p.m.
<b>INSURANCE DIVISION[191]</b>		
Consent for prohibited persons to engage in the business of insurance, ch 13 IAB 9/9/09 <b>ARC 8144B</b>	Insurance Division Offices 330 Maple St. Des Moines, Iowa	October 1, 2009 2 p.m.
Long-term care partnership program, amendments to chs 39, 72 IAB 9/9/09 <b>ARC 8132B</b>	Insurance Division Offices 330 Maple St. Des Moines, Iowa	October 1, 2009 10 a.m.
Third-party administrators, ch 58 IAB 9/9/09 <b>ARC 8140B</b>	Insurance Division Offices 330 Maple St. Des Moines, Iowa	October 1, 2009 1 p.m.
<b>IOWA FINANCE AUTHORITY[265]</b>		
Qualified allocation plan, 12.1, 12.2 IAB 8/26/09 <b>ARC 8071B</b>	Iowa Finance Authority Offices 2015 Grand Ave. Des Moines, Iowa	September 15, 2009 9 to 11 a.m.
<b>LABOR SERVICES DIVISION[875]</b>		
Boilers and pressure vessels, amendments to chs 80, 90 to 94, 96 IAB 8/26/09 <b>ARC 8082B</b>	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	September 16, 2009 1:30 p.m. (If requested)
<b>NATURAL RESOURCE COMMISSION[571]</b>		
Restitution for pollution causing injury to wild animals—valuation of fish, 113.2, 113.3, 113.4(2)“c” IAB 9/9/09 <b>ARC 8107B</b>	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 6, 2009 2 p.m.
<b>PROFESSIONAL LICENSURE DIVISION[645]</b>		
Board of barbering—national examinations, continuing education, fees, 5.2, 21.1 to 21.3, 21.5, 21.7, 21.8, 24.2(1), 24.3(2) IAB 8/26/09 <b>ARC 8085B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 15, 2009 9 to 9:30 a.m.
Respiratory care—accrediting organization, 261.1, 261.3(1), 263.2(11) IAB 9/9/09 <b>ARC 8100B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 29, 2009 9 to 9:30 a.m.
Social work, amendments to chs 279 to 284 IAB 9/9/09 <b>ARC 8101B</b>	Fifth Floor Board Room 526 Lucas State Office Bldg. Des Moines, Iowa	September 29, 2009 9 to 9:30 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)</b>		
Discipline for sign language interpreters and transliterators, 363.2(11) IAB 9/9/09 <b>ARC 8111B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 20, 2009 9 to 9:30 a.m.
<b>REAL ESTATE COMMISSION[193E]</b>		
Transfer of license and required transfer form, 6.2(1) IAB 8/26/09 <b>ARC 8058B</b>	Second Floor Professional Licensing Conference Room 1920 SE Hulsizer Rd. Ankeny, Iowa	September 15, 2009 1 p.m.
Delivery and receipt of radon information, 14.1(6) IAB 8/26/09 <b>ARC 8057B</b>	Second Floor Professional Licensing Conference Room 1920 SE Hulsizer Rd. Ankeny, Iowa	September 15, 2009 9 a.m.
<b>STATE PUBLIC DEFENDER[493]</b>		
Court-appointed attorneys—appointment and fee claims, 11.5(4), 12.2 IAB 9/9/09 <b>ARC 8091B</b> (See also <b>ARC 8090B</b> herein)	Conference Room 424 Lucas State Office Bldg. Des Moines, Iowa	September 29, 2009 9 a.m.

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
   Agricultural Development Authority[25]  
   Soil Conservation Division[27]  
 ATTORNEY GENERAL[61]  
 AUDITOR OF STATE[81]  
 BEEF INDUSTRY COUNCIL, IOWA[101]  
 BLIND, DEPARTMENT FOR THE[111]  
 CAPITAL INVESTMENT BOARD, IOWA[123]  
 CITIZENS’ AIDE[141]  
 CIVIL RIGHTS COMMISSION[161]  
 COMMERCE DEPARTMENT[181]  
   Alcoholic Beverages Division[185]  
   Banking Division[187]  
   Credit Union Division[189]  
   Insurance Division[191]  
   Professional Licensing and Regulation Bureau[193]  
     Accountancy Examining Board[193A]  
     Architectural Examining Board[193B]  
     Engineering and Land Surveying Examining Board[193C]  
     Landscape Architectural Examining Board[193D]  
     Real Estate Commission[193E]  
     Real Estate Appraiser Examining Board[193F]  
     Interior Design Examining Board[193G]  
   Savings and Loan Division[197]  
   Utilities Division[199]  
 CORRECTIONS DEPARTMENT[201]  
   Parole Board[205]  
 CULTURAL AFFAIRS DEPARTMENT[221]  
   Arts Division[222]  
   Historical Division[223]  
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
   City Development Board[263]  
 IOWA FINANCE AUTHORITY[265]  
 EDUCATION DEPARTMENT[281]  
   Educational Examiners Board[282]  
   College Student Aid Commission[283]  
   Higher Education Loan Authority[284]  
   Iowa Advance Funding Authority[285]  
   Libraries and Information Services Division[286]  
   Public Broadcasting Division[288]  
   School Budget Review Committee[289]  
 EGG COUNCIL, IOWA[301]  
 ELDER AFFAIRS DEPARTMENT[321]  
 EMPOWERMENT BOARD, IOWA[349]  
 ENERGY INDEPENDENCE, OFFICE OF[350]  
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
 EXECUTIVE COUNCIL[361]  
 FAIR BOARD[371]  
 HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]  
Criminal and Juvenile Justice Planning Division[428]  
Deaf Services Division[429]  
Persons With Disabilities Division[431]  
Latino Affairs Division[433]  
Status of African-Americans, Division on the[434]  
Status of Women Division[435]  
Status of Iowans of Asian and Pacific Islander Heritage[436]  
HUMAN SERVICES DEPARTMENT[441]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
Employment Appeal Board[486]  
Foster Care Review Board[489]  
Racing and Gaming Commission[491]  
State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
Appeal Board, State[543]  
City Finance Committee[545]  
County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
Energy and Geological Resources Division[565]  
Environmental Protection Commission[567]  
Natural Resource Commission[571]  
Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]  
PUBLIC DEFENSE DEPARTMENT[601]  
Homeland Security and Emergency Management Division[605]  
Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
Professional Licensure Division[645]  
Dental Board[650]  
Medicine Board[653]  
Nursing Board[655]  
Pharmacy Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
Labor Services Division[875]  
Workers' Compensation Division[876]  
Workforce Development Board and Workforce Development Center Administration Division[877]

**ARC 8089B****ACCOUNTANCY EXAMINING BOARD[193A]****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 542.4, the Accountancy Examining Board hereby proposes to amend Chapter 12, "Fees," Iowa Administrative Code.

The amendments to Chapter 12 implement an increase in the firm initial and renewal fee from \$50 to \$100 annually. The fee increase will bring the firm permit fees in line with the costs of regulating the accounting profession.

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

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before September 30, 2009. Comments should be addressed to Jodi Adams, CPA MBA, Accountancy Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to [jodi.adams@iowa.gov](mailto:jodi.adams@iowa.gov).

This amendment is intended to implement Iowa Code chapters 17A, 272C, 542, and 546.

The following amendment is proposed.

Amend rule 193A—12.1(542) as follows:

**193A—12.1(542) Required fees.** The following is a schedule of the fees for examinations, certificates, licenses, permits and renewals adopted by the board:

Initial CPA examination application:	
Paid directly to CPA examination services	not to exceed \$1500
Reexamination:	
Paid directly to CPA examination services	not to exceed \$1500
Original issuance of CPA certificate or LPA license by examination (fee includes wall certificate)	\$100
Original issuance of CPA certificate by reciprocity or substantial equivalency	\$100
CPA wall certificate or LPA license issued by reciprocity or substantial equivalency	\$50
Replacement of lost or destroyed wall CPA certificate or LPA license	\$50
Original issuance of attest qualification	\$100
Biennial renewal of CPA certificate or LPA license—active status	\$100
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—active status	\$25
Biennial renewal of CPA certificate or LPA license—inactive status	\$50
Late renewal of CPA certificate or LPA license within 30-day grace period (July 1 to July 30)—inactive status	\$10
Penalty for failure to comply with continuing education requirements	\$50 to \$250
Original issuance of firm permit to practice	<del>\$50</del> <u>100</u>
Annual renewal of firm permit to practice	<del>\$50</del> <u>100</u>

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

The board has not yet established a fee schedule for annual renewals commencing with certificates and licenses that expire on and after June 30, 2010, and will amend the rules when the revised fee schedule is available.

**ARC 8115B****ADMINISTRATIVE SERVICES DEPARTMENT[11]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services proposes to amend Chapter 50, "Definitions," Chapter 63, "Leave," and Chapter 64, "Benefits," Iowa Administrative Code.

These amendments reflect the removal of definitions no longer needed in the rules, conformity of the rules to the Family and Medical Leave Act, the addition of new family leave provisions for family members of certain military personnel as required by the National Defense Authorization Act for FY 2008, deletion of outdated information regarding employee benefits, and clarification of reimbursement for educational expenses.

Any interested person may make written comments on the proposed amendments on or before September 29, 2009. Comments should be directed to Jennifer Sandusky, Human Resources Enterprise, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-5102 or by E-mail to [jennifer.sandusky@iowa.gov](mailto:jennifer.sandusky@iowa.gov).

These amendments are intended to implement the Family and Medical Leave Act, the National Defense Authorization Act for FY 2008, and Iowa Code chapters 70A and 509A.

The following amendments are proposed.

ITEM 1. Rescind the definitions of "Double spouse," "Health care provider" and "Serious health condition" in rule **11—50.1(8A)**.

ITEM 2. Amend rule **11—50.1(8A)**, definitions of "In loco parentis" and "Uniformed services," as follows:

"*In loco parentis*" means in the place of a ~~son, daughter or~~ parent and charged with the same rights, duties, and responsibilities as a ~~son, daughter or~~ parent.

"*Uniformed services*" means ~~the United States armed forces and organized reserves (army, navy, air force or marines), the army national guard and the air national guard when engaged in active duty for training, inactive duty training, or full time national guard duty, organized reserve duty, the commissioned corps of the public health service, coast guard, and any other category of persons designated by the President in time of war or emergency~~ service as defined in 29 CFR Part 1002.

ITEM 3. Amend **11—Chapter 50**, implementation sentence, as follows:

This rule is intended to implement ~~2003~~ Iowa Code ~~Supplement~~ sections 8A.401 to 8A.439.

ITEM 4. Amend subrule 63.3(10) as follows:

**63.3(10)** All accrued sick leave shall be canceled on the date of separation, and no employee shall be reimbursed for accrued sick leave unused at the time of separation except as provided for in Iowa Code section 70A.23 ~~as amended by 2006 Iowa Acts, Senate File 2231,~~ or the applicable collective bargaining agreement. However, if an employee is laid off and is reemployed by any state agency within two years following the date of layoff, or an employee ~~who was~~ is separated due to ~~qualification for long term disability benefits or an on-the-job injury or illness~~ and is reemployed by any state agency

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

within two years following the date of medical release, the employee's unused accrued sick leave shall be restored, except to the extent that the sick leave hours have been credited to a sick leave bank pursuant to Iowa Code section 70A.23 ~~as amended by 2006 Iowa Acts, Senate File 2231~~, and the provisions of 11 IAC 64.16(8A). Employees participating in the sick leave insurance program who return to permanent employment will not have prior sick leave amounts restored.

ITEM 5. Amend rule 11—63.4(8A) as follows:

**11—63.4(8A) Family and Medical Leave Act leave.** An employee who has been employed for ~~at least a cumulative total of 12 months or more in the most recent seven-year period~~ and who has worked at least 1,250 hours during the ~~previous 12-month period~~ immediately preceding the date leave is to begin shall be eligible for ~~12 weeks of family and medical leave per fiscal year~~ in accordance with the federal Family and Medical Leave Act (FMLA) and 29 CFR Part 825, these rules, and the policies of the department. Eligibility determinations shall be made as of the date that the FMLA leave is to begin. The FMLA leave year begins on the first day of each fiscal year. Eligible employees are entitled to FMLA leave subject to the following conditions:

**63.4(1)** It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. ~~No more than 12 weeks (480 hours) of family and medical leave shall be granted to an employee in any fiscal year.~~ When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph "a" or "c" below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous six months. Leave may be for one or more of the following reasons:

a. ~~The birth, adoption or foster or placement with the employee~~ of a son or daughter (biological child, adopted child, foster child, stepchild, legal ward or a child to whom the employee stands in loco parentis) for adoption or foster care provided the leave is taken within 12 months following any such birth, adoption or foster placement;

b. The care of a son or daughter under 18 years of age, or older if incapable of self-care because of a mental or physical disability, or spouse with a serious health condition;

c. The care of a parent or person who stood in loco parentis to the employee, with a serious health condition;

d. A serious health condition that makes an employee ~~incapable of performing~~ unable to work at all or perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12101 et seq., and the regulations at 29 CFR Section 1630.2(n).

e. A qualifying exigency, as defined in the National Defense Authorization Act for FY 2008 (NDAA), arising out of the fact that the employee's spouse, son, daughter or parent is a covered military member on active duty, or has been notified of an impending call or order to active duty in support of a contingency operation.

f. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember, pursuant to the NDAA.

**63.4(2)** Leave may be taken on an intermittent ~~leave~~ basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraph "a" of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for circumstances described in paragraph "b," ~~"e" or "d"~~ "c," "d," "e," or "f" of subrule 63.4(1) is mandatory if certified by a health care provider or proper military authority.

**63.4(3)** Use of sick leave shall be in accordance with rule 11—63.3(8A). When FMLA leave is taken pursuant to paragraph "a," ~~"b" or "e"~~ "b," "c," "e," or "f" of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

sick leave and vacation before unpaid leave is granted. When the employee's medical provider releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

~~An employee who requests FMLA leave after the birth, adoption or foster placement of a son or daughter must take the leave within 12 months after the event.~~

When family FMLA leave is taken pursuant to paragraph "d" of subrule 63.4(1), an employee must exhaust all paid sick leave, compensatory leave, and vacation before unpaid leave is granted. ~~An employee may, but is not required to, use accrued compensatory leave for FMLA leave if the employee follows standard request procedures for the leave. Compensatory leave used in this fashion will not reduce the employee's FMLA leave entitlement.~~

**63.4(4)** An employee shall submit a written request ~~of using~~ forms developed prescribed by the department, to the appointing authority within 30 calendar days prior to the need for FMLA leave when the need for the leave is foreseeable. In situations involving unforeseeable need for leave and leave involving a birth, adoption, foster placement, or planned medical treatment for an illness, the employee must provide notice ~~within two workdays, or~~ as soon as practicable, after the employee learns of the need for the leave. Notice may be made orally or in writing. Untimely requests or failure to provide notice or mandatory information to the appointing authority may result in delay or denial of the FMLA leave. The failure to follow mandatory leave policies may result in discipline ~~to~~ of the employee.

The appointing authority shall ~~grant, tentatively grant, delay, or deny leave as FMLA leave within two workdays following notice of the leave or when the appointing authority has a reasonable basis to conclude an absence qualifies as FMLA leave~~ provide the employee with all notices required by the federal Family and Medical Leave Act and the policies of the department. Notices shall be provided to employees within the time frames prescribed by the federal regulations and the policies of the department. The appointing authority shall notify the employee using forms ~~developed prescribed~~ by the department, or verbally when circumstances prevent delivery of the forms. If verbal notification is made, the appointing authority shall take reasonable steps to deliver written notification to the employee within ~~two~~ five workdays.

**63.4(5)** ~~When the leave involves the employee's serious health condition, the~~ The appointing authority may, at the agency's expense, require a second opinion. ~~However, the health care provider chosen by the appointing authority for the second opinion cannot be~~ The appointing authority will designate the health care provider to furnish the second opinion. In making the designation, the appointing authority shall select a provider that is not employed on a regular basis by the appointing authority. If the second opinion differs from the first, the appointing authority may, at the agency's expense, require a third opinion from a health care provider agreeable to both the employee and the appointing authority. The third opinion shall be final and binding on both parties.

**63.4(6)** During the period of leave, the appointing authority shall pay the state's share of the employee's health, dental, basic life, and long-term disability benefit insurance premiums. Failure by the employee to pay the employee's share of the premiums will result in a loss of coverage. The appointing authority shall provide notice to the employee 15 calendar days prior to any retroactive or prospective cancellation of benefits coverage. Upon return from FMLA leave, employees who have dropped or canceled their health, dental, or life insurance benefits while on FMLA leave will be restored to ~~no more than~~ the same level of benefits as prior to the commencement of leave upon completion of the necessary insurance applications and other forms required by the department.

**63.4(7) to 63.4(9)** No change.

**63.4(10)** If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The appointing authority's obligations may be governed by the Americans with Disabilities Act. ~~The appointing authority shall make reasonable accommodations for a qualified employee with a disability when such accommodations will allow the employee to perform essential job functions unless they pose an undue hardship.~~

**63.4(11) to 63.4(13)** No change.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

**63.4(14)** Retention of vacation leave. Notwithstanding subrule 63.4(3), non-contract-covered employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, ~~on~~ using forms prescribed by the department, to retain ~~up to two weeks (80 hours) of vacation at the onset of the FMLA qualifying event or at any time during the original eligibility period~~ by submitting the form to the employer no later than seven calendar days from the date it is determined that the employee's leave is covered by FMLA. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased; however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

For employees covered by a collective bargaining agreement, the retention of vacation leave will be governed by the collective bargaining agreement.

ITEM 6. Amend rule 11—63.6(8A) as follows:

**11—63.6(8A) Rights upon return from leave.**

**63.6(1)** An employee who is on approved leave without pay, disaster service volunteer leave, ~~or educational leave or leave without pay for military service~~ must notify the ~~agency or institution appointing authority~~ from which the employee is on leave of the intent to exercise return from leave rights. Upon return from leave, the employee shall have the right to return to a vacant position in the class held prior to the leave or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply. ~~The appointing authority must approve if an~~ An employee on leave without pay, disaster service volunteer leave, or educational leave ~~requests~~ may request permission from the appointing authority to return to work sooner than the original approved leave expiration date. Employees on leave without pay for more than 30 calendar days, except for military leave, ~~or educational leave required by the appointing authority,~~ shall have their pay increase eligibility date adjusted to a later date which reflects the period of leave without pay.

**63.6(2)** An employee who elects to separate from employment for purposes of induction into military service shall have the right to return to ~~a vacant position in the class held prior to separation or to a class in the same pay grade for which the employee qualifies~~. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply employment in accordance with 38 U.S.C. Sections 4301-4334. Upon return, the employee's pay increase eligibility date and unused sick leave at the time of separation shall be restored.

**63.6(3)** At the conclusion of a period of military service, an employee who is on approved military service leave must notify the appointing authority of the intent to return to employment. Upon return from military leave, the employee shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334.

ITEM 7. Amend rule 11—63.9(8A) as follows:

**11—63.9(8A) Military leave.**

**63.9(1)** A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave without loss of pay for 30 days each calendar year. ~~Such leave shall include a reasonable amount of time for commuting, for the period of active or inactive state or federal military service without loss of pay, benefits, seniority, or position during the first 30 days of leave. Thereafter, absences~~ Absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, ~~and~~ 38 U.S.C. Sections 4301-4333, and 20 CFR Part 1002. Military leave may be utilized for up to 30 days in ~~any~~ each calendar year. Any amount of military leave taken during any part of an employee's scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. If the employee's work shift crosses two calendar days, only one day shall count toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

**63.9(2)** A nontemporary employee who is ~~inducted into~~ ordered by proper authority to military service duty as defined in Iowa Code section 29A.28 may elect to be placed on leave without pay or be separated and removed from the payroll. ~~The maximum period of accumulated time an employee can be on leave without pay or be separated from employment and still have return rights is five years.~~

*a.* — ~~The following periods shall be excluded from accumulation to determine return rights of an employee:~~

(1) — ~~Periods in which the employee is required, beyond five years, to complete an initial period of obligated service.~~

(2) — ~~Periods during which a person is unable to get orders releasing the person from a period of service in the uniformed services before the expiration of such five-year period and such inability was through no fault of the person.~~

(3) — ~~Periods ordered to be performed under 10 U.S.C. Sections 270, 672(a), 672(g), 673, 673(c), and 688; 14 U.S.C. Sections 331, 332, 359, 360, 367, and 712; and 32 U.S.C. Sections 502(a) and 503.~~

(4) — ~~Periods ordered to or retained on active duty (other than for training) under any provision of law during a war or during a national emergency declared by the President or Congress.~~

(5) — ~~Periods ordered to or retained on active duty (other than for training) in support, as determined by the Secretary concerned, of an operational mission for which personnel have been ordered to active duty under the authority of 10 U.S.C. Section 673(b).~~

(6) — ~~Periods ordered to active duty in support, as determined by the Secretary concerned, of a critical mission or requirement of the uniformed services or called into federal service as a member of the National Guard under 10 U.S.C. Chapter 15 or under Sections 3500 or 8500.~~

*b.* — ~~The employer is not required to reemploy an individual if the individual's employment prior to military service was for a brief, nonrecurring period and there was no reasonable expectation that it would continue indefinitely; if reemployment would cause an undue hardship on the employer; if the employer's circumstances have so changed as to make such reemployment impossible or unreasonable; or if the employee has not received an honorable discharge for the employee's period of service in the uniformed services. It is the responsibility of the employer to document such "undue hardship" as well as circumstances that have changed such that reemployment is impossible or unreasonable. When requested, this documentation shall be provided to the former employee.~~

**63.9(3)** Nontemporary employees who elect to separate from employment for ~~induction into military service~~ when ordered by proper authority to military duty shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

Employees who elect to be placed on leave without pay when ~~inducted into military service~~ ordered by proper authority to military duty shall continue to receive regular pay and benefits for ~~the first 30 days of leave.~~ Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

**63.9(4)** ~~The~~ At the conclusion of military service, the employee must notify the ~~agency from which separated or placed on leave without pay~~ employee's appointing authority of the intent to exercise return rights pursuant to 38 U.S.C. Sections 4301-4344. ~~If the service is less than 31 days (or for the purpose of taking an examination to determine fitness for service) the employee must report to the employer for reemployment at the beginning of the first full regularly scheduled working period on the first calendar day following completion of service and the expiration of eight hours after a time for safe transportation back to the employee's residence. If reporting within that period is impossible or unreasonable through no fault of the employee, the employee shall report to work as soon as possible.~~

~~If the period of service was for 31 days or more but less than 181 days, the employee must submit an application to the employer no later than 14 calendar days following completion of service (if submitting an application is impossible or unreasonable through no fault of the employee, then the next calendar day when submission of the application is possible). For service over 180 days, the employee must submit an application with the employer no later than 90 days after completion of the service.~~

~~These time period restrictions shall be extended by up to two years if an employee is hospitalized or convalescing from an injury caused by active duty. The two-year period will be extended by the~~

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

minimum time required to accommodate the circumstances beyond the individual's control which makes reporting within the time limits impossible or unreasonable.

~~63.9(5)~~ The employer may request that an employee provide the employer with documentation that establishes the timeliness of the application for reemployment and the length and character of uniformed service. If documentation is unavailable, the employer must reemploy the employee until the documentation becomes available. If, after such reemployment, documentation becomes available that establishes that such person does not meet one or more of the requirements for reemployment, the employer may terminate the employment of the person. An employee taking military leave may use any vacation or compensatory leave that was accrued prior to service. Employees who elect to use vacation or compensatory leave shall continue to receive benefits in accordance with the state of Iowa's benefits program policies and procedures. Upon return to employment, the employee's accrual rate for vacation shall be at the same rate as if the employee had not taken military leave.

~~63.9(6)~~ An employee with fewer than 91 days of uniformed service must be reemployed promptly in a position that the employee would have attained if continuously employed, unless proved not qualified after reasonable efforts are made by the employer to qualify the employee. If not qualified for that position, the person will be reemployed in the position the person left. These requirements are the same for service of 91 days or more, with the additional option that a position of like seniority, status and pay may be offered. If unqualified after reasonable efforts by the employer to qualify the employee for such a position or the position that was left prior to service, the employee must be reemployed in any other position of lesser status and pay for which the employee is qualified, with full seniority. The position for which the employee is entitled is further governed by rule 11—63.6(8A).

An employee with a service-connected disability who is not qualified for employment in the position the employee would have attained but for military service, or in the position that was left (even after reasonable efforts by the employer to accommodate the disability) must be reemployed promptly in any other position of similar seniority, status, and pay for which qualified or would become qualified with reasonable efforts by the employer. If these efforts fail, reemployment must be in a position which is the nearest approximation consistent with the circumstances of the employee's case.

If two or more employees are entitled to reemployment in the same position or classification, the individual who left first for service in the uniformed services has the higher right to be reemployed first. An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee's share of the health and dental insurance premiums if the period of military service is less than 31 days. If more than 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon return to employment, the employee may elect to have health and dental insurance coverage become effective either on the first day of the month the employee returns to employment or the first day of the month following the month in which the employee returned to employment. Coverage under the plans will not have an exclusion or waiting period upon return to employment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

~~63.9(7)~~ Upon reemployment, a person is entitled to the seniority and other benefits the individual would have attained, with reasonable certainty, had that person remained continuously employed. The employee may be required to pay the employee cost, if any, of any benefit to the extent that other employees are required to pay.

~~63.9(7)~~ A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services.

~~63.9(8)~~ Any person taking military leave may use any vacation that is accrued prior to service. Upon reemployment, the employee's accrual rate for vacation shall be the same rate as if the employee had not taken military leave.

~~63.9(9)~~ An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee's share of the health and dental insurance premiums if the period of military service is less than 31 days. If beyond 30 days, the

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

~~employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon reemployment, health and dental insurance coverage will become effective either on the first day of the month following the month the employee was reemployed or the first day of the month in which the employee was reemployed. Coverage under the plans will not have an exclusion or waiting period upon reemployment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.~~

~~**63.9(10)** A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person's period of service in the uniformed services.~~

~~*a. — Retirement system.* No forfeiture of benefits already accrued will be permitted, and there will be no necessity to requalify for participation in a retirement system by reason of absence for military service. To the extent required by law, employers will be required to make, on behalf of returning service members, any contributions to the members' pensions that the employer would have made if the service member had not been absent for military service. Employees will have up to three times the period of service to make up missed contributions (not to exceed five years). The employer is required to make matching contributions only to the extent that the reemployed service member makes the required employee contributions. No interest or penalty will be charged on the employee or employer contribution, nor will the employee be credited with interest that would have been earned on such contributions.~~

~~*b. — FMLA eligibility.* In determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the state shall be combined with the months and hours that would have been worked but for the military service during the 12 months prior to the start of the leave requested.~~

ITEM 8. Rescind subrule **63.10(4)**.

ITEM 9. Renumber subrule **63.10(5)** as **63.10(4)**.

ITEM 10. Adopt the following new rule 11—63.20(8A,70A):

**11—63.20(8A,70A) Bone marrow and organ donation leave.** Employees, excluding employees covered by a collective bargaining agreement that provides otherwise, shall be granted leave pursuant to Iowa Code section 70A.39. An employee who is granted a leave of absence under Iowa Code section 70A.39 shall receive leave without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The employee shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under Iowa Code section 70A.39 shall not be deemed to be an employee of the state for purposes of workers' compensation or for purposes of the Iowa tort claims Act.

ITEM 11. Amend **11—Chapter 63**, implementation sentence, as follows:

These rules are intended to implement ~~2003~~ Iowa Code ~~Supplement~~ section 8A.413 and Iowa Code chapter 70A.

ITEM 12. Amend rule 11—64.1(8A) as follows:

**11—64.1(8A) Health benefits.** The director is authorized by the executive council of Iowa to administer health benefit programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A. The executive council of Iowa shall determine the amount of the state's contribution toward each individual non-contract-covered employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

~~**64.1(1)** The executive council of Iowa shall determine the amount of the state's contribution toward each individual non-contract-covered employee's premium cost and shall authorize the~~

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

~~remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.~~

~~**64.1(2)** Health maintenance organizations (HMOs). Beginning with the benefit year starting January 1, 2001, any HMO seeking approval to offer benefits to state employees shall provide evidence of accreditation by the National Committee for Quality Assurance (NCQA) or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). When an HMO seeks approval to offer benefits to state employees but has not achieved the required accreditation, the director may waive the accreditation requirement for up to two consecutive benefit years. The granting of such a waiver shall be based, in part, on information submitted by the HMO that outlines its intent to achieve accreditation. If the HMO has not achieved the required accreditation by the end of the second benefit year, the director shall report this information to the executive council and may recommend termination of the contract.~~

~~**64.1(3)** Definitions. The following definitions shall apply when used in this rule:~~

~~"Employee" means any employee of the state of Iowa covered by Iowa Code chapter 509A.~~

~~"HMO" means any health maintenance organization as defined in Iowa Code section 514B.1(6).~~

ITEM 13. Amend rule 11—64.2(8A) as follows:

**11—64.2(8A) Dental insurance.** The director is authorized by the executive council of Iowa to administer dental insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A.

ITEM 14. Amend rule 11—64.3(8A) as follows:

**11—64.3(8A) Life insurance.** The director is authorized by the executive council of Iowa to administer life insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

ITEM 15. Amend rule 11—64.4(8A) as follows:

**11—64.4(8A) Long-term disability insurance.** The director is authorized by the executive council of Iowa to administer long-term disability insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

Employees who receive loss of time benefits under the state workers' compensation program shall have those benefits, except for benefits designated as medical costs pursuant to Iowa Code section 85.27 and that portion of benefits paid as attorneys' fees approved pursuant to Iowa Code section 86.39, deducted from any state long-term disability benefits received where the workers' compensation injury or illness was a substantial contributing factor to the award of long-term disability benefits. Disability benefit payments will be further reduced by primary and family social security payments as determined at the time social security disability payments commence, railroad retirement disability income, and any other state-sponsored sickness or disability benefits payable.

ITEM 16. Amend subrule **64.6(1)**, definition of "Retirement investors' club," as follows:

"Retirement investors' club" means the voluntary retirement savings program for employees designed to increase personal long-term savings. The program contains ~~two~~ three plans, the 457 employee contributions plan, ~~and~~ the 401(a) employer contribution plan, and the 403(b) tax-sheltered annuity plan.

ITEM 17. Amend paragraphs **64.6(2)"g"** to "**k**" as follows:

g. *Plan expenses.* Expenses incurred by the plan administrator while administering the plan, including fees and expenses approved by the plan trustee for investment advisory, custodial, record-keeping, and other plan administration and communication services, and any other reasonable and necessary expenses or charges allocable to the plan that have been incurred for the exclusive benefit of plan participants and that have been approved by the plan trustee may be charged to the short-term interest that has accrued in the deferred compensation trust fund created by Iowa Code section ~~19A.12C~~ 8A.434 prior to the allocation of funds to a participant's chosen investment provider. Such expenses

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

may also be funded from fees assessed to eligible employers who choose to offer the plan to their employees.

~~h. — *Advisory committee.* There shall be appointed by the plan trustee an advisory committee. The advisory committee shall consist of representatives of the legislative, judicial, and executive branches of government, public sector employees through their authorized collective bargaining representatives, and the private sector. Such representatives shall convene in regularly scheduled meetings, in a manner, time and place chosen by the plan trustee or designee, to advise in the administration of the plan and the plan investment options.~~

~~i. *Time periods.* As necessary or desirable to facilitate the proper administration of the plan and consistent with the requirements of Section 457 of the Internal Revenue Code (IRC), the plan administrator may modify the time periods during which a participating employee or beneficiary is required to make any election under the plan, and the time periods for processing these elections by the plan administrator, including the making or amending of a deferral agreement, the making or amending of investment provider selections, the election of distribution commencement dates or distribution methods.~~

~~j. *Supplementary information and procedures.* Any explanatory brochures, pamphlets, or notices distributed by the plan shall be distributed for information purposes only and shall not override any provision of the plan or give any person any claim or right not provided for under the plan. In the event any form or other document used in administering the plan, including but not limited to enrollment forms and marketing materials, conflicts with the terms of the plan, the terms of the plan shall prevail.~~

~~k. *Binding plan.* The plan, and any properly adopted amendments, shall be binding on the parties and their respective heirs, administrators, trustees, successors and assignees and on all beneficiaries of the participant.~~

ITEM 18. Amend paragraphs **64.6(9)“e”** to **“g”** as follows:

~~e. — *Quality standards.* An investment provider that issues individual or group annuity contracts, or that has issued life insurance policies, must have:~~

~~(1) — A minimum credit rating of at least “A” from the A.M. Best Company financial strength rating system or equivalent ratings from two other major, recognized ratings services, and~~

~~(2) — A minimum number of years in existence greater than 12.~~

~~In lieu of (1) and (2) above, an investment provider that provides mutual funds shall be selected by the plan administrator using a selection process that includes quality standard requirements as set forth in a competitive bid process and in the investment provider’s service agreement or contract.~~

~~f. *Minimum contract requirements.* In addition to meeting selection requirements, an investment provider must meet and maintain the requirements set forth in its contract or service agreement with the state of Iowa.~~

~~g. *Removal from participation.* Failure to comply with the provisions of these rules, the investment provider contract or service agreement with the employer, or the terms and conditions of the investment provider account with the participating employee may result in termination of an investment provider contract or service agreement, and all rights therein shall be exercised by the employer.~~

ITEM 19. Amend subrule 64.8(2) as follows:

**64.8(2) *Enrollment.*** An ~~open~~ enrollment and change period, as designated by the director, shall be held for employees who wish to make changes in their current pretax status. New employees will automatically be enrolled in the plan after satisfying any waiting period requirements for group insurance unless ~~a change~~ an election form is submitted. Employees also may change their existing pretax status during the plan year if they have a qualifying change in status as defined in the Plan Document.

ITEM 20. Amend subrule 64.10(4) as follows:

**64.10(4) *Repayment.*** As a condition of receiving applying for reimbursement for education expenses, the recipient must sign an agreement to continue employment with the appointing authority ~~for a period following the date of receipt of reimbursement that is~~. The agreement must be signed prior to approval and will stipulate the period of time deemed by the appointing authority to be commensurate with the amount of reimbursement received. The period of time commences upon

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

successful completion of the course. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority an appropriate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

ITEM 21. Amend **11—Chapter 64**, implementation sentence, as follows:

These rules are intended to implement ~~2003~~ Iowa Code Supplement sections 8A.402, 8A.433 to 8A.438, and 8A.454 and Iowa Code chapter 509A.

**ARC 8092B****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 189.2(2) and 215.24, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 85, "Weights and Measures," Iowa Administrative Code.

The proposed amendment updates the reference to the handbooks used for specifications and regulations for commercial weighing and measuring devices and for packaging and labeling and method of sale.

Any interested persons may make written comments or suggestions on the proposed amendment on or before September 29, 2009. Written comments should be sent to Margaret Thomson, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-6236. E-mail comments may be sent to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

No waiver provision is included in the proposed amendment. However, the Department's general waiver provisions, found at 21—Chapter 8, apply.

This amendment is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

The following amendment is proposed.

Amend rule 21—85.39(189,215) as follows:

**21—85.39(189,215) Weights and measures.** The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 amended or revised as of July ~~4, 2007~~ 16, 2009, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

The National Institute of Standards and Technology (NIST) Handbooks 130 and 133: Weights and Measures Law, Packaging and Labeling, Method of Sale, Type Evaluation and Checking the Net Contents of Packaged Goods, and all supplements, as promulgated by the National Institute of

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

Standards and Technology amended or revised as of July 1, ~~2007~~ 16, 2009, are adopted in their entirety by this reference.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

**ARC 8143B****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 11, "Complaints, Investigations, Contested Case Hearings," Iowa Administrative Code.

The proposed amendment changes the manner by which a respondent receives a copy of a complaint filed with the Board. Under current board practice, the respondent receives a copy of the complaint at the beginning stage of the investigation. With this change, the respondent will receive a copy only after the Board has found probable cause.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at any of the public hearings that will be held Tuesday, September 29, 2009; Wednesday, September 30, 2009; and Thursday, October 1, 2009, at 1 p.m.

On Tuesday, September 29, 2009, the first public hearing will be held over the Iowa Communications Network (ICN) from 1 to 2 p.m., with the origination site in the ICN Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views orally or in writing. The following ICN sites will be available for the September 29, 2009, hearing:

Room 818, Smith Wellness Center  
Iowa Lakes Community College  
3200 College Drive  
Emmetsburg

Room 101, Guthrie Center High School  
906 School Street  
Guthrie Center

Turner Room, Green Valley AEA 14  
1405 N. Lincoln  
Creston

Room 206, Northwest AEA  
1520 Morningside Avenue  
Sioux City

Room 402, Building D  
Northwest Iowa Community College - 1  
603 W. Park Street  
Sheldon

Room 204, Library Building  
Prairie Lakes AEA 8 - Fort Dodge  
Iowa Central Comm. College Campus  
1 Triton Circle  
Fort Dodge

State Room, AEA 267  
Regional Office – Clear Lake  
9184B 265th Street  
Clear Lake

Nishna Valley Jr-Sr High School  
58962 380th Street  
Hastings

On Wednesday, September 30, 2009, the second hearing will be held in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa from 1 to 2 p.m., at which time persons may present their views orally or in writing.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

On Thursday, October 1, 2009, the third public hearing will be held over the Iowa Communications Network (ICN) from 1 to 2 p.m., with the origination site in the ICN Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views orally or in writing. The following ICN sites will be available for the October 1, 2009, hearing:

Room 528, North Campus/Trustee Hall  
Southeastern Community College - 1  
1500 West Agency  
West Burlington

Great Prairie AEA - 1  
2814 N. Court Street  
Ottumwa

Central High School  
425 E. 11th Street  
DeWitt

Solon Public Library  
320 West Main Street  
Solon

Area Education Agency 267  
Regional Office - Marshalltown  
909 S. 12th Street  
Marshalltown

West High School  
Baltimore and Ridgeway  
Waterloo

Fayette Community Library  
104 W. State Street  
Fayette

At the hearings, 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 hearings.

Any person who intends to attend a 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, October 2, 2009. 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](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrules 11.4(3) to 11.4(5) as follows:

**11.4(3) Required copies—place and time of filing the complaint.**

~~a. In addition to the original, a sufficient number of copies~~ A copy of the complaint must be filed ~~to enable service of one copy to each of the respondents and retention of 12 copies for use by~~ with the board.

~~b. The complaint must be delivered personally or by mail to the office of the board. The current office address is the Grimes State Office Building, Third Floor, Des Moines, Iowa 50319-0147.~~

~~c. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay. The conduct upon which it is based must have occurred or been discovered by the complainant within three years of filing of the complaint unless good cause is shown for an extension of this limitation.~~

~~11.4(4) Service of complaint. The board or a designee of the board shall serve a copy of the complaint upon the respondent by one of the following means:~~

~~a. — Personal service as provided in the Iowa Rules of Civil Procedure; or~~

~~b. — Certified mail, return receipt requested; or~~

~~c. — First class mail; or~~

~~d. — Publication, as provided in the Iowa Rules of Civil Procedure.~~

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

~~11.4(5)~~ **11.4(4)** *Amendment or withdrawal of complaint.* A complaint or any specification thereof may be amended or withdrawn by the complainant at any time. The parties to a complaint may mutually agree to the resolution of the complaint at any time in the proceeding prior to issuance of a final order by the board. The resolution must be committed to a written agreement and filed with the board. The agreement is not subject to approval by the board, but shall be acknowledged by the board and may be incorporated into an order of the board.

**11.4(5)** *Form and content of the complaint notice to the respondent.*

*a.* The complaint notice to the respondent shall be in writing.

*b.* The complaint notice to the respondent shall contain the following information:

(1) The full name, address, and telephone number, if known, of the respondent.

(2) A concise statement of the facts which clearly and specifically apprises the respondent of the details of the alleged violation of the criteria of professional practices or the criteria of competent performance.

(3) An explanation of the facts underlying the complaint.

(4) A citation to the specific rule or law which the complainant alleges has been violated.

**ARC 8125B****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.

After visiting with staff from the Department of Education, the Board determined that applicants, at some point in time, will not be able to prove their highly qualified teacher (HQT) status. At that point, the only option available to applicants would be testing. The proposed amendment addresses this need to provide a way for all applicants to prove their HQT status.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 30, 2009, 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, October 2, 2009. 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](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Adopt the following **new** subparagraph **13.26(2)“b”(4)**:

(4) Highly qualified teacher (HQT) status. Applicants from non-Iowa institutions who have completed the requirements for this endorsement must verify their HQT status. The board shall determine the test and the minimum passing score for HQT status. Verification must be provided through one of the following:

1. Written verification from the department of education in the state in which the applicant completed the elementary teacher preparation program that the applicant has achieved HQT status in that state; or

2. Written verification from the department of education in the state where the applicant is currently teaching that the applicant has achieved HQT status in that state; or

3. Submission of the official test score report indicating the applicant has met the qualifying score for licensure in the state in which the applicant completed the elementary teacher preparation program; or

4. Obtaining the qualifying score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants from outside the United States.

5. For applicants who have completed the requirements for one of the Iowa elementary endorsements, verification of HQT status by meeting the minimum score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants who have been teaching outside the United States.

**ARC 8121B****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.

After visiting with staff from the Department of Education, the Board determined that applicants, at some point in time, will not be able to prove their highly qualified teacher (HQT) status. At that point, the only option available to applicants would be testing. The proposed amendment addresses this need to provide a way for all applicants to prove their HQT status.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 30, 2009, 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.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, October 2, 2009. 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](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** subparagraph **13.26(3)“b”(4)**:

(4) Highly qualified teacher (HQT) status. Applicants from non-Iowa institutions who have completed the requirements for this endorsement must verify their HQT status. The board shall determine the test and the minimum passing score for HQT status. Verification must be provided through one of the following:

1. Written verification from the department of education in the state in which the applicant completed the elementary teacher preparation program that the applicant has achieved HQT status in that state; or

2. Written verification from the department of education in the state where the applicant is currently teaching that the applicant has achieved HQT status in that state; or

3. Submission of the official test score report indicating the applicant has met the qualifying score for licensure in the state in which the applicant completed the elementary teacher preparation program; or

4. Obtaining the qualifying score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants from outside the United States.

5. For applicants who have completed the requirements for one of the Iowa elementary endorsements, verification of HQT status by meeting the minimum score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants who have been teaching outside the United States.

**ARC 8126B****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.

After visiting with staff from the Department of Education, the Board determined that applicants, at some point in time, will not be able to prove their highly qualified teacher (HQT) status. At that point, the only option available to applicants would be testing. The proposed amendment addresses this need to provide a way for all applicants to prove their HQT status.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 30, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

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, October 2, 2009. 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](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** subparagraph **13.26(4)“b”(4)**:

(4) Highly qualified teacher (HQT) status. Applicants from non-Iowa institutions who have completed the requirements for this endorsement must verify their HQT status. The board shall determine the test and the minimum passing score for HQT status. Verification must be provided through one of the following:

1. Written verification from the department of education in the state in which the applicant completed the elementary teacher preparation program that the applicant has achieved HQT status in that state; or

2. Written verification from the department of education in the state where the applicant is currently teaching that the applicant has achieved HQT status in that state; or

3. Submission of the official test score report indicating the applicant has met the qualifying score for licensure in the state in which the applicant completed the elementary teacher preparation program; or

4. Obtaining the qualifying score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants from outside the United States.

5. For applicants who have completed the requirements for one of the Iowa elementary endorsements, verification of HQT status by meeting the minimum score set by the Iowa board of educational examiners if the applicant has not been teaching within the last five years and completion of a teacher preparation program prior to enactment of the federal highly qualified teacher legislation (June 2006). This option may also be utilized by applicants who have been teaching outside the United States.

**ARC 8129B**

**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.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

A representative group of Iowa high school agriculture teachers and professors in the Iowa State University Agriculture Education Department met to examine the current requirements for the agriculture endorsements and to propose amendments to those requirements. Agriculture has changed a great deal since the agriculture endorsements were adopted; therefore, the proposed amendment updates the requirements for the agriculture endorsement.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 30, 2009, 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, October 2, 2009. 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](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 13.28(1) as follows:

**13.28(1) Agriculture. 5-12.** Completion of 24 semester credit hours in agriculture and agriculture education to include ~~coursework in agronomy, animal science, agricultural mechanics, and agricultural economies~~:

- a. Foundations of vocational and career education.
- b. Planning and implementing courses and curriculum.
- c. Methods and techniques of instruction to include evaluation of programs and students.
- d. Coordination of cooperative education programs.
- e. Coursework in each of the following areas and at least three semester credit hours in five of the following areas:

- (1) Agribusiness systems.
- (2) Power, structural, and technical systems.
- (3) Plant systems.
- (4) Animal systems.
- (5) Natural resources systems.
- (6) Environmental service systems.
- (7) Food products and processing systems.

**ARC 8130B****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 17, "Career and Technical Endorsements and Licenses," Iowa Administrative Code.

A representative group of Iowa high school agriculture teachers and professors in the Iowa State University Agriculture Education Department met to examine the current requirements for the agriculture endorsements and to propose amendments to those requirements. Agriculture has changed a great deal since the career and technical agricultural sciences and agribusiness endorsement was adopted; therefore, the proposed amendment updates the requirements for the agricultural sciences and agribusiness endorsement.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 30, 2009, 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, October 2, 2009. 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](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend paragraph **17.1(1)"a"** as follows:

*a. Agricultural sciences and agribusiness. ~~Completion of 24 semester hours in agricultural business management or economics, agricultural mechanics, agronomy, animal science, and horticulture. One thousand hours of work experience in one or more agriculture related occupations. Coursework in agriculture education to include foundations of career and technical education, planning and implementing courses and curriculum, methods and techniques of instruction, evaluation of programs and students, and in the coordination of cooperative experience education programs.~~*

(1) Completion of 24 semester credit hours in agriculture and agriculture education to include:

1. Foundations of vocational and career education.

2. Planning and implementing courses and curriculum.

3. Methods and techniques of instruction to include evaluation of programs and students.

4. Coordination of cooperative education programs.

5. Coursework in each of the following areas and at least three semester credit hours in five of the following areas:

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- Agribusiness systems;
  - Power, structural, and technical systems;
  - Plant systems;
  - Animal systems;
  - Natural resources systems;
  - Environmental service systems; and
  - Food products and processing systems.
- (2) One thousand hours of work experience in one or more of the areas listed in 17.1(1)“e.”

ARC 8117B

## 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 24, “Paraeducator Certificates,” Iowa Administrative Code.

The proposed amendment adds an area of concentration for paraeducators who assist speech-language pathologists (SLP). The SLP area of concentration in Iowa’s paraeducator certification system is not a required area of concentration for speech-language pathology paraeducators; it will be an optional certificate.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 30, 2009, 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, October 2, 2009. 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](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** subrule 24.4(6):

**24.4(6) *Speech-language pathology (SLP)—prekindergarten through grade 12.*** The speech-language pathology paraeducator shall successfully complete the following list of competencies so that under the direction and supervision of a qualified speech-language pathologist the paraeducator will be able to:

- a. Understand the roles and responsibilities of the speech-language pathology paraeducator.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- b. Demonstrate a basic understanding of the four areas of communication, including articulation, language, fluency, and voice, and how they occur through typical development.
- c. Demonstrate an understanding of articulation/phonological disabilities.
- d. Demonstrate an understanding of language disabilities.
- e. Use appropriate instructional procedures and reinforcement techniques when working with children with articulation/phonological disabilities.
- f. Use appropriate instructional procedures and reinforcement techniques when working with children with language disabilities.
- g. Gather information as directed by the speech-language pathologist regarding the performance of children, including recording and charting responses.

**ARC 8122B****ENVIRONMENTAL PROTECTION COMMISSION[567]****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 subsections 455A.6(6)"a," 455B.105(3) and 455B.392(1)"c," the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 133, "Rules for Determining Cleanup Actions and Responsible Parties," Iowa Administrative Code.

Iowa Code section 455B.392(1)"c" provides that a person having control of a substance is strictly liable to the state of Iowa for damages to natural resources caused by a hazardous condition. The Commission has adopted requirements in paragraph 133.6(3)"b" setting out the methods for counting dead fish and assigning a monetary value for specific fish species. These requirements are based on the Natural Resource Commission (NRC) fish restitution rules in 571—Chapter 113. NRC rule-making authority derives from Iowa Code section 481A.151, which authorizes use of both the American Fisheries Society methods and values and also an alternative method for assigning monetary values to game fish valued at not less than \$15 per fish. The NRC has also initiated rule making incorporating the same changes that are proposed herein.

The proposed amendment of rule 567—133.2(455B) redefines the meaning of "AFS," the acronym used for the American Fisheries Society's special publications on fish-counting methods and restitution valuation. The language is updated to state that Special Publication 30, the most current AFS publication regarding fish-counting methods and restitution valuation, shall be used by the Department to determine the amount of fish restitution to be collected. Secondly, the amendment of subparagraph 133.6(3)"b"(3) revises the fish species to be valued at \$15 per fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 23, 2009. Such written materials should be directed to Tamara Mullen, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-7147; or E-mail [tamara.mullen@dnr.iowa.gov](mailto:tamara.mullen@dnr.iowa.gov). Persons who wish to convey their views orally should contact Tamara Mullen at (515)281-8934 or at the Legal Bureau offices on the Third Floor of the Wallace Building.

Also, there will be a public hearing on October 6, 2009, at 2 p.m., in the Fourth Floor (West) Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

These amendments are intended to implement Iowa Code sections 455B.392, 456A.23, and 481A.2. The following amendments are proposed.

ITEM 1. Amend rule ~~567—133.2(455B,455E)~~, definition of “AFS,” as follows:

“AFS” means the Special Publication ~~24~~ 30, “Investigation and ~~Valuation of Fish Kills~~ Monetary Values of Fish and Freshwater Mussel Kills,” published by the American Fisheries Society.

ITEM 2. Amend subparagraph ~~133.6(3)“b”(3)~~ as follows:

(3) The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost except ~~those fish that are members of the families Ictaluridae (catfish/bullheads), Esocidae (northern pike/muskellunge), Salmonidae (trout), Percichthyidae (white bass/yellow bass/wipers), Centrarchidae (black bass/crappie/sunfish/rock bass/warmouth), and Percidae (yellow perch/walleye/sauger).~~ the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill, redear sunfish, warmouth, pumpkinseed, freshwater drum, yellow perch, walleye, sauger, and walleye/sauger hybrid. The value of these fish shall be \$15 each, unless AFS establishes a higher value. Notwithstanding the above, the value of each fish classified by the department as an endangered or threatened species shall be \$1,000.

**ARC 8093B****HUMAN SERVICES DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)“b” for the proposed rule making relating to Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 8011B**. The Notice proposed elimination of several eligibility requirements from the transitional Medicaid coverage group to ensure that any family that qualified would remain eligible for the full 12 months of coverage as long as there was a child in the household.

The Department has decided to incorporate this option into a budget proposal for State Fiscal Year 2011. Therefore, the Department is not proceeding with rule making at this time, and Notice **ARC 8011B** is hereby terminated.

**ARC 8113B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 76, “Application and Investigation,” Iowa Administrative Code.

The proposed amendment limits the Medicaid expenses subject to recovery from a Medicaid member’s estate. This amendment is intended to implement the Medicare Improvements for Patients and Providers Act of 2008, Public Law 110-275. Effective January 1, 2010, this legislation prohibits states

## HUMAN SERVICES DEPARTMENT[441](cont'd)

from using estate recovery programs to recover Medicaid payments made for Medicare cost-sharing benefits under a Medicare savings program.

Coverage groups referred to as Medicare savings programs include qualified Medicare beneficiaries (QMBs), specified low-income Medicare beneficiaries (SLMBs), and qualified disabled and working persons (QDWP). Depending on the coverage group, Medicare cost-sharing may include Medicaid payments to cover a member's Medicare Part A and B premiums, deductibles, coinsurance, and copayments.

The cost of medical assistance is subject to recovery from the estates of Medicaid members who received benefits after the age of 55 or while living in a medical institution without the expectation of returning home. Under this amendment, the value of cost-sharing benefits paid on or after January 1, 2010, is excluded from the calculation of the cost of a member's medical assistance for purposes of the estate recovery program.

This amendment does not provide for waivers in specified situations because this exemption is a benefit to those affected.

Any interested person may make written comments on the proposed amendment on or before September 29, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment is intended to implement Iowa Code section 249A.5(2).

The following amendment is proposed.

Amend subrule 76.12(7), introductory paragraph, as follows:

**76.12(7) Estate recovery.** Medical assistance is subject to recovery from the estate of a Medicaid member, the estate of the member's surviving spouse, or the estate of the member's surviving child as provided in this subrule. Effective January 1, 2010, medical assistance that has been paid for Medicare cost-sharing or for benefits described in Section 1902(a)(10)(E) of the Social Security Act is not subject to recovery. All assets included in the estate of the member, the surviving spouse, or the surviving child are subject to probate for the purposes of medical assistance estate recovery pursuant to Iowa Code section 249A.5(2) "d." The classification of the debt is defined at Iowa Code section 633.425(7).

**ARC 8112B**

## 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 514I.5, the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

The proposed amendments:

- Clarify that there are separate health and dental plans participating in the HAWK-I program; and
- Implement a new program to provide dental coverage to children who would be eligible for HAWK-I benefits except that they have health insurance.

Currently, children must be uninsured to obtain dental coverage through the HAWK-I program. The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) allows states the option to offer a dental-only program. The General Assembly has appropriated funding to implement a dental-only program with approval of the HAWK-I Board. The HAWK-I Board has directed the Department to offer

## HUMAN SERVICES DEPARTMENT[441](cont'd)

dental-only coverage to children who would qualify for the HAWK-I program except that they have health insurance.

Under these amendments, children who have health insurance but who do not have dental coverage can qualify for supplemental dental-only coverage to receive necessary preventive and restorative dental services. Some families will be charged a premium to participate in the program, based on their income. The amendments require coverage of diagnostic and preventive services, routine and restorative services, endodontic services, periodontal services, cast restorations, and prosthetics. Orthodontia is not a covered service. Payments will be made on a capitation basis.

These amendments do not contain a waiver provision because an extension of eligibility and coverage benefits the children affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before September 29, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code sections 514I.4 through 514I.7 as amended by 2009 Iowa Acts, Senate File 389, sections 26 and 31 through 34.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 86**, preamble, as follows:

## PREAMBLE

These rules define and structure the department of human services healthy and well kids in Iowa (HAWK-I) program. The purpose of this program is to provide transitional health and dental care coverage to uninsured children who are ineligible for Title XIX (Medicaid) assistance. The program is implemented and administered in compliance with Title XXI of the federal Social Security Act. The rules establish requirements for the third-party administrator responsible for the program administration and for the participating health and dental plans that will be delivering services to the enrollees.

ITEM 2. Amend rule **441—86.1(514I)**, definitions of “Benchmark benefit package,” “Capitation rate,” “Contract,” “Covered services,” “Emergency services,” “HAWK-I program” and “Provider,” as follows:

“*Benchmark benefit package for health care coverage*” shall mean any of the following:

1. to 3. No change.

“*Capitation rate*” shall mean the fee the department pays monthly to a participating health or dental plan for each enrollee for the provision of covered medical or dental services whether or not the enrollee received services during the month for which the fee is intended.

“*Contract*” shall mean the contract between the department and the person or entity selected as the third-party administrator or the contract between the department and the participating health or dental plan for the provision of medical or dental services to HAWK-I enrollees for whom the participating health or dental plans assume risk.

“*Covered services*” shall mean all or a part of those medical and ~~health~~ dental services set forth in rule 441—86.14(514I).

“*Emergency services*” shall mean, with respect to an individual enrolled with a plan, covered inpatient and outpatient services which are furnished by a provider qualified to furnish these services and which are needed to evaluate and stabilize an emergency medical or dental condition.

“*HAWK-I program*” or “*program*” shall mean the healthy and well kids in Iowa program implemented in this chapter to provide health and dental care coverage to eligible children.

“*Health insurance coverage*” shall mean health insurance coverage as defined in ~~42 U.S.C. Section 300gg(c)~~ 45 CFR Section 144.103, as amended to October 1, 2008.

“*Provider*” shall mean an individual, firm, corporation, association, or institution that is providing or has been approved to provide medical or dental care or services to an enrollee pursuant to the HAWK-I program.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Adopt the following new definitions of “Dentist,” “Emergency dental condition” and “Participating dental plan” in rule **441—86.1(514I)**:

“*Dentist*” shall mean a person who is licensed to practice dentistry in Iowa as provided in Iowa Code chapter 153.

“*Emergency dental condition*” shall mean an oral condition that occurs suddenly and creates an urgent need for professional consultation or treatment. Emergency conditions may include hemorrhage, infection, pain, broken teeth, knocked-out teeth, or other trauma.

“*Participating dental plan*” shall mean any entity licensed by the division of insurance of the department of commerce to provide dental insurance in Iowa that has contracted with the department to provide dental insurance coverage to eligible children under this chapter.

ITEM 4. Amend subrule 86.2(11) as follows:

**86.2(11) *Preexisting ~~medical~~ conditions.*** The child shall not be denied eligibility based on the presence of a preexisting medical or dental condition.

ITEM 5. Amend rule 441—86.6(514I) as follows:

**441—86.6(514I) Selection of a plan.** At the time of initial application, if there is more than one participating health or dental plan available in the child’s county of residence, the applicant shall select the health or dental plan in which the applicant wishes to enroll as part of the eligibility process. The enrollee may change plans only at the time of the annual review unless the provisions of subrule 86.7(1) or paragraph 86.6(2)“a” apply. The applicant may designate the plan choice verbally or in writing. Form 470-3574, Selection of Plan, may be used for this purpose but is not required.

**86.6(1) *Coverage in another county’s health plan.*** If a child traditionally travels to another county to receive medical care, the applicant may choose to participate in the health plan available in the county in which the child receives medical care.

**86.6(2) *Period of enrollment.*** Once enrolled in a health or dental plan, the child shall remain enrolled in the selected health or dental plan for a period of 12 months unless:

*a.* There is a substantial change in the provider panel of the health or dental plan originally chosen, as determined by the board. A substantial change means, but is not limited to, loss of a contracted hospital or provider group. When there is another participating health or dental plan available in the child’s county of residence, the child may disenroll from the current health or dental plan and enroll in the other health or dental plan.

*b.* The child is disenrolled in accordance with the provisions of rule 441—86.7(514I). If a child is disenrolled from the health or dental plan and subsequently reapplies before the end of the original 12-month enrollment period, the child shall be enrolled in the health or dental plan from which the child was originally disenrolled unless the provisions of subrule 86.7(1) apply.

*c.* No change.

**86.6(3) *Failure to select a health or dental plan.*** When more than one health or dental plan is available, if the applicant fails to select a health or dental plan within ten working days of the written request to make a selection, the third-party administrator shall select the health or dental plan and notify the family of the enrollment. The third-party administrator shall select the plan on a rotating basis to ensure an equitable distribution between participating health and dental plans.

*a.* If the third-party administrator has assigned a child a health or dental plan, the family has 30 days to request enrollment into another participating health or dental plan. All changes shall be made prospectively and shall be effective on the first day of the month following the month of the request.

*b.* If the family has not requested a change of enrollment into another available health or dental plan within 30 days, the provisions of 86.6(2) shall apply.

**86.6(4) *Child moves from the service area.*** The child may be disenrolled from the health or dental plan when the child moves to an area of the state in which the health or dental plan does not have a provider network established. If the child is disenrolled, the child shall be enrolled in a participating health or dental plan in the new location. The period of enrollment shall be the number of months remaining in the original certification period.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**86.6(5) *Change at annual review.*** If more than one health or dental plan is available at the time of the annual review of eligibility, the family may designate another plan either verbally or in writing. Form 470-3574, Selection of Plan, may be used for this purpose. The child shall remain enrolled in the current health or dental plan if the family does not notify the third-party administrator of a new health or dental plan choice by the end of the current 12-month enrollment period.

ITEM 6. Amend rule 441—86.7(514I) as follows:

**441—86.7(514I) ~~Disenrollment~~ Cancellation.** ~~The child~~ child's eligibility for the HAWK-I program shall be ~~disenrolled from the selected plan prior to~~ canceled before the end of the 12-month enrollment period for any of the following:

**86.7(1) ~~Child moves from the service area.~~** ~~The child may be disenrolled from the plan when the child moves to an area of the state in which the plan does not have a provider network established. If the child is disenrolled, the child shall be enrolled in a participating plan in the new location. The period of enrollment shall be the number of months remaining in the original certification period.~~

**86.7(2) *Age.*** The child shall be ~~disenrolled from the plan and~~ canceled from the HAWK-I program as of the first day of the month following the month in which the child attained the age of 19.

**86.7(3) *Nonpayment of premiums.*** The child shall be ~~disenrolled from the plan and~~ canceled from the program as of the first day of the month in which premiums are not paid in accordance with the provisions of subrules 86.8(3) and 86.8(5).

**86.7(4) *Iowa residence abandoned.*** The child shall be ~~disenrolled from the plan and~~ canceled from the program as of the first day of the month following the month in which the child relocated to another state. ~~A child Eligibility shall not be disenrolled canceled~~ when the child is temporarily absent from the state in accordance with the provisions of subrule 86.2(6).

**86.7(5) *Eligible for Medicaid.*** The child shall be ~~disenrolled from the plan and~~ canceled from the program as of the first day of the month following the month in which the third-party administrator is notified of Medicaid eligibility. If there are months during which the child is covered by both the Medicaid and HAWK-I programs, the HAWK-I program shall be the primary payor and Medicaid shall be the payor of last resort.

**86.7(6) *Enrolled in other health insurance coverage.*** The child shall be ~~disenrolled~~ canceled from the ~~plan~~ program as of the first day of the month following the month in which the third-party administrator is notified that the child has other health or dental insurance coverage. If the child has obtained only health insurance coverage, dental coverage may continue under the supplemental dental program in accordance with the provisions of rule 441—86.20(514I). If there are months during which the child is covered by both another insurance plan and the HAWK-I program, the other insurance plan shall be the primary payor and HAWK-I shall be the payor of last resort.

**86.7(7) *Admission to a nonmedical public institution.*** The child shall be ~~disenrolled from the plan and~~ canceled from the program as of the first day of the month following the month in which the child enters a nonmedical public institution unless the temporary absence provisions of paragraph 86.2(3) "d" apply.

**86.7(8) *Admission to an institution for mental disease.*** The child shall be ~~disenrolled from the plan and~~ canceled from the program if the child is a patient in an institution for mental disease at the time of annual review.

**86.7(9) *Employment with the state of Iowa.*** The child shall be ~~disenrolled from the plan and~~ canceled from the HAWK-I program as of the first day of the month in which the child's parent became eligible to participate in a health or dental plan available to state of Iowa employees.

ITEM 7. Amend subrule 86.8(2), introductory paragraph, as follows:

**86.8(2) *Premium amount.*** ~~Premiums~~ Except as specified for supplemental dental-only coverage in subrule 86.20(4), premiums under the HAWK-I program shall be assessed as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 8. Amend subparagraph **86.8(3)“b”(2)** as follows:

(2) All premiums due must be paid before the child will be enrolled for coverage. When the premium is received, the third-party administrator shall notify the ~~plan~~ health and dental plans of the enrollment.

ITEM 9. Amend paragraph **86.8(3)“c”** as follows:

*c. Subsequent payments.* All subsequent premiums are due by the tenth day of each month for the next month's coverage and must be postmarked no later than the last day of the month before the month of coverage. Failure to pay the premium by the last day of the month before the month of coverage shall result in ~~disenrollment~~ cancellation from the ~~plan~~ program. Premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

ITEM 10. Amend subrule 86.8(6) as follows:

**86.8(6) Failure to pay premium.** Failure to pay the premium in accordance with subrules 86.8(3) and 86.8(5) shall result in ~~disenrollment from the plan and~~ cancellation from the program unless the reinstatement provisions of subrule 86.8(4) apply. Once a child is ~~disenrolled and~~ canceled from the program due to nonpayment of premiums, the family must reapply for coverage.

ITEM 11. Rescind and reserve subrule **86.9(3)**.

ITEM 12. Amend paragraph **86.13(2)“c”** as follows:

*c.* Participating health and dental plan information.

ITEM 13. Amend paragraph **86.13(6)“f”** as follows:

*f.* Notifying the health and dental plans when the number of enrollees who speak the same non-English language equals or exceeds 10 percent of the number of enrollees in the health or dental plan.

ITEM 14. Amend subrules 86.13(8) to 86.13(10) as follows:

**86.13(8) Selection of health or dental plan.** The third-party administrator shall provide participating health and dental plan information to families of eligible children by telephone or mail and, if necessary, offer unbiased assistance in the selection of a health or dental plan in accordance with the provisions of rule 441—86.6(514I).

**86.13(9) Enrollment.** The third-party administrator shall notify participating health and dental plans of enrollments.

**86.13(10) Disenrollments.** The third-party administrator shall disenroll an enrollee when the enrollee's eligibility for the HAWK-I program is canceled in accordance with the provisions of rule 441—86.7(514I). The third-party administrator shall notify the participating ~~health plan~~ health and dental plans when an enrollee is disenrolled.

ITEM 15. Amend subrule 86.14(1) as follows:

**86.14(1) Required medical services.** The participating health plan shall cover at a minimum the following medically necessary services:

*a. to k.* No change.

~~*l.* —Dental services (including restorative and preventative services).~~

*m. and n.* No change.

ITEM 16. Adopt the following new subrule 86.14(3):

**86.14(3) Required dental services.** Participating dental plans shall cover at a minimum the following necessary dental services:

*a.* Diagnostic and preventive services.

*b.* Routine and restorative services.

*c.* Endodontic services.

*d.* Periodontal services.

*e.* Cast restorations.

*f.* Prosthetics.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 17. Amend rule 441—86.15(514I) as follows:

**441—86.15(514I) Participating health and dental plans.**

**86.15(1) Licensure.** The participating health or dental plan must:

a. ~~be~~ Be licensed by the division of insurance of the department of commerce to provide health or dental care coverage in Iowa; or

b. ~~be~~ Be an organized delivery system licensed by the director of public health to provide health or dental care coverage.

**86.15(2) Services.** The participating health or dental plan shall provide ~~health-care~~ coverage for the services specified in rule 441—86.14(514I) to all children determined eligible by the third-party administrator.

a. The participating health or dental plan shall make services it provides to HAWK-I enrollees at least as accessible to the enrollees (in terms of timeliness, duration and scope) as those services are accessible to other commercial enrollees in the area served by the health or dental plan.

b. No change.

c. If a participating health or dental plan does not provide statewide coverage, the health or dental plan shall participate in every county within the region in which the health or dental plan has contracted to provide services in which it is licensed and in which a provider network has been established. Regions are specified in rule 441—86.1(514I).

**86.15(3) Premium tax.** Premiums paid to participating health and dental plans by the third-party administrator are exempt from premium tax.

**86.15(4) Provider network.** The participating health or dental plan shall establish a network of providers. Providers contracting with the participating health or dental plan shall comply with HAWK-I requirements, which shall include collecting copayments, if applicable.

**86.15(5) ~~Medical Identification~~ cards.** ~~Medical identification~~ Identification cards shall be issued by the participating health or dental plan to the enrollees for use in securing covered services.

**86.15(6) Marketing.**

a. Participating health and dental plans may not distribute directly or through an agent or independent contractor any marketing materials.

b. No change.

c. At a minimum, participating health and dental plans must provide the following material in writing or electronically:

(1) No change.

(2) All health and dental plan literature and brochures shall be available in English and any other language when enrollment in the health or dental plan by enrollees who speak the same non-English language equals or exceeds 10 percent of all enrollees in the health or dental plan and shall be made available to the third-party administrator for distribution.

d. All health and dental plan literature and brochures shall be approved by the department.

e. The participating health and dental plans shall not, directly or indirectly, conduct door-to-door, telephonic, or other “cold-call” marketing.

f. The participating health or dental plan may make marketing presentations at the discretion of the department.

**86.15(7) Appeal process.** The participating health or dental plan shall have a written procedure by which enrollees may appeal issues concerning the health or dental care services provided through providers contracted with the health or dental plan and which:

a. to d. No change.

e. Ensures that the decision be made by a physician, dentist, or clinical peer not previously involved in the case.

f. to h. No change.

i. Ensures that the participating health or dental plan’s written appeal procedures be provided to each newly covered enrollee.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*j.* Requires that the participating health or dental plan make quarterly reports to the department summarizing appeals and resolutions.

**86.15(8)** *Appeals to the department.* Rescinded IAB 1/13/99, effective 1/1/99.

**86.15(9)** *Records and reports.* The participating health ~~plan~~ and dental plans shall maintain records and reports as follows:

*a.* The health or dental plan shall comply with the provisions of rule 441—79.3(249A) regarding maintenance and retention of clinical and fiscal records and shall file a letter with the commissioner of insurance as described in Iowa Code section 228.7. In addition, the health or dental plan or subcontractor of the health or dental plan, as appropriate, must maintain a medical or dental records system that:

- (1) Identifies each medical or dental record by HAWK-I enrollee identification number.
- (2) Maintains a complete medical or dental record for each enrollee.
- (3) Provides a specific medical or dental record on demand.
- (4) No change.

(5) Maintains the confidentiality of medical or dental records information and releases the information only in accordance with established policy below:

1. All medical and dental records of the enrollee shall be confidential and shall not be released without the written consent of the enrollee or responsible party.

2. Written consent is not required for the transmission of medical or dental records information to physicians, dentists, other practitioners, or facilities that are providing services to enrollees under a subcontract with the health or dental plan. This provision also applies to specialty providers who are retained by the health or dental plan to provide services which are infrequently used, which provide a support system service to the operation of the health or dental plan, or which are of an unusual nature. This provision is also intended to waive the need for written consent for department staff and the third-party administrator assisting in the administration of the program, reviewers from the peer review organization (PRO), monitoring authorities from the Centers for Medicare and Medicaid Services (CMS), the health or dental plan itself, and other subcontractors which require information as described under numbered paragraph “5” below.

3. Written consent is not required for the transmission of medical or dental records information to physicians, dentists, or facilities providing emergency care pursuant to paragraph 86.15(2) “b.”

4. Written consent is required for the transmission of the medical or dental records information of a former enrollee to any physician or dentist not connected with the health or dental plan.

5. The extent of medical or dental records information to be released in each instance shall be based upon a test of medical or dental necessity and a “need to know” on the part of the practitioner or a facility requesting the information.

6. Medical and dental records maintained by subcontractors shall meet the requirements of this rule.

EXCEPTION: Written consent is required for the transmission of medical records relating to substance abuse, HIV, or mental health treatment in accordance with state and federal laws.

*b.* Each health or dental plan shall provide at a minimum reports and plan information to the third-party administrator as follows:

- (1) A list of providers of ~~medical~~ services under the plan.
- ~~(2) Rescinded IAB 10/17/01, effective 12/1/01.~~
- ~~(3) Rescinded IAB 10/17/01, effective 12/1/01.~~
- ~~(4) Rescinded IAB 10/17/01, effective 12/1/01.~~
- ~~(5)~~ (2) Encounter data on a monthly basis as required by the department.
- ~~(6) Rescinded IAB 10/17/01, effective 12/1/01.~~
- ~~(7)~~ (3) Other information as directed by the department.

*c.* Each health or dental plan shall at a minimum provide reports and health or dental plan information to the department as follows:

- (1) to (5) No change.

**86.15(10)** *Systems.* The participating health or dental plan shall maintain data files that are compatible with the department’s and third-party administrator’s systems.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**86.15(11)** *Payment to the participating health or dental plan.*

*a.* In consideration for all services rendered by a health or dental plan, the health or dental plan shall receive a payment each month for each enrollee. This capitation rate represents the total obligation of the department with respect to the costs of medical or dental care and services provided to the enrollees.

*b.* No change.

*c.* The capitation rate does not include any amounts for the recoupment of losses suffered by the health or dental plan for risks assumed under the current or any previous contract. The health or dental plan accepts the rate as payment in full for the contracted services. Any savings realized by the health or dental plan due to lower utilization from a less frequent incidence of health or dental problems among the enrolled population shall be wholly retained by the health or dental plan.

*d.* If an enrollee has third-party coverage or a responsible party other than the HAWK-I program available for purposes of payment for medical or dental expenses, it is the right and responsibility of the health or dental plan to investigate these third-party resources and attempt to obtain payment. The health or dental plan shall retain all funds collected through third-party sources. A complete record of all income from these sources must be maintained and made available to the department.

**86.15(12)** *Quality assurance.* The health or dental plan shall have in effect an internal quality assurance system.

ITEM 18. Amend rule 441—86.19(514I) as follows:

**441—86.19(514I) Recovery.****86.19(1)** *Definitions.*

“*Administrative error*” means an action attributed to the department or to the HAWK-I third-party administrator that results in incorrect payment of benefits, including premiums paid to a health or dental plan, due to one or more of the following circumstances:

1. to 9. No change.

“*Client error*” means an intentional or negligent action attributed to the enrollee that results in incorrect payment of benefits, including premiums paid to a health or dental plan, because the enrollee or the enrollee’s representative:

1. and 2. No change.

**86.19(2)** *Amount subject to recovery from the enrollee or representative.* The department may recover from the enrollee or the enrollee’s representative the amount of premiums incorrectly paid to a health or dental plan on behalf of the enrollee due to client error, minus any premium payments made by the enrollee, in accordance with 441—Chapter 11.

*a.* Premiums incorrectly paid to a health or dental plan on behalf of an enrollee due to an administrative error are not subject to recovery from the enrollee.

*b.* Payments made by a health or dental plan to a provider of medical or dental services are not subject to recovery from the enrollee regardless of the cause of the error.

**86.19(3)** to **86.19(5)** No change.

ITEM 19. Adopt the following **new** rule 441—86.20(514I):

**441—86.20(514I) Supplemental dental-only coverage.****86.20(1)** *Definition.*

“*Supplemental dental-only coverage*” means dental care coverage provided to a child who meets the eligibility requirements for the HAWK-I program except that the child is covered by health insurance through an individual or group health plan.

**86.20(2)** *Eligibility.* Unless otherwise specified, eligibility for supplemental dental-only coverage shall be determined in accordance with the provisions of rules 441—86.1(514I) through 441—86.12(514I), 441—86.18(514I), and 441—86.19(514I).

**86.20(3)** *Insured status.* The child may be enrolled in an individual or group health plan. However, a child who is currently enrolled in an individual or group dental plan is not eligible to participate in the supplemental dental-only coverage.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**86.20(4) Premiums.** Premiums for participation in the supplemental dental-only plan are assessed as follows:

- a. No premium is charged to families who meet the provisions of paragraph 86.8(2) "a."
- b. If the family's gross countable income is equal to or exceeds 150 percent of the federal poverty level but does not exceed 200 percent of the federal poverty level for a family of the same size, the premium is \$5 per child per month with a \$10 monthly maximum per family.
- c. If the family's gross countable income is equal to or exceeds 200 percent of the federal poverty level but does not exceed 250 percent of the federal poverty level for a family of the same size, the premium is \$10 per child per month with a \$15 monthly maximum per family.
- d. If the family's gross countable income is equal to or exceeds 250 percent of the federal poverty level but does not exceed 300 percent of the federal poverty level for a family of the same size, the premium is \$15 per child per month with a \$20 monthly maximum per family.
- e. If the family includes uninsured children who are eligible for both medical and dental coverage under HAWK-I and insured children who are eligible only for dental coverage, the premium shall be assessed as follows:
  - (1) The total premium shall be no more than the amount that the family would pay if all the children were eligible for both medical and dental coverage.
  - (2) If the family has one child eligible for both medical and dental coverage and one child eligible for dental coverage only, the premium shall be the total of the health and dental premium for one child and the dental premium for one child.
  - (3) If the family has two or more children eligible for both medical and dental coverage, no additional premium shall be assessed for dental-only coverage for the children who do not qualify for medical coverage under HAWK-I because they are covered by health insurance.

ITEM 20. Amend **441—Chapter 86**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 514I as amended by 2009 Iowa Acts, Senate File 389.

**ARC 8128B**

**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 514I.5, the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

This amendment implements a one-month delay in benefits when health insurance has ended during the month of application for HAWK-I or Medicaid benefits or during the five preceding months for a child whose family's countable income equals or exceeds 200 percent of the federal poverty level. The amendment specifies conditions when the delay does not apply, including situations when the reason the insurance ended was out of the family's control.

The intent of this provision is to provide a disincentive for families who drop health insurance coverage for their children and then apply for aid. The federal Centers for Medicare and Medicaid Services has informed the Department that a strategy to avoid this phenomenon (called "crowd out") must be implemented as a condition of approval for the HAWK-I State Plan amendment to expand income eligibility to families whose countable limit is up to 300 percent of the federal poverty level.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment provides for waiver of the waiting period in several 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).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 8127B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before September 29, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment is intended to implement Iowa Code chapter 514I.

**ARC 8110B****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 514I.5, the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

The proposed amendments require that, as a condition of eligibility for HAWK-I, applicants and enrollees shall:

- Attest to and provide acceptable proof of their citizenship status and identity; and
- Provide a social security number.

Public Law 111-3, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), requires the state to verify the citizenship status and identity of all children applying for or enrolling in the HAWK-I program. One method permitted for verifying citizenship status is conducting a match with Social Security Administration data. A social security number is not currently required for HAWK-I eligibility but will be necessary to conduct a match with Social Security Administration data.

Verification of citizenship and identity and provision of a social security number have been required in the Medicaid program for a number of years. These amendments are parallel to the Medicaid requirements. These amendments do not change the classifications of noncitizen children who are eligible to enroll in the program (e.g., lawful permanent residents, refugees).

Other than an exception for people who refuse to obtain social security numbers due to sincere religious beliefs, these amendments do not provide for waivers in specified situations, because the Department does not have the authority to waive federal requirements.

Any interested person may make written comments on the proposed amendments on or before September 29, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code chapter 514I and Public Law 111-3.

The following amendments are proposed.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule 86.2(7) as follows:

**86.2(7) *Citizenship and alien status.*** The child shall be a citizen or lawfully admitted alien. The criteria established under 441—subrule 75.11(2) shall be followed when determining whether a lawfully admitted alien child is eligible to participate in the HAWK-I program.

a. The citizenship or alien status of the parents or other responsible person shall not be considered when determining the eligibility of the child to participate in the program.

b. As a condition of eligibility for HAWK-I:

(1) All applicants shall attest to their citizenship status by signing the application form, which contains a citizenship declaration. EXCEPTION: Applicants applying pursuant to subrule 86.3(6) shall instead complete and sign Form 470-2549, Statement of Citizenship Status.

(2) When a child under the age of 19 is not living independently, the child's parent or other responsible person with whom the child lives shall be responsible for attesting to the child's citizenship or alien status and for providing any required proof of the status.

c. Except as provided in 441—paragraph 75.11(2)“f,” applicants or enrollees for whom an attestation of United States citizenship has been made pursuant to paragraph 86.2(7)“b” shall present satisfactory documentation of citizenship or nationality as defined in 441—paragraphs 75.11(2)“d,” “e,” “g,” and “h.”

d. An applicant or enrollee shall have a reasonable period to obtain and provide proof of citizenship and nationality. For the purposes of this requirement, the “reasonable period” begins on the date a written request to obtain and provide proof is issued to an applicant or enrollee and continues to the date the proof is provided or to the sixtieth calendar day from the date the written request was issued.

e. Eligibility for HAWK-I shall not be approved for applicants until acceptable documentary evidence is provided.

f. Failure to provide acceptable documentary evidence by the sixtieth calendar day from the date the written request was issued pursuant to paragraph 86.2(7)“d” shall be the basis for denial of coverage under HAWK-I for the child.

g. Failure to provide acceptable documentary evidence for a child shall not affect the eligibility of other children in the family for whom acceptable documentary evidence has been provided.

ITEM 2. Adopt the following **new** subrule 86.2(12):

**86.2(12) *Furnishing a social security number.***

a. As a condition of eligibility, a social security number or proof of application for the number if the number has not been issued or is not known must be furnished for a child for whom coverage under HAWK-I is being requested or received.

(1) When proof of application for a social security number has been provided, the number must be reported upon receipt.

(2) The requirement to provide a social security number does not apply if the person refuses to obtain a social security number because of well-established religious objections. The term “well-established religious objections” means that the person is a member of a recognized religious sect or a division of a recognized religious sect and adheres to the tenets or teachings of the sect or division, and for that reason is conscientiously opposed to applying for or using a national identification number.

b. Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of a social security number when the applicant or enrollee is cooperating in providing information necessary for issuance of the number.

c. The mother of a newborn child shall have until the second month following the mother's discharge from the hospital to apply for a social security number for the child.

d. A social security number may be requested for a person in the family for whom coverage under HAWK-I is not being requested or received, but provision of the number shall not be a condition of eligibility for the applicant or enrollee.

**ARC 8118B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 237A.12 and 2009 Iowa Acts, Senate File 478, sections 208 and 210, the Department of Human Services proposes to amend Chapter 109, "Child Care Centers," Iowa Administrative Code.

The proposed amendments would:

- Implement regulatory fees for issuing child care center licenses;
- Set fees for Department processing of criminal and child abuse record checks;
- Require national criminal history checks based on fingerprints for all persons subject to record checks due to involvement in child care at a licensed center;
- Require centers to have a protocol to handle incidents of biting;
- Require that center volunteers be at least 16 years old; and
- Clarify policy on interim permission for a new facility to open without a license and for training requirements for center directors.

Implementation of regulatory fees based on a child care center's capacity is required by 2009 Iowa Acts, Senate File 478, section 208. Under the proposed amendments, fee amounts would range from \$50 for a center with the capacity to care for up to 20 children to \$150 for a center with the capacity to care for more than 150 children. Fees would be payable before a full or provisional license is issued. Due to the required determination of capacity, the Department will notify each center of the amount of the fee and the due date. Fees will be in effect for relicensures with an effective date on or after June 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after April 1, 2010.

Section 209 of 2009 Iowa Acts, Senate File 478, amends Iowa Code section 237A.5 to require national criminal history checks through the Federal Bureau of Investigation and to specify that the Department shall not be responsible for the cost of these record checks. This requirement shall be phased in as centers are licensed or relicensed beginning January 1, 2010. Centers are responsible for obtaining and submitting fingerprints of staff and others required to have record checks. Training in taking fingerprints is expected to be offered by the Department of Public Safety. A person who has passed state record checks may begin involvement with child care pending the response to the national criminal history check.

Although the amendments set a fee for state record checks made through the Department, it is anticipated that most facilities will conduct record checks directly through the state's "single contact repository" (SING). The single contact repository allows facilities electronic access to criminal and abuse registry information through one contact, instead of requiring separate requests to each agency. To use SING, centers will need to set up business accounts with the Department of Public Safety. In order to reduce duplicate expenses for national record checks when a person moves to another facility, the rules provide that one child care center may forward specified information about these checks to another center upon request.

The amendments clarify that the Department's standard procedure is to issue Form 470-4690, Permission to Open Without a License, to a new center when compliance with administrative requirements is established and then to complete other aspects of the licensing inspection process after the center begins operation.

The amendments also clarify that training requirements for all center directors are the same as for full-time staff, regardless of whether the director is considered full-time or part-time.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

The requirement for a protocol about biting is intended to promote better outcomes when biting occurs, since biting often leads to children being injured and to child abuse assessments.

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). However, the Department does not have authority to waive statutory provisions.

Any interested person may make written comments on the proposed amendments on or before September 29, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

The Department will also hold a public hearing for the purpose of receiving comments on these proposed amendments on Tuesday, September 29, 2009, from 1 to 3 p.m. in the Assembly Room at the Department for the Blind, 524 Fourth Street, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Analysis and Appeals at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement 2009 Iowa Acts, Senate File 478, Division XVII, and Iowa Code chapter 237A.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Regulatory fee” in rule **441—109.1(237A)**:

“*Regulatory fee*” means the amount payable to the department for licensure of a child care center based on the capacity of the center.

ITEM 2. Amend paragraphs **109.2(1)“c”** and **“d”** as follows:

c. When a center makes a sufficient application for an initial ~~or renewal~~ license, it may operate for a period of up to 120 calendar days from the date of issuance of Form 470-4690, Permission to Open Without a License, pending a final licensing decision. A center has made a sufficient application when it has submitted the following to the department:

(1) to (4) No change.

d. Applicants shall be notified of approval or denial of initial applications within 120 days from the date the application is submitted.

(1) If the applicant has been issued Form 470-4690, Permission to Open Without a License, the applicant shall be notified of approval or denial within 120 calendar days of the date of issuance of Form 470-4690.

(2) No full or provisional license shall be issued before payment of the applicable regulatory fee as determined pursuant to subrule 109.2(7).

ITEM 3. Amend paragraph **109.2(2)“a”** as follows:

a. An applicant showing full compliance with center licensing laws and these rules, including department approval of center plans and procedures and submission of the regulatory fee as specified in subrule 109.2(7) to the department by the date due, shall be issued a license for 24 months. In determining whether or not a center is in compliance with the intent of a licensing standard outlined in this chapter, the department shall make the final decision.

ITEM 4. Adopt the following **new** paragraph **109.2(4)“f”**:

f. The regulatory fee as specified in subrule 109.2(7) is not received by the department's division of fiscal management by the due date indicated on Form 470-4834, Child Care Center Licensing Fee Invoice.

ITEM 5. Adopt the following **new** subrule 109.2(7):

**109.2(7) Regulatory fees.** For relicensures with an effective date on or after June 1, 2010, as indicated on the license certificate, and for initial applications for licensure submitted on or after April 1, 2010, a fee based upon center capacity is due to the department before the issuance of the license in accordance with this subrule.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

a. *Fee structure.* The amount of the fee is based on the capacity of the center as follows:

Center Capacity	Fee Amount
0 to 20 children	\$50
21 to 50 children	\$75
51 to 100 children	\$100
101 to 150 children	\$125
151 or more children	\$150

b. *Determination of capacity.* The licensing consultant shall determine center capacity by dividing the amount of usable space by the amount of space required per child, as specified in subrule 109.11(1) and subparagraphs 109.11(3)“a”(2) and (3). Upon approval by the department, the final determination of center capacity may include evaluation of other factors that influence capacity, as long as physical space requirements per child as defined in subrule 109.11(1) and subparagraphs 109.11(3)“a”(2) and (3) are maintained.

c. *Notification.* Upon final determination of center capacity by the licensing consultant, the licensing consultant or designee shall sign and provide Form 470-4834, Child Care Center Licensing Fee Invoice, to the center. Form 470-4834 will indicate:

- (1) The center’s name,
- (2) The center’s tax identification number,
- (3) The center’s address,
- (4) The center’s final licensing capacity,
- (5) The center’s regulatory fee amount, and
- (6) The date the fee is due to the department.

d. *Payment.* The center shall return Form 470-4834 to the department with the licensing fee payment within 30 state business days from the date of the licensing consultant’s or designee’s signature on Form 470-4834. Payment may be in the form of cash, money order, or cashier’s check.

- (1) Payment must be received before the department will issue a full or provisional license.
- (2) Regulatory fees are nonrefundable and nontransferable.

ITEM 6. Adopt the following **new** paragraph **109.4(2)“g”**:

g. Develop and implement a protocol for responding to incidents of biting.

ITEM 7. Amend subrule 109.6(5) as follows:

**109.6(5) *Volunteers and substitutes.*** A volunteer shall be at least 16 years of age.

a. No change.

b. The center shall have the volunteer or substitute:

(1) Complete Form 595-1396, DHS Criminal History Record Check, Form B, or any other permission form approved by the department of public safety for conducting an Iowa criminal history record check.

~~(2) Complete Form 470-0643, Request for Child Abuse Information.~~

~~(2)~~ (2) Sign a statement indicating the volunteer or substitute has been informed of the volunteer’s or substitute’s responsibilities as a mandatory reporter.

ITEM 8. Amend subrule 109.6(6) as follows:

**109.6(6) *Record checks.*** ~~The department shall conduct criminal~~ Criminal and child abuse record checks ~~in Iowa shall be conducted~~ for each owner, director, staff member, volunteer, or subcontracted staff person with direct responsibility for child care or with access to a child when the child is alone and for anyone living in the child care facility who is 14 years of age or older. ~~The department may use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check Form B, or any other form required for criminal and child abuse record checks. The department may also conduct criminal and child abuse record checks in other states and may conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa or in other states. The~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

center shall keep copies of the results of all record checks, including department-issued documents sent to the center related to a records check conducted under this subrule, regardless of findings, for review by the department upon request.

a. Iowa records. Checks and evaluations of Iowa child abuse and criminal records, including the sex offender registry, shall be completed before the person's involvement with child care at the center. Iowa records checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any transgressions.

(1) The child care center may access the single contact repository (SING) as necessary to conduct a criminal and child abuse record check of the person in Iowa. If the results of the check indicate that the person has committed a transgression, the facility shall send a copy of the results to the department for determination of whether or not the person may be involved with child care, regardless of the person's status with the center.

(2) Unless a record check has already been conducted in accordance with subparagraph (1), the department shall conduct a criminal and child abuse record check in Iowa for a person who is subject to a record check. The department may access SING as necessary to conduct criminal and child abuse record checks in Iowa. The department may also conduct dependent adult abuse, sex offender, and other public or civil offense record checks in Iowa.

(3) The department or the child care center may use Form 470-0643, Request for Child Abuse Information, for child abuse record checks and Form 595-1396, DHS Criminal History Record Check Form B, or any other form approved by the department of public safety for criminal record checks.

(4) The cost of conducting the Iowa records checks is the responsibility of the child care center or, as permitted by law, of the person who is the subject of the records check. When the department conducts Iowa records checks in accordance with this paragraph, the center shall submit to the department a fee for each record check before the department initiates the record check process. The fee shall be \$25 through June 30, 2010, and \$35 effective July 1, 2010. Payment must be in the form of cash, money order, or cashier's check.

b. National criminal history records. National criminal history checks based on fingerprints are required effective with a center's initial licensure or relicensure on or after January 1, 2010. When this requirement goes into effect for a center, national criminal history checks are required for all persons subject to record checks under this subrule who are currently involved with child care at the center and for persons newly considered for involvement with child care on or after that date. The center shall submit all required fingerprints before the issuance of the license and before renewal of the license. Centers that have a relicensure date of January 1, 2010, shall have until February 1, 2010, to submit the fingerprints to the department of public safety.

(1) A national criminal history check shall be performed before or upon an individual's involvement with child care. If the results of record checks performed under paragraph 109.6(6) "a" or 109.6(6) "c" do not warrant prohibition of the person's involvement with child care or otherwise present protective concerns, the person may be involved with child care on a provisional basis until the national criminal history check and evaluation have been completed. The national criminal history check shall be repeated every four years and when the department or center becomes aware of any new transgressions committed in another state.

(2) The child care center shall provide fingerprints for submission through the state criminal history repository to the United States Department of Justice, Federal Bureau of Investigation. The child care center is responsible for obtaining the materials necessary for the fingerprinting process and for submitting the fingerprints to the Iowa department of public safety.

(3) The cost of conducting the national criminal history check is the responsibility of the child care center or, as permitted by law, of the person who is the subject of the national criminal history check.

(4) If the results of the national criminal history check indicate that the person has committed a transgression, the center shall send a copy of the results of the records check to the department for determination of whether or not the person may be involved with child care, regardless of the person's status with the center.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(5) A center considering involvement of a person who has had a national criminal history check at another center may request information from that center. That center (or the department if the department's evaluation was performed after the person was no longer being considered for involvement with child care at that center) shall provide the following information in writing upon a center's request:

1. Date of most recent national criminal history check conducted on the person in question by the center, and

2. Whether or not the results of the check or any subsequent evaluations from that check resulted in clearance for involvement with child care.

c. Other states' records. The department may conduct a dependent adult abuse, sex offender registry, or other public or civil offense records check in other states for a person who is subject to a record check before the person's involvement with child care and when the department or center becomes aware of any transgressions in another state. When the department conducts records checks in accordance with this paragraph, the center shall submit a fee to the department before the department initiates the record check process. The fee shall be \$25 through June 30, 2010, and \$35 effective July 1, 2010. Payment must be in the form of cash, money order, or cashier's check.

~~a. d.~~ Mandatory prohibition. A person with the following convictions or founded abuse reports is prohibited from involvement with child care:

(1) to (6) No change.

~~b. e.~~ Mandatory time-limited prohibition.

(1) No change.

(2) After the five-year prohibition period from the date of the conviction or the founded abuse report as defined in subparagraph ~~109.6(6) "b" (4)~~ 109.6(6) "e" (1), the person may request the department to perform an evaluation under paragraph ~~109.6(6) "e"~~ 109.6(6) "f" to determine whether prohibition of the person's involvement with child care continues to be warranted.

~~e. f.~~ Evaluation required. For all other transgressions, and as requested under subparagraph ~~109.6(6) "b" (2)~~ 109.6(6) "e" (2), the department shall notify the affected person and the licensee that an evaluation shall be conducted to determine whether prohibition of the person's involvement with child care is warranted.

(1) to (3) No change.

~~a. g.~~ Evaluation decision. Within 30 days of receipt of a completed Form 470-2310, Record Check Evaluation, the department shall make a decision on the person's involvement with child care. The department has final authority in determining whether prohibition of the person's involvement with child care is warranted and in developing any conditional requirements and corrective action plan under this paragraph.

(1) to (4) No change.

~~e. h.~~ Notice to parents. The department shall notify the parent, guardian, or legal custodian of each child for whom the person provides child care if there has been a founded child abuse ~~record against~~ 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 of each child for whom the facility provides child care.

~~f. — Repeat of record checks.~~ The child abuse and criminal record checks shall be repeated at a minimum of every two years and when the department or the center becomes aware of any transgressions. Any new transgressions discovered shall be handled in accordance with this subrule.

ITEM 9. Amend subrule 109.7(2) as follows:

109.7(2) Staff Center directors and staff employed 20 hours or more per week. The requirements of this subrule apply to all center directors, regardless of whether the director works on a full-time or part-time basis.

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

(1) to (6) No change.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

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

(1) to (3) No change.

ITEM 10. Amend subrule 109.9(1) as follows:

**109.9(1) *Personnel records.*** The center shall maintain personnel information sufficient to ensure that persons employed in the center meet minimum staff and training requirements and do not pose any threat to the health, safety, or well-being of the children. Each employee's file shall contain, at a minimum, the following:

a. A statement signed by each individual indicating whether or not the individual has any conviction ~~by~~ of violating any law of in any state or ~~if the individual~~ has any record of founded child abuse or dependent adult abuse in any state.

b. Copies of all records checks kept in accordance with state and federal law regarding confidentiality of records checks. These records may include:

(1) A copy of Form 595-1396, DHS Criminal History Record Check, Form B, or any other permission form approved by the department of public safety for conducting an Iowa criminal history record check. The center shall complete the form and forward it to the department before the start of employment.

~~ε-~~ (2) A copy of Form 470-0643, Request for Child Abuse Information.

(3) Copies of the results of Iowa records checks conducted through SING for review by the department upon request.

(4) Copies of national criminal history check results.

c. Reserved.

d. to f. No change.

**ARC 8144B**

## **INSURANCE DIVISION[191]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 505.8 and 522B.16B and 18 U.S.C. Section 1033, the Iowa Insurance Division hereby gives Notice of Intended Action to adopt a new Chapter 13, "Consent for Prohibited Persons to Engage in the Business of Insurance," Iowa Administrative Code.

18 U.S.C. Section 1033 (the "Act") provides, in part, that no person who has been convicted of a felony involving dishonesty or breach of trust or an offense under the Act shall engage in the business of insurance without having first obtained the consent of the insurance commissioner of the person's resident state. Proposed Chapter 13 sets out the requirements, procedures and fees relating to how such persons may obtain the required consent of the Iowa Insurance Commissioner. The Division intends that the new chapter will become effective December 9, 2009, and that insurance companies, producers, and individuals shall comply with the rules beginning January 1, 2010.

Any interested person may make suggestions or comments on this proposed new chapter on or before October 1, 2009. Such materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing at 2 p.m. on October 1, 2009, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319, at which time persons may present their views

## INSURANCE DIVISION[191](cont'd)

either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the new chapter.

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

These rules are intended to implement Iowa Code chapter 505, Iowa Code section 522B.16B and 18 U.S.C. Section 1033.

The following amendment is proposed.

Adopt the following **new** 191—Chapter 13:

CHAPTER 13  
CONSENT FOR PROHIBITED PERSONS  
TO ENGAGE IN THE BUSINESS OF INSURANCE

**191—13.1(505,522B) Purpose and authority.** The purpose of these rules is to implement the provisions of 18 U.S.C. Section 1033 and Iowa Code section 522B.16B. The Iowa insurance commissioner has jurisdiction under 18 U.S.C. Section 1033 to grant requests for consent to engage in the business of insurance.

**191—13.2(505,522B) Definitions.** For the purpose of this chapter, the following definitions shall apply:

“*Act*” means the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, H.R. 3355; 18 U.S.C. Sections 1033 and 1034.

“*Applicant*” means any person subject to the provisions of 18 U.S.C. Sections 1033 and 1034 who files an application for consent to engage in the business of insurance.

“*Breach of trust*” means any criminal act or an element of a criminal act by an applicant, including but not limited to an act that constitutes or involves misuse, misapplication or misappropriation of the following:

1. Anything of value held as a fiduciary, where “fiduciary” includes, but is not limited to, a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director or public servant; or

2. Anything of value of any public, private or charitable organization.

“*Business of insurance*” means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activity of persons who are or who act as officers, directors, agents, or employees of insurers, producers or any other persons authorized to act on behalf of such persons, including an independent contractor of an insurer that is conducting the business of insurance on behalf of the insurer.

“*Commissioner*” means the Iowa insurance commissioner or the commissioner’s designee.

“*Consent*” means the written consent issued by the commissioner for a prohibited person to engage in the business of insurance in Iowa.

“*Dishonesty*” means any criminal act which includes, but is not limited to, any offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations or the failure to disclose material facts.

“*Division*” means the Iowa insurance division.

“*Felony*” means the following:

1. A federal crime for which the maximum authorized punishment exceeds one year of imprisonment; or

2. A crime in any state or country that is identified as a felony in that state or country or, if not identified as a felony in that other state or country, any offense for which the maximum authorized punishment exceeds one year of incarceration.

“*Insurer*” means any entity that is engaged in or that transacts the business of insurance or that reinsures risks and includes any person who is or who acts as an officer, director, agent or employee of that business.

## INSURANCE DIVISION[191](cont'd)

“*License*” means any license, registration, certificate of authority or other permit or approval issued or granted by the commissioner.

“*Prohibited person*” means any person who is a resident of Iowa and who has been convicted of any felony crime involving dishonesty or breach of trust in a state or federal jurisdiction or who has been convicted of any violation of the Act.

“*Request for consent*” means a completed application, submitted by a prohibited person, that requests the commissioner’s consent to allow that prohibited person to engage in or transact, or to continue to engage in or transact, the business of insurance in Iowa.

“*State*” for the purposes of this rule, includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands.

**191—13.3(505,522B) Requirement for prohibited persons to obtain consent.**

**13.3(1)** A prohibited person shall not engage in or transact the business of insurance in the state of Iowa without the consent of the commissioner of insurance of the person’s resident state.

**13.3(2)** A prohibited person who is a resident of Iowa must receive a consent from the commissioner before the division will consider any application or request for a license, certification, certificate of authority, or other permit or approval issued or granted by the division related to doing the business of insurance in Iowa.

**13.3(3)** A prohibited person engaging in or transacting the business of insurance in Iowa without the consent of the insurance commissioner of the person’s resident state is in violation of these rules, is subject to the penalties of this chapter, and risks federal criminal and civil sanctions and penalties.

**191—13.4(505,522B) Applications for consent.** The prohibited person must file with the division an application for consent as set forth in this rule.

**13.4(1)** Except as provided in subrule 13.4(2), a prohibited person who is, or seeks to be, employed in any capacity in the business of insurance in Iowa shall complete and file an application for consent using the “Short Form Application for Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. § 1033 and 1034.” The form is available on the division’s Web site at [www.iid.state.ia.us](http://www.iid.state.ia.us) or is available by request from the division.

**13.4(2)** The commissioner may at any time request additional information from an applicant to support a pending application for consent. Failure to provide such information is grounds for denial of the application.

**13.4(3)** An application must include:

*a.* Two 2” by 2” recent passport-type photographs attached to the upper right-hand corner of the first page of the application for consent.

*b.* A certified copy of the applicant’s criminal history record both from the applicant’s state of residence and from the state in which the felony was committed if different from the state of residence. A Record Check Request form may be obtained from the Iowa division of criminal investigation at: [www.state.ia.us/government/dps/dci/crimhist.htm](http://www.state.ia.us/government/dps/dci/crimhist.htm).

*c.* A certified copy of court documents that demonstrate completion and performance of all conditions imposed by the court.

*d.* An affidavit from the immediate supervisor or potential immediate supervisor for the entity that employs the applicant or that seeks to employ the applicant stating in detail the duties and responsibilities which the applicant will perform and for which the applicant seeks consent.

*e.* Any other relevant documents or information that the prohibited person would like to have considered.

**13.4(4)** Upon the occurrence of any event that would change any answer on the application, an amendment must be promptly filed. Failure to file an amendment may result in denial of the request for consent or the immediate suspension or revocation of a previously granted consent.

## INSURANCE DIVISION[191](cont'd)

**191—13.5(505,522B) Consideration of applications for consent.**

**13.5(1)** The commissioner shall have the sole discretion to grant or deny an application for consent to engage in or transact the business of insurance.

**13.5(2)** Each decision of whether or not to grant consent to engage in the business of insurance to a prohibited person will be handled on a case-by-case basis. Factors to be considered include, but are not limited to, the following:

- a.* The nature and severity of the crime;
- b.* The length of time since the conviction;
- c.* The injury or loss caused by the prohibited person;
- d.* Whether the conviction is related to the business of insurance;
- e.* Whether the prohibited person received a pardon from the authority that convicted the person and whether the pardon was granted due to the innocence of the person;
- f.* Whether the prohibited person completed parole or probation;
- g.* Whether a breach of trust or dishonesty was involved;
- h.* The nature and strength of character reference letters;
- i.* The person's business and personal records before and after the conviction;
- j.* Whether and to what extent the person has made material false statements in an application, renewal or other documents filed with the commissioner;
- k.* Whether and to what extent the person has made material false statements in applications or other documents filed with other state or federal agencies;
- l.* Whether the prohibited person's conviction was expunged;
- m.* Whether or not the person received the conviction in a foreign country; and
- n.* Any additional relevant factors.

**191—13.6(505,522B) Review of application by the division.**

**13.6(1)** A completed application shall be reviewed by the commissioner, and the following shall be considered:

- a.* The information submitted by the applicant;
- b.* The factors set forth in subrule 13.5(2); and
- c.* Any mitigating or aggravating circumstances.

**13.6(2)** At the commissioner's discretion, the commissioner may convene a hearing to receive evidence and testimony about the application.

**13.6(3)** If the commissioner determines that the applicant does not seem to constitute a significant threat to the public, the commissioner shall issue the consent and specify its scope.

**13.6(4)** If the commissioner determines that the applicant does seem to constitute a significant threat to the public, the commissioner shall deny the application. Notice of the denial shall be sent to the applicant via certified mail to the address on record with the division, return receipt requested. The prohibited person shall have 30 days to request a hearing with the commissioner.

**13.6(5)** The application and materials supplied with the application or at the request of the division and any information obtained by the division during the course of its review shall be considered information submitted to the insurance division or obtained by the insurance division in the course of an investigation for purposes of Iowa Code section 505.8(8), and the commissioner shall keep such information confidential. A consent issued by the commissioner shall be deemed a public record for purposes of Iowa Code chapter 22; however, Iowa Code section 505.8(9) also shall apply.

**191—13.7(505,522B) Consent effective for specified positions and responsibilities only.** A consent issued by the commissioner shall be effective only so long as the prohibited person remains in the same or similar job position with the same or similar responsibilities to which the person attested in the initial request for consent. A material change in job responsibilities requires the prohibited person to file an amended request for consent.

INSURANCE DIVISION[191](cont'd)

**191—13.8(505,522B) Change in circumstances.**

**13.8(1) Failure to disclose.** In the event that the division determines that the prohibited person receiving the consent made materially false or misleading statements, or failed to disclose material information in the application for consent, the consent shall be suspended or revoked. The prohibited person shall have 30 days to request a hearing with the commissioner.

**13.8(2) New felony.**

*a.* A prohibited person who previously received consent from the commissioner to participate in the business of insurance shall immediately notify the division if that person is subsequently convicted of an offense under the Act, or of any felony offense involving dishonesty or breach of trust.

*b.* The entry of a new conviction shall automatically terminate the prior consent.

*c.* When the division becomes aware of the new conviction, it will inform the prohibited person in writing, via certified mail to the address on record with the division, return receipt requested, that the consent previously issued has been revoked.

*d.* The prohibited person may seek a new consent from the commissioner pursuant to the Act and to this chapter after reporting the new conviction.

**13.8(3) Violation of terms of consent.** If the commissioner determines that a prohibited person has violated the terms of a consent, the commissioner shall immediately terminate the consent. The prohibited person shall have 30 days to request a hearing with the commissioner.

**13.8(4) Suspension of insurance producer license.** The commissioner may summarily suspend the insurance producer license of a prohibited person for any of the actions described in subrule 13.8(1), 13.8(2) or 13.8(3), if the person has been issued a license by the division. A hearing shall be scheduled in accordance with Iowa Code chapter 17A to determine whether the person's license should be revoked.

**191—13.9(505,522B) Burden of proof.** The burden of proof of persuasion and of the production of evidence at a hearing regarding a request for consent is on the prohibited person. The person shall have to demonstrate by clear and convincing evidence that the person is not a threat to the public interest and public safety.

**191—13.10(505,522B) Violations and penalties.** A prohibited person who engages in the business of insurance without the consent of the commissioner or otherwise in violation of this chapter shall be deemed to be in violation of Iowa Code section 522B.2 and subject to the penalties provided in Iowa Code section 522B.17.

These rules are intended to implement Iowa Code chapter 505, Iowa Code section 522B.16B and 18 U.S.C. Section 1033.

**ARC 8132B**

**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 chapter 249G, Iowa Code sections 505.8, 522B.18 and 514G.111, Iowa Code section 514H.9 as amended by 2009 Iowa Acts, House File 723, section 21, and Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 39, "Long-Term Care Insurance," and Chapter 72, "Long-Term Care Asset Preservation Program," Iowa Administrative Code.

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The rules in Chapter 39 implement Iowa Code chapter 514G to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverage, and to facilitate flexibility and innovation in the development of long-term care insurance.

The proposed amendments to Chapter 39 add new Division III, which is intended to implement Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723, and Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171, to establish, in conjunction with the Iowa Department of Human Services, a long-term care partnership program in Iowa to provide for financing of long-term care through a combination of private insurance and medical assistance. The proposed amendments also change the training required of insurance producers who wish to sell long-term care insurance to include training regarding the long-term care partnership program. The proposed amendments change the term “agent” to “producer,” where appropriate, to be consistent with other chapters in the Iowa Code and Iowa Administrative Code, particularly Iowa Code chapter 422B and 191—Chapters 10 and 11. Finally, the proposed amendments prohibit the issuance of insurance policies under the Iowa long-term care asset preservation program in 191—Chapter 72 on or after January 1, 2010. The Insurance Division intends that the amendments will become effective November 25, 2009, and intends that Iowa insurance companies and producers shall comply with the long-term care insurance rules beginning January 1, 2010.

Any interested person may make suggestions or comments on these proposed amendments on or before October 1, 2009. Such materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on October 1, 2009, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapters 514G and 522B, Iowa Code section 514G.111, Iowa Code section 514H.9 as amended by 2009 Iowa Acts, House File 723, section 21, and Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171.

The following amendments are proposed.

ITEM 1. Amend subrule 39.6(7), introductory paragraph, as follows:

**39.6(7)** *Electronic enrollment for group policies.* In the case of a group defined in Iowa Code section 514G.4(4), any requirement that a signature of an insured be obtained by ~~an agent~~ a producer or insurer shall be deemed satisfied if:

ITEM 2. Amend subrule 39.11(1), introductory paragraph, as follows:

**39.11(1)** Application forms shall include the following questions designed to elicit information whether, as of the date of the application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and ~~agent~~ producer, except where the coverage is sold without ~~an agent~~ a producer, containing such questions may be used. With regard to a replacement policy issued to a group defined by Iowa Code section 514G.4(5) “a,” the following questions may be modified only to the extent necessary to elicit information about health or long-term care insurance policies other than the group policy being replaced; provided, however, that the certificate holder has been notified of the replacement.

ITEM 3. Amend subrule 39.11(2), introductory paragraph, as follows:

**39.11(2)** ~~Agents~~ Producers shall list any other health insurance policies they have sold to the applicant.

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ITEM 4. Strike “agent” wherever it appears in subrules **39.11(3)** and **39.11(4)** and insert “producer” in lieu thereof.

ITEM 5. Amend paragraph **39.15(1)“a”** as follows:

a. Establish marketing procedures to ensure that any comparison of policies by its ~~agents~~ producers or by other producers will be fair and accurate.

ITEM 6. Amend paragraph **39.15(2)“c”** as follows:

c. *Cold-lead advertising.* Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance ~~agent~~ producer or insurance company.

ITEM 7. Amend subparagraph **39.15(3)“b”(5)**, numbered paragraph “2,” as follows:

2. Actively monitor the marketing efforts of the insurer and its ~~agents~~ producers; and

ITEM 8. Rescind subrule 39.15(4) and adopt the following **new** subrule in lieu thereof:

**39.15(4) Producer training requirements.**

a. *Purpose.* The purpose of this subrule is to require certain specific minimum training for insurance producers who wish to sell long-term care insurance in Iowa. This additional training is necessary due to the complex nature of long-term care insurance products and to ensure that insurance producers are able to determine whether long-term care insurance products are suitable for consumers and that producers are able to adequately explain to consumers how the long-term care insurance products work. The ultimate goal of this subrule is to ensure that purchasers of long-term care insurance products understand basic features of the products.

(1) This subrule applies to all long-term care insurance products sold on or after January 1, 2010.

(2) For purposes of this subrule, “credit” and “CE term” shall mean the same as defined in rule 191—11.2(505,522B).

b. *Required training.*

(1) An individual may not sell, solicit or negotiate long-term care insurance unless the individual is licensed as an insurance producer with an accident and health or sickness line of authority and has completed a one-time training course and ongoing training every CE term thereafter. The training shall meet the requirements set forth in paragraph 39.15(4)“c.”

(2) The training content of paragraph 39.15(4)“c” must be approved as continuing education courses under 191—Chapter 11, except that:

1. Requests for approval of any course, program of study, or subject shall be filed directly with the division at [ltcapproval@iid.iowa.gov](mailto:ltcapproval@iid.iowa.gov), rather than with any outside vendor retained by the division for course reviews pursuant to 191—subrule 11.5(2); and

2. The initial training required under subparagraph 39.15(4)“b”(1) must be classroom training. However, a CE provider may apply directly to the division and request that a self-study or on-line course be approved as a substitute. Ongoing training may be by any means allowable under 191—Chapter 11.

c. *Training content.*

(1) The one-time training required by this subrule shall be no less than eight credits and the ongoing training required by this subrule shall be no less than four credits, except that producers who have completed four credits of long-term care training prior to [insert the effective date of these amendments] shall complete only four credits of one-time training specifically related to the long-term care partnership program and Iowa-specific Medicaid requirements.

(2) The training required under subparagraph (1) shall consist of topics related to long-term care insurance, long-term care services and qualified state long-term care insurance partnership programs, including, but not limited to:

1. State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including Medicaid requirements;

2. Available long-term care services and providers;

3. Changes or improvements in long-term care services or providers;

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4. Alternatives to the purchase of private long-term care insurance;
5. The effect of inflation on benefits and the importance of inflation protection;
6. Consumer suitability standards and guidelines;
7. The Deficit Reduction Act;
8. Iowa's laws regarding the long-term care partnership program;
9. The Iowa Medicaid program;
10. Miller trusts;
11. Spousal protection;
12. Transfer of assets;
13. Estate recovery;
14. Eligibility;
15. Special marketing and reporting requirements under the partnership law; and
16. Requirements of the Iowa department of human services.

(3) The training required by this subrule shall not include training that is specific to a single insurer or company product or that includes any sales or marketing information, materials, or training, other than those required by state or federal law.

*d. Requirements for insurers.*

(1) Insurers subject to this chapter shall obtain verification that a producer has received training required by subparagraph 39.15(4) "b"(1) before a producer is permitted to sell, solicit or negotiate the insurer's long-term care insurance products; shall make verifications available to the division upon request; and shall maintain records subject to the state's record retention requirements.

(2) Each insurer subject to this chapter shall maintain records with respect to the training of its producers concerning the distribution of its partnership policies that will allow the division to provide assurance to the Iowa department of human services that producers have received the training set forth in subparagraph 39.15(4) "c"(2), numbered paragraph "1," as required by subparagraph 39.15(4) "b"(1) and that producers have demonstrated an understanding of the partnership policies and the policies' relationship to public and private coverage of long-term care, including Medicaid, in this state. These records shall be maintained in accordance with the state's record retention requirements and shall be made available to the division upon request.

*e. Training obtained in other states.* The satisfaction of the training requirements in any state shall be deemed to satisfy the training requirements in this state.

ITEM 9. Amend paragraph **39.16(2)"b"** as follows:

*b.* Train its ~~agents~~ producers in the use of its suitability standards; and

ITEM 10. Amend subrule 39.16(3), introductory paragraph, as follows:

**39.16(3)** To determine whether the applicant meets the standards developed by the issuer, the ~~agent~~ producer and issuer shall develop procedures that take into consideration the following:

ITEM 11. Amend subrule 39.16(4) as follows:

**39.16(4)** The issuer, and, when ~~an agent~~ a producer is involved, the ~~agent producer~~, shall make reasonable efforts to obtain the information set out in subrule 39.16(3). The efforts shall include presentation of the "Long-Term Care Insurance Personal Worksheet" to the applicant, at the time of or prior to application. The personal worksheet used by the issuer shall contain, at a minimum, the information in the format contained in Appendix B, in not less than 12-point type. The issuer may request the applicant to provide additional information to comply with its suitability standards. A copy of the issuer's personal worksheet shall be filed with the commissioner.

A completed personal worksheet shall be returned to the issuer prior to the issuer's consideration of the applicant for coverage, except the personal worksheet need not be returned for sales of employer group long-term care insurance to employees and their spouses.

The sale or dissemination outside the company or agency by the issuer or ~~agent~~ producer of information obtained through the personal worksheet in Appendix B is prohibited.

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ITEM 12. Amend subrule 39.16(6) as follows:

**39.16(6)** ~~Agents~~ Producers shall use the suitability standards developed by the issuer in marketing long-term care insurance.

ITEM 13. Amend subrule 39.18(2) as follows:

**39.18(2)** In the case of ~~agent~~ producer solicitations, ~~an agent~~ a producer must deliver the outline of coverage prior to the presentation of an application or enrollment form.

ITEM 14. Strike “agents” wherever it appears in subrule **39.18(9)** and insert “producers” in lieu thereof.

ITEM 15. Amend paragraph **39.19(1)“a”** as follows:

*a.* In the case of ~~agent~~ producer solicitations, ~~an agent~~ a producer must deliver the shopper’s guide to the applicant at the time of application.

ITEM 16. Amend subrule 39.24(4) as follows:

**39.24(4)** No long-term care insurance policy or certificate may be field-issued based on medical or health status. For purposes of this subrule, “field-issued” means a policy or certificate issued by ~~an agent~~ a producer or a third-party administrator pursuant to the underwriting authority granted to the ~~agent~~ producer or third-party administrator by an insurer.

ITEM 17. Amend rule 191—39.27(514G) as follows:

**191—39.27(514G) Reporting requirements.**

**39.27(1)** Every insurer shall maintain for each ~~agent~~ producer records of that ~~agent’s~~ producer’s amount of replacement sales as a percent of the ~~agent’s~~ producer’s total annual sales and the amount of lapses of long-term care insurance policies sold by the ~~agent~~ producer as a percent of the ~~agent’s~~ producer’s total annual sales.

**39.27(2)** Every insurer shall report annually by June 30 the 10 percent of its ~~agents~~ producers with the greatest percentages of lapses and replacements as measured by subrule 39.27(1) in the format prescribed in Appendix G.

**39.27(3)** Reported replacement and lapse rates do not alone constitute a violation of insurance laws or necessarily imply wrongdoing. The reports are for the purpose of reviewing more closely ~~agent~~ producer activities regarding the sale of long-term care insurance.

**39.27(4) to 39.27(8)** No change.

ITEM 18. Reserve rules **191—39.56** to **191—39.74**.

ITEM 19. Adopt the following new division heading in **191—Chapter 39**:

DIVISION III  
LONG-TERM CARE PARTNERSHIP PROGRAM

ITEM 20. Adopt the following new rules 191—39.75(514H,83GA,HF723) to 191—39.86(514H,83GA,HF723):

**191—39.75(514H,83GA,HF723) Purpose.**

**39.75(1)** This division is intended to implement Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723, and Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171, to establish, in conjunction with the department of human services, a long-term care partnership program in Iowa to provide for financing of long-term care through a combination of private insurance and medical assistance.

**39.75(2)** The Iowa long-term care partnership program shall:

*a.* Provide incentive for individuals to insure against the costs of providing for long-term care needs;

*b.* Provide a mechanism for individuals to qualify for coverage under medical assistance while having certain assets disregarded for eligibility determinations and recovery; and

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c. Reduce the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives using qualified long-term care partnership policies or certificates.

**191—39.76(514H,83GA,HF723) Effective date.** The rules in this division shall apply to all long-term care policies or certificates sold or issued for delivery on or after January 1, 2010.

**191—39.77(514H,83GA,HF723) Definitions.** For purposes of this division, the definitions in Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723, and the definitions in rule 191—39.4(514G) shall apply. In addition, the following definitions shall apply:

“*Asset disregard*” means, with regard to the state's medical assistance program, disregarding assets in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a qualified long-term care partnership policy.

“*CE*” means “continuing education” as defined in Iowa Code chapter 522B.

“*CE provider*” means any individual or entity that is approved to offer continuing education courses in Iowa.

“*Division*” means the Iowa insurance division.

“*Iowa long-term care partnership policy*” or “*partnership policy*” means an insurance policy that meets the following requirements:

1. The policy covers an insured who, when coverage first became effective under the policy, was a resident of Iowa or was an individual eligible under subrule 39.78(2).

2. The policy is a qualified long-term care insurance policy as defined in Section 7702B(b) of the Internal Revenue Code of 1986 and was issued no earlier than January 1, 2010.

3. The policy meets all of the applicable requirements of this chapter and Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723.

4. The division has certified the policy as meeting the requirements of the following: Section 1917(b) of the Social Security Act, 42 U.S.C. 1396p; Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171; and any applicable federal regulations or guidelines.

5. The policy provides the following inflation protections:

- For a person who is less than 61 years of age as of the date of purchase of the policy or date of issuance of the certificate, the policy provides either annual compounded inflation protection of not less than 3 percent or annual compounded inflation protection of not less than a rate based on changes in the consumer price index. “Consumer price index” means consumer price index for all urban consumers, U.S. city average, all items, as determined by the Bureau of Labor Statistics of the United States Department of Labor.

- For a person who is at least 61 years of age but less than 76 years of age as of the date of purchase of the policy or date of issuance of the certificate, the policy provides either an inflation feature that meets the requirements of this definition, paragraph “4,” first bulleted paragraph, or an automatic inflation feature that provides annual simple inflation increases at a rate not less than 3 percent.

- For a person who is at least 76 years of age as of the date of purchase of the policy or date of issuance of the certificate, an inflation protection feature may be included in the policy but is not required.

“*Long-term care partnership program*” means a qualified state long-term care insurance partnership as defined in Section 1917(b) of the Social Security Act, 42 U.S.C. 1396p; Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171; and Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723.

“*Medicaid*” means the program of medical assistance operated by the Iowa department of human services under Title XIX of the federal Social Security Act, 42 U.S.C. 1396 et seq., and amendments thereto.

**191—39.78(514H,83GA,HF723) Eligibility.**

**39.78(1)** An individual who is a beneficiary of an Iowa long-term care partnership policy or certificate may be eligible for assistance under the state's medical assistance program using the asset disregard as provided under rule 191—39.80(514H,83GA,HF723).

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**39.78(2)** An individual who is a beneficiary of a long-term care partnership policy or certificate issued in another state which grants reciprocity to an Iowan who moves to that state is eligible for benefits under Iowa's medical assistance program using the asset disregard as provided in rule 191—39.80(514H,83GA,HF723). For purposes of this subrule, "reciprocity" means the granting of all the benefits by one state to an individual who becomes a resident of that state but purchased a long-term care partnership policy while residing in another state.

**191—39.79(514H,83GA,HF723) Discontinuance of partnership program.** If the Iowa long-term care partnership program established by this division and Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723, is discontinued, any individual who purchased an Iowa long-term care partnership policy or certificate before the date the program was discontinued shall be eligible to receive asset disregard if allowed as provided by Title VI, Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171.

**191—39.80(514H,83GA,HF723) Required disclosures.**

**39.80(1)** An insurer or a producer soliciting or offering to sell a partnership policy shall provide to each prospective applicant a Partnership Program Notice. The notice must be substantially similar to Appendix H of this chapter. The Partnership Program Notice shall be provided with the required Outline of Coverage.

**39.80(2)** An insurer or a producer soliciting or offering to sell a partnership policy shall provide to each prospective applicant a copy of the Iowa Long-Term Care Partnership Program Consumer Guide. The Iowa Long-Term Care Partnership Program Consumer Guide form may be found on the division's Web site, [www.iid.state.ia.us](http://www.iid.state.ia.us).

**39.80(3)** A partnership policy or certificate issued or issued for delivery in Iowa shall be accompanied by a Partnership Status Disclosure Notice (Appendix I). A similar notice may be used if filed with and approved by the division.

**191—39.81(514H,83GA,HF723) Form filings.**

**39.81(1)** A partnership policy shall not be issued or issued for delivery in Iowa unless filed with and approved by the division. Any policy submitted for certification as a partnership policy shall be accompanied by a Partnership Issuer Certification. The Partnership Issuer Certification form may be found on the division's Web site, [www.iid.state.ia.us](http://www.iid.state.ia.us). Insurance companies required to file rates or forms with the division shall submit required rate and form filings and any fees required for the filings electronically using the System for Electronic Rate and Form Filing (SERFF). Insurance companies must comply with the division's requirements, including both the Iowa general instructions and the specific submission requirements for the type of insurance for which the companies are submitting forms or rates, as set forth on the SERFF Web site at [www.serff.org](http://www.serff.org).

**39.81(2)** Insurers may request to make use of a previously approved policy form as a qualified state long-term care partnership policy. Requests shall be filed electronically via SERFF and according to instructions on the SERFF Web site.

**191—39.82(514H,83GA,HF723) Exchanges.**

**39.82(1)** An insurer must offer, on a one-time basis, in writing, to all existing policyholders that were issued long-term care policies between February 1, 2003, and January 1, 2010, the option to exchange their existing long-term care policies for an Iowa long-term care partnership policy.

**39.82(2)** Under an exchange program, an insurer must comply with all of the following:

*a.* The mandatory offer of an exchange shall apply only to products issued by the insurer that are comparable to the type of policy, such as group policies and individual policies and on the policy series that the company has certified as partnership qualified.

*b.* An insurer must provide the insured a minimum of 90 days from the date of mailing of the offer by the insurer to accept or reject the offer.

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*c.* An insurer must make the offer on a nondiscriminatory basis without regard to the age or health status of the insured. However, the insurer may underwrite if the policy is amended to provide additional benefits or if the exchange would require the issuance of a new policy, except as described in paragraph 39.82(2) “*d*” below. Any portion of the policy that was issued prior to the exchange date shall be priced based on the policyholder’s age when the policy was originally issued. Any portion of the policy that is added as a result of the exchange may be priced based on the policyholder’s age at the time of the exchange.

*d.* If there is no change in coverage that is material to the risk, policies exchanged under this rule shall not be subject to any medical underwriting.

*e.* Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the policy or certificate being replaced.

*f.* Any portion of the policy that was issued prior to the exchange date shall maintain the policy’s original price based on the policyholder’s age when the policy was originally issued. Any portion of the policy that is added as a result of the exchange may be priced based on the policyholder’s age at the time of the exchange.

*g.* Where the policy is issued to a group, the offer required in paragraph 39.82(2) “*a*” shall be made to the group policyholder.

*h.* Notwithstanding paragraphs 39.82(2) “*a*” and “*c*,” an insurer is not required to offer an exchange to an individual who is eligible for benefits within an elimination period, who is or who has been in claim status, or who would not be eligible to apply for coverage due to issue age or plan design limitations under the new policy. The insurer may require that policyholders meet all eligibility requirements, including plan design, underwriting, if applicable, and payment of the required premium.

**39.82(3)** Policies issued pursuant to this rule shall be considered exchanges and not replacements and are not subject to rule 191—39.11(514D,514G).

**39.82(4)** A policy received in an exchange after January 1, 2010, is treated as newly issued and is eligible for long-term care partnership policy status. For purposes of applying the Medicaid rules relating to Iowa’s long-term care partnership program, the addition of a rider, endorsement or change in schedule page for a policy may be treated as giving rise to an exchange.

**39.82(5)** An insurer or a producer offering an exchange shall provide to each prospective applicant a Partnership Program Notice, as required by subrule 39.80(1), and a copy of the Iowa Long-Term Care Partnership Program Consumer Guide, as required by subrule 39.80(2). An insurer issuing or issuing for delivery in Iowa an exchange shall provide the policyholder or certificate holder a Partnership Status Disclosure Notice, as required by subrule 39.80(3).

**191—39.83(514H,83GA,HF723) Required policy terms and disclosures.**

**39.83(1)** A policy or certificate designed or marketed as a long-term care partnership policy or certificate must prominently disclose on the schedule page the following statements:

“This [policy or certificate] is intended to meet the standards for the long-term care partnership program in this state;

“Nothing in this [policy or certificate] is a guarantee of Medicaid eligibility nor is it a guarantee of any ability to disregard assets for purposes of Medicaid eligibility. This notice is required by the state of Iowa.”

**39.83(2)** A long-term care insurance policy or certificate that is not designed or marketed as a partnership policy or certificate must prominently disclose that it is not a long-term care partnership policy or certificate.

**191—39.84(514H,83GA,HF723) Standards for marketing; suitability; and producer training required.**

**39.84(1)** The standards for marketing found in rule 191—39.15(514D,514G) and the suitability requirements of rule 191—39.16(514D,514G) shall apply to Division III.

**39.84(2)** Each producer who intends to market long-term care partnership policies in Iowa must complete the producer training requirements of subrule 39.15(4).

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**39.84(3)** Each insurer that markets partnership policies in Iowa shall verify that a producer receives training approved by the division pursuant to subrule 39.15(4) before the producer is permitted to sell, solicit, or negotiate the insurer's long-term care partnership insurance products. Insurers shall maintain records of compliance.

**39.84(4)** The division shall deem the satisfaction of training requirements in another state as satisfaction of the requirements of subrule 39.84(2) or 39.84(3).

**191—39.85(514H,83GA,HF723) Requirements for continuing education providers to provide long-term care partnership program training.** In addition to having been approved as a CE provider under rule 191—11.9(505,522B), a CE provider intending to provide either the initial training or the ongoing continuing education required under subrule 39.15(4) shall do the following:

**39.85(1)** Submit to the division an application for training that includes the CE provider's qualifications for teaching the specific topics and the CE provider and instructor qualifications listed on the division's Web site, [www.iid.state.ia.us](http://www.iid.state.ia.us).

**39.85(2)** Submit to the division details about the content of the courses the CE provider creates for the training.

*a.* The training topics shall not be the same as those set out in subrule 39.15(4), paragraph "d."

*b.* The initial training must be classroom training. However, the CE provider may apply directly to the division and request that a self-study or on-line course be approved as a substitute. Ongoing training may be by any means allowable under 191—Chapter 11.

*c.* The training shall follow the outline listed on the division's Web site, [www.iid.state.ia.us](http://www.iid.state.ia.us).

**39.85(3)** Both the CE provider and the course content must be approved by the division in writing before training can commence.

**39.85(4)** Approved partnership CE providers shall comply with rules 191—11.10(505,522B) and 191—11.11(505,522B).

**191—39.86(514H,83GA,HF723) Required reports.**

**39.86(1)** Each issuer of partnership-qualified long-term care insurance in this state shall provide regular reports to the Secretary of the United States Department of Health and Human Services in accordance with federal law and regulations and to the Iowa department of human services and the division as provided in Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171. The report shall include information listed in the State Long-Term Care Partnership, Insurer Reporting Requirements, Version 1.2, dated June 10, 2009, issued by the United States Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. Submission of the report to the Iowa department of human services or the division is not required if the issuer files the report through the Centers for Medicare and Medicaid Services filing system.

**39.86(2)** When a policyholder or certificate holder begins receiving any benefits under a policy, the issuer shall begin providing to the policyholder or certificate holder reports for every three-month period beginning with the month in which the first benefits were issued.

*a.* The first report shall include the following information:

- (1) The total benefits paid by the issuer during the prior three months for services rendered; and
- (2) A statement of which of those benefits paid qualify for asset disregard.

*b.* Each report after the first report shall include, in addition to the information required by paragraph 39.86(2) "a," the following information:

(1) The total amount of benefits issued prior to the report and the total benefits paid that qualify for asset disregard that were paid prior to the report; and

(2) The total benefits paid to date under the policy or certificate and the total benefits paid to date that qualify for asset disregard.

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ITEM 21. Strike “agent” wherever it appears in **191—Chapter 39**, Appendices B, C and G, and insert “producer” in lieu thereof.

ITEM 22. Adopt the following new Appendix H in **191—Chapter 39**:

## APPENDIX H

### Partnership Program Notice Important Consumer Information Regarding the Iowa Long-Term Care Insurance Partnership Program

Some long-term care insurance policies or certificates sold in Iowa may qualify for the Iowa Long-Term Care Partnership Program (the Partnership Program). The Partnership Program is a partnership between state government and private insurance companies to assist individuals in planning their long-term care needs. Insurance companies voluntarily agree to participate in the Partnership Program by offering long-term care insurance coverage that meets certain state and federal requirements. Long-term care insurance policies or certificates that qualify as Partnership policies or certificates may protect the policyholder’s or certificate holder’s assets through a feature known as “Asset Disregard” under Iowa’s Medicaid program.

Asset Disregard means that an amount of the policyholder’s or certificate holder’s assets equal to the amount of long-term care insurance benefits received under a qualified Partnership policy or certificate will be disregarded for the purpose of determining the insured’s eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified Partnership policy or certificate without affecting the person’s eligibility for Medicaid.

All other Medicaid eligibility criteria will apply, and special rules may apply to persons whose home equity exceeds \$500,000. Asset Disregard is not available under a long-term care insurance policy or certificate that is not a Partnership policy or certificate. Therefore, you should consider if Asset Disregard is important to you and whether a Partnership policy or certificate meets your needs. The purchase of a Partnership policy or certificate does not automatically qualify you for Medicaid. There are other eligibility requirements you must meet, including resource and income requirements.

What are the Requirements for a Partnership Policy or Certificate? In order for a policy or certificate to qualify as a Partnership policy or certificate, it must, among other requirements:

- Be issued to an individual on or after January 1, 2010;
- Be issued to an individual who is an Iowa resident when coverage first becomes effective under the policy;
- Be a tax-qualified policy under Section 7702B(b) of the Internal Revenue Code of 1986;
- Meet the following inflation protection requirements:
  - For a person less than 61 years of age – provides compound annual inflation protection
  - For a person at least 61 but less than 76 years of age – provides 3 percent inflation protection
  - For a person at least 76 years of age – inflation protection may be offered but is not required

If you apply and are approved for long-term care insurance coverage, [carrier name] will provide you with written documentation as to whether or not your policy or certificate qualifies as a Partnership policy or certificate.

What Could Disqualify a Policy or Certificate as a Partnership Policy or Certificate? Certain types of changes to a Partnership policy or certificate could affect whether or not such policy or certificate continues to be a Partnership policy or certificate. If you purchase a Partnership policy or certificate and later decide to make *any* changes, you should first consult with your insurance producer or insurance company to determine the effect of a proposed change. If you move to a state that does not have a Partnership Program or does not recognize your policy or certificate as a Partnership policy or certificate, you would not receive beneficial treatment of your policy or certificate under the Medicaid program of that state. The information contained in this disclosure is based on current Iowa and federal laws. These

INSURANCE DIVISION[191](cont'd)

laws may be subject to change. Any change in law could reduce or eliminate the beneficial treatment of your policy or certificate under Iowa's Medicaid program.

Additional Information If you have questions regarding the long-term care insurance policies or certificates, please contact [carrier name]. If you have questions regarding current laws governing Medicaid eligibility, you should contact the Iowa Department of Human Services (Sally Oudekerk, Medicaid Policy Specialist, Bureau of Medical Support, telephone number (515)281-3709, E-mail address [soudeke@dhs.state.ia.us](mailto:soudeke@dhs.state.ia.us)).

ITEM 23. Adopt the following new Appendix I in **191—Chapter 39**:

## APPENDIX I

### Partnership Status Disclosure Notice Important Information Regarding Your Policy's or Certificate's Long-Term Care Insurance Partnership Status

This disclosure notice is issued in conjunction with your long-term care policy:

Some long-term care insurance policies or certificates sold in Iowa qualify for the Iowa Long-Term Care Partnership Program. Long-term care insurance policies or certificates that qualify as Partnership policies or certificates may be entitled to special treatment, in particular as "Asset Disregard" under Iowa's Medicaid program.

Asset Disregard means that an amount of the policyholder's or certificate holder's assets equal to the amount of long-term care insurance benefits received under a qualified Partnership policy or certificate will be disregarded for the purpose of determining the insured's eligibility for Medicaid. This generally allows a person to keep assets equal to the insurance benefits received under a qualified Partnership policy or certificate without affecting the person's eligibility for Medicaid. All other Medicaid eligibility criteria will apply, and special rules may apply to persons whose home equity exceeds \$500,000. Asset Disregard is not available under a long-term care insurance policy or certificate that is not a Partnership policy or certificate. The purchase of a Partnership policy or certificate does not automatically qualify you for Medicaid. There are other eligibility requirements you must meet, including resource and income requirements.

Partnership Policy or Certificate Status Your long-term care insurance policy or certificate is intended to qualify as a Partnership policy or certificate under the Iowa Long-Term Care Partnership Program as of your policy's or certificate's effective date.

What Could Disqualify a Policy or Certificate as a Partnership Policy or Certificate? Certain types of changes to a Partnership policy or certificate could affect whether or not such policy or certificate continues to be a Partnership policy or certificate. If you purchase a Partnership policy or certificate and later decide to make *any* changes, you should first consult with your insurance producer or your insurance company to determine the effect of a proposed change. If you move to a state that does not maintain a Partnership Program or does not recognize your policy or certificate as a Partnership policy or certificate, you would not receive beneficial treatment of your policy or certificate under the Medicaid program of that state. The information contained in this disclosure is based on current Iowa and federal laws. These laws may be subject to change. Any change on law could reduce or eliminate the beneficial treatment of your policy or certificate under Iowa's Medicaid program.

Additional Information If you have questions regarding the long-term care insurance policies or certificates, please contact [carrier name]. If you have questions regarding current laws governing Medicaid eligibility, you should contact the Iowa Department of Human Services (Sally Oudekerk, Medicaid Policy Specialist, Bureau of Medical Support, telephone number (515)281-3709, E-mail address [soudeke@dhs.state.ia.us](mailto:soudeke@dhs.state.ia.us)).

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ITEM 24. Amend rule 191—72.2(249G) as follows:

**191—72.2(249G) Applicability and scope.** The requirements of this chapter apply to any long-term care insurance policy or certificate authorized for sale by the division of insurance as qualifying under the Iowa long-term care asset preservation program under Iowa Code chapter 249G. No long-term care insurance policy or certificate which has been approved by the division of insurance as a certified long-term care insurance policy or certificate under this chapter may be advertised, solicited, or issued for delivery in this state on or after January 1, 2010.

**ARC 8140B**

## INSURANCE DIVISION[191]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 505.8 and 510.9, the Insurance Division hereby gives Notice of Intended Action to rescind Chapter 58, "Third-Party Administrators," Iowa Administrative Code, and adopt a new chapter with the same title.

Chapter 58 implements Iowa Code chapter 510, which, in part, relates to the regulation of third-party administrators. The proposed amendment rescinds Chapter 58 and adopts a new chapter based on a proposed model regulation of the National Association of Insurance Commissioners. The Insurance Division intends that the rules will become effective December 9, 2009, and intends that third-party administrators operating in Iowa shall comply with the rules beginning January 1, 2010.

Any interested person may make suggestions or comments on these proposed rules on or before October 1, 2009. Such materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on October 1, 2009, at 1 p.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the new rules.

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

These rules are intended to implement Iowa Code chapters 505 and 510.

The following amendment is proposed.

Rescind 191—Chapter 58 and adopt the following **new** chapter in lieu thereof:

### CHAPTER 58

#### THIRD-PARTY ADMINISTRATORS

**191—58.1(510) Purpose.** The purpose of this chapter is to administer the provisions of Iowa Code chapter 510 relating to the regulation of third-party administrators.

**191—58.2(510) Definitions.** The terms defined in Iowa Code section 510.11 shall have the same meaning for the purposes of this chapter. In addition, for purposes of this chapter:

"*Affiliate*" or "*affiliates*" means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person. For purposes of this definition, "control" (including the terms "controls" or "controlled by") means the

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possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Iowa Code section 505.23 and Iowa Code chapter 521A that control does not exist in fact. The commissioner may determine, after furnishing notice and opportunity to be heard to all persons in interest and after making specific findings of fact to support the determination, that control exists in fact notwithstanding the absence of a presumption to that effect.

“*Commissioner*” means the commissioner of insurance for the state of Iowa.

“*Division*” means the Iowa insurance division.

“*Home state*” means the United States state or territory or the District of Columbia designated by a third-party administrator as its principal regulator, which shall be either its place of incorporation or its principal place of business within the United States. A third-party administrator may designate as its home state any United States jurisdiction in which it does business and which has adopted a law governing third-party administrators substantially similar to Iowa Code chapter 510 and this chapter.

“*Insurance producer*” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

“*Insurer*” means a person engaged in the business of insurance who is regulated under Iowa Code chapter 508, 512B, 515, or 520.

“*Nonresident third-party administrator*” means a person who is applying for licensure in Iowa, who is licensed in any state other than Iowa, and whose home state is not Iowa.

“*Person*” means any individual, aggregation of individuals, trust, association, partnership, or corporation or an affiliate of any of these.

“*Stop-loss*” or “*stop-loss insurance*” means insurance protecting an employer or other person responsible for an otherwise self-insured health or life benefit plan against higher than expected obligations under the plan.

“*Underwrites*” or “*underwriting*” or “*underwritten*” means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan, or the overall planning and coordinating of a benefits program.

**191—58.3(505,510) Registration required.** A third-party administrator shall not operate as a third-party administrator in Iowa without an approved certificate of registration from the division. A third-party administrator that has a home state other than Iowa must apply for and obtain a nonresident third-party administrator certificate of registration from the division before operating as a third-party administrator in Iowa.

**58.3(1) Exceptions.**

a. The following persons doing the following corresponding actions shall not be required to have approved certificates of registration from the division if these are the only actions by the persons that would otherwise cause the persons to be considered third-party administrators:

- (1) An employer administering its employee benefit plan or the plan of an affiliated employer under common management and control;
- (2) A union administering a benefit plan on behalf of its members;
- (3) An insurer authorized to transact life, annuity, health, or employee benefit stop-loss insurance in this state administering insurance coverage for its policyholders, subscribers or certificate holders;
- (4) An insurance producer selling insurance or engaged in related activities within the scope of the producer’s license;
- (5) A creditor acting on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
- (6) A trust and its trustees, agents and employees acting pursuant to such trust established in conformity with 29 U.S.C. Section 186;

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(7) A trust exempt from taxation under Section 507(a) of the Internal Revenue Code and its trustees and employees acting pursuant to such trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account that meets the requirements of Section 401(f) of the Internal Revenue Code;

(8) A credit union or a financial institution that is subject to supervision of examination by federal or state banking authorities, collecting or remitting premiums to licensed insurance producers or to limited lines producers or authorized insurers in connection with loan payments, or a mortgage lender doing such collecting or remitting;

(9) A credit card-issuing company advancing or collecting insurance premiums or charges from its credit card holders who have authorized collection;

(10) A person adjusting or settling claims in the normal course of that person's practice or employment as an attorney at law if that person does not collect charges or premiums in connection with insurance coverage; or

(11) A person licensed as a managing general agent in this state when acting within the scope of activities conveyed under such a license.

*b.* An insurer that underwrites, collects charges, collateral or premiums from, or adjusts or settles claims for other than its policyholders, subscribers and certificate holders is not required to be licensed as a third-party administrator and shall be exempt from rule 191—58.3(510), except that the insurer shall comply with paragraphs 58.3(1) "c," "e" and "f" and rules 191—58.6(505,510) and 191—58.7(505,510), if applicable.

*c.* A person shall not be required to have an approved certificate of registration from the division if that person is affiliated with a licensed insurer and that person only acts as a third-party administrator for the direct and assumed insurance business of the affiliated insurer, provided that the insurer acknowledges in writing to the insurance commissioner that the insurer is responsible for the acts of the third-party administrator and that the insurer will provide all of the third-party administrator's books and records to the insurance commissioner upon request.

*d.* A person shall not be required to have an approved certificate of registration from the division if that person only acts as a third-party administrator for a group plan based in another state that has fewer than 100 insureds under the plan residing in Iowa.

*e.* A person who is not required to be registered as a third-party administrator under Iowa Code chapter 510 or this chapter and who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, only in connection with life, annuity or health coverage provided by a self-funded plan other than a governmental or church plan, shall file a statement with the commissioner triannually, verifying the person's status as described herein. An example of such a statement may be found on the division's Web site, [www.iid.state.ia.us](http://www.iid.state.ia.us).

*f.* An administrator operating solely as a single-employer trust or Taft-Hartley labor union trust as defined under ERISA shall be required to file a statement triannually, verifying the administrator's status as described herein. An example of such a statement may be found on the division's Web site, [www.iid.state.ia.us](http://www.iid.state.ia.us).

**58.3(2) Application.**

*a.* All third-party administrators wishing to do business in Iowa shall electronically file a completed application and any required attachments in the form prescribed by the division. The application shall be accompanied by a filing fee as stated in rule 191—58.18(510).

*b.* Application for resident third-party administrator certificate of registration.

(1) All applications shall include evidence of the existence of a surety bond issued by an insurance company licensed to do business in the state of Iowa. The bond must be in an amount equivalent to 10 percent of the third-party administrator's average daily client account balance during the preceding calendar year. In no case shall the bond be less than \$50,000 or more than \$1,000,000. The surety bond shall be in the form prescribed by the commissioner. The bond shall be payable to the Iowa Insurance Division to ensure the financial protection of the third-party administrator's customers, subject to the dollar limitation of the surety bond.

## INSURANCE DIVISION[191](cont'd)

(2) An application by a third-party administrator that is a corporation, association or benefit society shall be accompanied by a certified copy of the articles of incorporation or association or a certification of good standing from the Iowa secretary of state.

*c.* Application for nonresident third-party administrator certificate of registration.

(1) A third-party administrator whose home state is not Iowa shall file with the division, in a manner acceptable to the division, a completed application and a certification from the home state that verifies that the applicant is in good standing in the home state.

(2) In lieu of requiring a third-party administrator to file a certification, the division may verify the nonresident third-party administrator's home state status through an electronic database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(3) A third-party administrator shall not be eligible for a nonresident third-party administrator certificate of registration under paragraph 58.3(2) "c" if the third-party administrator does not hold a certificate of registration as a resident in a home state that has adopted a law governing third-party administrators substantially similar to Iowa Code chapter 510 and this chapter. A third-party administrator may designate a state other than the resident state as its home state. If a third-party administrator is not eligible under paragraph 58.3(2) "c," it must meet the application requirements for a resident third-party administrator.

*d.* The division may refuse to issue a certificate of registration to an applicant as provided in Iowa Code section 510.21, or may refuse to issue a certificate of registration if the division determines that any of the grounds set forth in rule 191—58.16(510) exist with respect to the third-party administrator.

*e.* If an application is approved, the division will electronically deliver to the third-party administrator a certificate of registration.

**58.3(3) *Validity.*** A certificate of registration issued under Iowa Code chapter 510 and this rule shall remain valid, unless surrendered, suspended or revoked by the commissioner, for as long as the third-party administrator continues to renew the certificate of registration timely, continues in business in this state, and remains in compliance with Iowa Code chapter 510 and this chapter.

**191—58.4(510) Third-party administrator duties.**

**58.4(1)** A third-party administrator registered or applying for a certificate of registration or renewal under Iowa Code section 510.21 and this chapter shall:

*a.* Make available for inspection on request by the commissioner copies of all contracts with insurers or other persons utilizing the services of the third-party administrator.

*b.* As often as reasonably required by the commissioner, produce its accounts, records and files for examination and make its officers available to give information with respect to its affairs.

*c.* Immediately notify the commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of registration in this state.

*d.* Notify the commissioner in writing of any change in the information required to be filed under these rules including, but not limited to, a change of address or name, not later than 30 days after the change.

**58.4(2)** The commissioner may terminate a third-party administrator's certificate of registration, following notice and an opportunity for a hearing, for failure to comply with this rule.

**191—58.5(510) Renewal procedure.** A third-party administrator that wants to maintain its certificate of registration in Iowa shall file a completed request for renewal no later than 60 days before the expiration date on the certificate of registration.

**58.5(1)** The division shall provide notice to the third-party administrator of the upcoming renewal date.

**58.5(2)** The renewal form shall be filed in a manner as prescribed by the division. The renewal form shall be accompanied by the fee specified in rule 191—58.18(510).

**58.5(3)** Renewal requests filed after the 60-day period specified must include the late fee specified in rule 191—58.18(510).

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**58.5(4)** A third-party administrator that allows the certificate of registration to lapse and does not renew within one year from the expiration date must apply for a new certificate of registration.

**191—58.6(505,510) Responsibilities of the insurer.**

**58.6(1)** If an insurer utilizes the services of a third-party administrator, the insurer shall be responsible for determining the benefits, premium rates, collateral and reimbursement procedures, underwriting criteria, and claims payment procedures applicable to the coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the third-party administrator, pursuant to Iowa Code section 510.12 and rule 191—58.7(505,510). For purposes of this subrule, “collateral” means funds, letters of credit or any item with economic value, not owned by the insurer or third-party administrator, but held by the insurer or third-party administrator in case the collateral needs to be used to fulfill premium or loss reimbursement obligations in accordance with a contract between the insurer and the owner of the collateral. “Collateral” shall include anticipated loss prepayments made prior to the payment of losses, pursuant to arrangements in which reimbursement is not due until after losses have been paid.

**58.6(2)** An insurer must supervise its contracted third-party administrators to ensure that its programs are administered in a competent and appropriate manner.

**58.6(3)** In cases where a third-party administrator administers benefits for more than 100 certificate holders, subscribers, claimants or policyholders on behalf of an insurer, the insurer shall, at least semiannually, conduct a review of the operations of the third-party administrator. At least one such review shall be an on-site audit of the operations of the third-party administrator.

**58.6(4)** The requirements of rule 191—58.6(505,510) also apply to any insurer that contracts the performance of administrative functions to a person exempt from licensure pursuant to the exceptions set forth in rule 191—58.3(510).

**191—58.7(505,510) Written agreement.**

**58.7(1)** The written agreement required by Iowa Code section 510.12 shall include a statement of duties that the third-party administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance for which the third-party administrator is to be authorized to administer. The agreement shall make provision with respect to underwriting, claims handling and other standards pertaining to the business underwritten by the insurer.

**58.7(2)** The insurer or third-party administrator may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the third-party administrator during the pendency of any dispute regarding the cause for termination of the written agreement. The insurer shall fulfill any lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the third-party administrator.

**58.7(3)** The requirements of this rule shall also apply to any insurer that contracts the performance of an administrative function to a person exempt from licensure unless that person and the insurer are the same.

**191—58.8(510) Compensation to the third-party administrator.** A third-party administrator and an insurer shall not enter into an agreement or understanding that makes the amount of the third-party administrator’s commissions, fees, or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the insurer’s obligations. Third-party administrators are not prohibited from receiving performance-based compensation for providing hospital or other auditing services.

**191—58.9(510) Disclosure of charges and fees.** The third-party administrator shall disclose to the insurer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing

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reinsurance. Additional charges may not be made for services to the extent the insurer has paid for those services.

**191—58.10(510) Delivery of materials to covered individuals.** Any policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the third-party administrator for delivery to insured parties or covered individuals shall be delivered by the third-party administrator promptly after receipt of delivery instructions from the insurer.

**191—58.11(510) Annual report and fee.**

**58.11(1)** Each registered third-party administrator shall file by March 1 an annual report in a form and manner as prescribed by the commissioner. The report shall:

- a. Be verified by at least two officers of the third-party administrator;
- b. Include audited financial statements performed by an independent certified public accountant;
- c. Be prepared on a consolidated basis; and
- d. Include a columnar consolidating or combining worksheet that shall be filed with the report and

include the following:

- (1) Amounts shown on the consolidated audited financial report shall be shown on the worksheet;
- (2) Amounts for each entity shall be stated separately; and
- (3) Explanations of consolidating and eliminating entries shall be included.

**58.11(2)** A third-party administrator that makes a late filing shall pay a late fee as stated in rule 191—58.18(510).

**191—58.12(510) Change of information.**

**58.12(1)** A third-party administrator shall notify the commissioner within 30 days of any change in the information required to be filed under these rules including, but not limited to, a change of original application content. Reports of changes shall be filed electronically at [tparegistration@iid.iowa.gov](mailto:tparegistration@iid.iowa.gov). Failure to timely file changes is grounds for suspension of a certificate of registration and imposition of a \$100 civil penalty.

**58.12(2)** A third-party administrator may not do business under any name other than the name on the original application unless the third-party administrator notifies the commissioner prior to using the assumed name. The notice shall include a detailed explanation of the manner in which the name will be used.

**58.12(3)** A third-party administrator who ceases doing business in Iowa may either allow its certificate of registration to expire or file a request to withdraw its certificate of registration. A request for withdrawal must include information demonstrating that the third-party administrator will no longer be acting in Iowa as a third-party administrator.

**191—58.13(510) Inquiry by commissioner.** A third-party administrator shall promptly respond in writing to inquiries from the commissioner. A third-party administrator's actions are deemed untimely under this rule if the third-party administrator fails to respond to an inquiry from the commissioner within 30 days of the receipt of the inquiry, unless good cause exists for delay and the commissioner has given the third-party administrator a time extension in writing.

**191—58.14(510) Complaints.** A third-party administrator shall keep all complaints on file for a period of five years. Complaint information shall be made available to the division by the third-party administrator at any time upon the commissioner's request.

**191—58.15(510) Periodic examination.** The commissioner reserves the right to examine a third-party administrator or require the most recent audited financial statements from the third-party administrator and such other interim evidence as the commissioner deems appropriate.

**58.15(1)** Reasonable costs of the examination or audited financial statements shall be paid by the third-party administrator.

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**58.15(2)** Examination shall include, but not be limited to: financial condition, premium collection, claims processing, and marketing practices.

**58.15(3)** If one or more of the following factors are present, the commissioner may require and determine an amount of additional security:

- a. Insufficient liquid assets or retained earnings;
- b. A deteriorating financial condition, as evidenced through an examination by the commissioner or any other insurance commissioner;
- c. Any other relevant considerations.

**191—58.16(510) Grounds for denial, nonrenewal, suspension or revocation of certificate of registration.**

**58.16(1)** The commissioner may, at the commissioner's discretion and without advance notice or hearing, immediately suspend the certificate of registration of a third-party administrator if the commissioner finds that one or more of the following circumstances exist:

- a. The third-party administrator is insolvent or impaired;
- b. A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the third-party administrator has been commenced in any state; or
- c. The financial condition or business practices of the third-party administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

**58.16(2)** The commissioner shall deny, suspend, not renew or revoke a third-party administrator's certificate of registration if the commissioner finds that the third-party administrator:

- a. Is in unsound financial condition;
- b. Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or
- c. Has failed to pay any judgment rendered against it in this state within 60 days after the judgment has become final.

**58.16(3)** The commissioner may deny, suspend, not renew or revoke a third-party administrator's certificate of registration if the commissioner finds that the third-party administrator:

- a. Has violated or failed to comply with any lawful rule or order of the commissioner or any provision of the insurance laws of this state;
- b. Has a financial condition that has deteriorated to the degree that it may adversely affect the third-party administrator's ability to operate as a third-party administrator;
- c. Has filed an application or any necessary forms with the division that contain fraudulent information or omissions;
- d. Has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to a person otherwise entitled to the moneys and that have been entrusted to the third-party administrator in its fiduciary capacities;
- e. Has provided insufficient explanation, as determined by the commissioner, of the circumstances surrounding evidence that an owner, principal, officer, partner, manager, director, stockholder, trustee, employee of the third-party administrator or the third-party administrator itself:

(1) Has had an insurance license or an application for an insurance license in any state denied, suspended or revoked;

(2) Has been the subject of an investigation, fine, penalty, order, withdrawal or informal settlement with any state insurance department;

(3) Has been the subject of a criminal investigation, summons, arrest, indictment or questioning;

(4) Has been charged, tried, convicted of, or pled guilty or no contest to any felony or misdemeanor;

f. Has been found by the commissioner not to be competent, trustworthy, financially responsible or of good personal and business reputation;

g. Has refused to be examined or to produce its accounts, records and files for examination, or that any of the following individuals responsible for the conduct of the affairs of the third-party administrator has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the commissioner: members of the board of directors,

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board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly 10 percent or more of the voting stock, voting securities or voting interest of the third-party administrator; or any other person who exercises control or influence over the affairs of the third-party administrator;

*h.* Has, without just cause, refused to pay proper claims or perform services arising under its contracts, caused covered individuals to accept less than the amount due them, or caused covered individuals to employ attorneys or bring suit against the third-party administrator to secure full payment or settlement of such claims;

*i.* At any time fails to meet any qualification for which issuance of the certificate of registration could have been refused had the failure then existed and been known to the commissioner;

*j.* Has, or any of the following individuals responsible for the conduct of the affairs of the third-party administrator has, been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld: members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly 10 percent or more of the voting stock, voting securities or voting interest of the third-party administrator; or any other person who exercises control or influence over the affairs of the third-party administrator;

*k.* Is under suspension or revocation in another state;

*l.* Has failed to promptly respond to one or more inquiries of the commissioner; or

*m.* Has failed to timely file its annual report.

**58.16(4)** If the commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of registration issued under this chapter, the commissioner may, in addition to or in lieu of suspension or revocation, impose a monetary penalty that shall not exceed \$1,000 for each act or violation of this chapter, up to an aggregate of \$10,000, unless the person knew or reasonably should have known that the person was in violation of this chapter, in which case the penalty shall not exceed \$5,000 for each act or violation, up to an aggregate of \$50,000 in any one six-month period.

**191—58.17(510) Confidential information.**

**58.17(1)** Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Iowa Code section 510.14.

**58.17(2)** In order to assist in the performance of the commissioner's duties, the commissioner:

*a.* May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Iowa Code section 510.14, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials or other information;

*b.* May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

*c.* May enter into agreements governing the sharing and use of information consistent with this subrule.

**58.17(3)** No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under rule 191—58.17(510) or as a result of sharing as authorized in subrule 58.17(2).

## INSURANCE DIVISION[191](cont'd)

**58.17(4)** Nothing in this rule shall prohibit the commissioner from releasing final, adjudicated actions, including for-cause terminations that are open to public inspection pursuant to Iowa Code chapter 22 or Iowa Code section 505.8, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

**58.17(5)** In the event the insurer and the third-party administrator cancel their agreement, the third-party administrator may, by written agreement with the insurer, transfer all records to a new third-party administrator rather than retain the records for the five years required under Iowa Code section 510.14. In such cases, the new third-party administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior third-party administrator as required in Iowa Code section 510.14.

**191—58.18(510) Fees.**

**58.18(1)** Fees to be paid directly to the division shall be paid by check. Fees accompanying electronic filings shall be paid in a manner as directed by the commissioner.

**58.18(2)** Fees related to this chapter are as follows:

- a. The fee to accompany an application for a certificate of registration is \$100.
- b. The fee to accompany the filing of an annual report is \$50.
- c. The fee to renew a certificate of registration is \$100.
- d. The fee for the late filing of an annual report or of an application to renew a certificate of registration is \$100.

**58.18(3)** The division may charge a reasonable fee for the compilation and production of records necessary to evaluate an application for a certificate of registration, an application for the renewal of a certificate of registration, or an annual report.

**191—58.19(510) Severability clause.** If any provision of this chapter, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this chapter.

**191—58.20(510) Compliance date.** All persons shall comply with this chapter on and after January 1, 2010.

These rules are intended to implement Iowa Code chapters 505 and 510.

**ARC 8108B**

**IOWA FINANCE AUTHORITY[265]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(1)"r" and 2009 Iowa Acts, Senate File 376, sections 5 to 12, the Iowa Finance Authority proposes to amend Chapter 32, "Iowa Jobs Program," Iowa Administrative Code.

The purpose of these amendments is to implement 2009 Iowa Acts, Senate File 376, sections 5 to 12, by clarifying certain rules that regulate the operation of the Iowa Jobs Program.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on September 29, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority,

IOWA FINANCE AUTHORITY[265](cont'd)

2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov).

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

These proposed amendments were also Adopted and Filed Emergency and are published herein as **ARC 8103B**. The purpose of this Notice is to solicit comments on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

## ARC 8107B

### NATURAL RESOURCE COMMISSION[571]

#### 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 455A.5(6) and 481A.151, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 113, “Restitution for Pollution Causing Injury to Wild Animals,” Iowa Administrative Code.

These amendments will redefine the meaning of “AFS,” the acronym used for the American Fisheries Society’s special publications on fish counting methods and restitution valuation. The amendments will update the rule to state that “Special Publication 30,” the current AFS publication regarding fish and freshwater mussel counting methods and restitution valuation, shall be used by the Department. Iowa Code section 455B.151 authorizes the Department to use the AFS to conduct fish kill counts and assess restitution for damages to the state’s natural resources and wildlife. The amendments will also revise the fish species to be valued at \$15 per fish unless the AFS publication requires a higher value, in which case the higher value shall be applied.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 23, 2009. Such written materials should be directed to Martin Konrad, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail [Martin.Konrad@dnr.iowa.gov](mailto:Martin.Konrad@dnr.iowa.gov). Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-6976 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on October 6, 2009, at 2 p.m. in the Fourth Floor (West) Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code sections 456A.23, 481A.2, and 481A.151. The following amendments are proposed.

ITEM 1. Amend rule **571—113.2(481A)**, definition of “AFS,” as follows:

“AFS” means the Special Publication ~~24, “Investigation and Valuation of Fish Kills,”~~ 30, “Investigation and Monetary Values of Fish and Freshwater Mussel Kills,” published by the American Fisheries Society.

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

ITEM 2. Amend rule 571—113.3(481A) as follows:

**571—113.3(481A) Liability to the state.** Persons who cause by water pollution the destruction of or injury to wild animals of the state shall be liable to the state as provided by ~~2002 Iowa Acts, Senate File 2293, section 58 in Iowa Code section 481A.151.~~ These rules establish the methodologies and criteria for evaluating the extent and value of the destruction or injury and establish the methods of compensation. If the person and the department cannot agree to the proper resolution of a particular case, the issues of liability, damage and compensation will be established through contested case proceedings, as provided by 571—Chapter 7.

ITEM 3. Amend paragraph **113.4(2)“c”** as follows:

c. The monetary valuation of fish shall be the replacement values as published in AFS for all fish lost ~~except those fish that are members of the families Ictaluridae (catfish/bullheads), Esocidae (northern pike/muskellunge), Salmonidae (trout), Percichthyidae (white bass/yellow bass/wipers), Centrarchidae (black bass/crappie/sunfish/rock bass/warmouth), and Percidae (yellow perch/walleye/sauger) the following: channel catfish, flathead catfish, blue catfish, northern pike, muskellunge, northern pike/muskellunge hybrid, rainbow trout, brown trout, brook trout, white bass, yellow bass, white bass/striped bass hybrid, largemouth bass, smallmouth bass, spotted bass, crappie, rock bass, bluegill, redear sunfish, warmouth, pumpkinseed, freshwater drum, yellow perch, walleye, sauger and walleye/sauger hybrid.~~ The value of these fish shall be \$15 each, unless AFS establishes a higher value. Notwithstanding the above, the value of each fish classified by the department as an endangered or threatened species shall be \$1,000.

**ARC 8100B****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care hereby gives Notice of Intended Action to amend Chapter 261, “Licensure of Respiratory Care Practitioners,” and Chapter 263, “Discipline for Respiratory Care Practitioners,” Iowa Administrative Code.

These proposed amendments update the name of the accrediting organization for respiratory care to be consistent with the separation of the Committee on Accreditation for Respiratory Care (CoARC) from the Commission on Accreditation of Allied Health Education Programs (CAAHEP). The proposed amendments also amend subrule 263.2(11) by replacing the word “felony” with the word “crime” to be consistent with Iowa Code section 147.55.

Any interested person may make written comments on the proposed amendments no later than September 29, 2009, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [ebaird@idph.state.ia.us](mailto:ebaird@idph.state.ia.us).

A public hearing will be held on September 29, 2009, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152B, and 272C. The following amendments are proposed.

ITEM 1. Amend rule **645—261.1(152B)**, definition of “CoARC,” as follows:

“CoARC” means the ~~Committee~~ Commission on Accreditation ~~of~~ for Respiratory Care.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 2. Amend subrule 261.3(1) as follows:

**261.3(1)** The applicant shall have successfully completed a respiratory care education program accredited by or under a letter of review from, the Commission on Accreditation of Allied Health Education Programs (CAAHEP) ~~or by a program that is under Letter of Review by the Committee on Accreditation for Respiratory Care (CoARC) while actively pursuing CAAHEP accreditation.~~

ITEM 3. Amend subrule 263.2(11) as follows:

**263.2(11)** Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**ARC 8101B****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work hereby gives Notice of Intended Action to amend Chapter 279, "Administrative and Regulatory Authority for the Board of Social Work Examiners," Chapter 280, "Licensure of Social Workers," Chapter 281, "Continuing Education for Social Workers," Chapter 282, "Practice of Social Workers," Chapter 283, "Discipline for Social Workers," and Chapter 284, "Fees," Iowa Administrative Code.

These proposed amendments change the composition of the Board in accordance with Iowa Code section 147.14(1)"t" and add a definition for "diagnosis." Additionally, the proposed amendments change the name of the Board of Social Work in response to 2007 Iowa Acts, chapter 10, which renamed health-related examining boards as licensing boards.

Any interested person may make written comments on the proposed amendments no later than September 29, 2009, addressed to Roxanne Sparks, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [rsparks@idph.state.ia.us](mailto:rsparks@idph.state.ia.us).

A public hearing will be held on September 29, 2009, from 9 to 9:30 a.m. in the Fifth Floor Board Room #526, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154C and 272C.

The following amendments are proposed.

ITEM 1. Strike "board of social work examiners" wherever it appears in **645—Chapter 279 to Chapter 284** and insert "board of social work" in lieu thereof.

ITEM 2. Rescind subrule 279.3(2) and adopt the following new subrule in lieu thereof:

**279.3(2)** The members of the board shall include a total of seven members, five who are licensed to practice social work, with at least one from each of three levels of licensure and one employed in the area of children's social work, and two who are not licensed social workers and who shall represent the general public.

ITEM 3. Adopt the following new definition of "Diagnosis" in rule **645—280.1(154C)**:

"*Diagnosis*" means the determination and identification of a specific mental or emotional disorder or condition based in whole or in part on the Diagnostic and Statistical Manual of Mental Disorders (current edition) of the American Psychiatric Association.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 4. Adopt the following **new** definition of “Diagnosis” in rule **645—282.1(154C)**:  
*“Diagnosis”* means the determination and identification of a specific mental or emotional disorder or condition based in whole or in part on the Diagnostic and Statistical Manual of Mental Disorders (current edition) of the American Psychiatric Association.

**ARC 8111B****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Sign Language Interpreters and Transliterated hereby gives Notice of Intended Action to amend Chapter 363, “Discipline for Sign Language Interpreters and Transliterated,” Iowa Administrative Code.

The proposed amendment to subrule 363.2(11) changes the word “felony” to “crime” to be consistent with Iowa Code chapter 147 requirements.

Any interested person may make written comments on the proposed amendment no later than October 20, 2009, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on October 20, 2009, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 154E and 272C.

The following amendment is proposed.

Amend subrule 363.2(11) as follows:

**363.2(11)** Conviction of a ~~felony~~ **crime** related to the profession or occupation of the licensee or the conviction of any ~~felony~~ **crime** that would affect the licensee’s ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**ARC 8091B****STATE PUBLIC DEFENDER[493]****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 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 11, “Attorney Fee Contracts,” and Chapter 12, “Claims for Indigent Defense Services,” Iowa Administrative Code.

These proposed amendments implement 2009 Iowa Acts, Senate File 475, which revises the procedure for appointment of court-appointed attorneys and submission of fee claims from the attorneys.

Interested persons may make written comments or suggestions on the proposed amendments on or before September 29, 2009. Written materials should be addressed to the State Public Defender,

STATE PUBLIC DEFENDER[493](cont'd)

Lucas State Office Building, 4th Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087; faxed to (515)281-7289; or E-mailed to [msmith@spd.state.ia.us](mailto:msmith@spd.state.ia.us).

There will be a public hearing on September 29, 2009, at 9 a.m. in Conference Room 424 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8090B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 13B as amended by 2009 Iowa Acts, Senate File 475.

## 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, 2008 — September 30, 2008	6.00%
October 1, 2008 — October 31, 2008	6.00%
November 1, 2008 — November 30, 2008	5.75%
December 1, 2008 — December 31, 2008	5.75%
January 1, 2009 — January 31, 2009	5.50%
February 1, 2009 — February 28, 2009	4.50%
March 1, 2009 — March 31, 2009	4.50%
April 1, 2009 — April 30, 2009	5.00%
May 1, 2009 — May 31, 2009	4.75%
June 1, 2009 — June 30, 2009	5.00%
July 1, 2009 — July 31, 2009	5.25%
August 1, 2009 — August 31, 2009	5.75%
September 1, 2009 — September 30, 2009	5.50%

## ARC 8127B

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 514I.5 and 2009 Iowa Acts, House File 811, section 6(7), the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

This amendment implements a one-month delay in benefits when health insurance has ended during the month of application for HAWK-I or Medicaid benefits or during the five preceding months for a child whose family's countable income equals or exceeds 200 percent of the federal poverty level. The amendment specifies conditions when the delay does not apply, including situations when the reason the insurance ended was out of the family's control.

The intent of this provision is to provide a disincentive for families who drop health insurance coverage for their children and then apply for aid. The federal Centers for Medicare and Medicaid Services has informed the Department that a strategy to avoid this phenomenon (called "crowd out") must be implemented as a condition of approval for the HAWK-I State Plan amendment to expand income eligibility to families whose countable limit is up to 300 percent of the federal poverty level. Because the amendments to implement this expansion have already been Adopted and Filed (published in the Iowa Administrative Bulletin on May 20, 2009, as **ARC 7770B**), it is imperative that the Department meet the requirements for obtaining federal matching funds for these expenditures.

This amendment provides for waiver of the waiting period in several 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).

The HAWK-I Board adopted this amendment on August 17, 2009.

The Department finds that notice and public participation are impracticable and contrary to the public interest because this amendment is necessary to secure federal funding for HAWK-I expansion provisions that have already been adopted. The Department also will not be able to claim federal funds for the first month of coverage for any family who would have had a waiting period imposed if this rule had been in place on July 1, 2009. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department also finds that this amendment confers a benefit on the state as a whole by enabling federal financial participation in the expansion of HAWK-I coverage previously adopted. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of the amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 8128B** to allow for public comment.

This amendment is intended to implement Iowa Code chapter 514I.

This amendment became effective on September 1, 2009.

The following amendment is adopted.

Adopt the following **new** paragraph **86.2(4)"b"**:

*b.* Waiting period. For any child whose family income is subject to a monthly premium pursuant to paragraph 86.8(2) "*c*," the department shall determine whether health insurance coverage for the child ended during the month when an application is filed pursuant to subrule 86.3(4) or within the five months preceding the month of application. If so, a waiting period of one month shall be imposed. The effective date of coverage shall be one month later than the date specified in rule 441—86.5(514I). EXCEPTIONS: A waiting period shall not be imposed if any of the following conditions apply:

- (1) The child is moving from Medicaid to HAWK-I.
- (2) The child has a medical condition that, without medical care, would cause serious disability, loss of function, or death.
- (3) The cost of health insurance coverage for the child exceeds 5 percent of the family's gross income. The cost of health insurance for the child shall be the difference between the premium for coverage with and without the child.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- (4) The health insurance was provided through an individual plan.
- (5) The child's health insurance coverage was lost due to:
  1. Domestic violence.
  2. Divorce or death of a parent.
  3. An involuntary loss of employment that qualified the parent for dependent coverage, including but not limited to layoff, business closure, reduction in hours, or termination.
  4. A job change to a new employer that does not offer dependent coverage or that requires a waiting period before children can be enrolled in dependent coverage.
  5. Utilization of the maximum lifetime coverage amount.
  6. Expiration of coverage under COBRA.
  7. Discontinuation of dependent coverage by the parent's employer.
  8. A reason beyond the control of the parent, such as a serious illness of the parent, fire, flood, or natural disaster.

[Filed Emergency 8/19/09, effective 9/1/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8099B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

These amendments are made to conform Departmental rules to the following statutory changes enacted by the Iowa General Assembly in 2009:

- Senate File 438, section 1, adds a new category, "sexual exploitation of a dependent adult by a caretaker," to the definition of "dependent adult abuse" in Iowa Code section 235B.2.
- Senate File 484, section 8, extends the retention period for dependent adult abuse information that is determined to be unfounded from one year to five years and requires the Department to keep records of dependent adult abuse reports that are rejected for evaluation or assessment for three years from the rejection date.

These amendments do not provide for waivers in specified situations since they reflect statutory provisions which the Department has no authority to waive.

The Council on Human Services adopted these amendments August 12, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments merely incorporate statutory changes over which the Department has no discretion.

The Department finds that these amendments confer a benefit on the public by eliminating confusion caused by discrepancies between rules and statute. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 235B.2 as amended by 2009 Iowa Acts, Senate File 438, section 1, and Iowa Code section 235B.9 as amended by 2009 Iowa Acts, Senate File 484, section 8.

These amendments became effective August 13, 2009.

The following amendments are adopted.

ITEM 1. Amend rule **441—176.1(235B)**, definition of "Adult abuse," as follows:

"Adult abuse" means either:

1. ~~any~~ Any of the following as a result of the willful or negligent acts or omissions of a caretaker:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~1. — Physical injury to, or injury which is at variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.~~

~~2. — The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.~~

~~3. — Exploitation of a dependent adult which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.~~

~~4. — The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health.~~

~~• Physical injury to, or injury which is at variance with the history given of the injury, or unreasonable confinement, unreasonable punishment, or assault of a dependent adult.~~

~~• The commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.~~

~~• Exploitation of a dependent adult, which means the act or process of taking unfair advantage of a dependent adult or the adult's physical or financial resources for one's own personal or pecuniary profit, without the informed consent of the dependent adult, including theft, by the use of undue influence, harassment, duress, deception, false representation, or false pretenses.~~

~~• The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health.~~

~~• Sexual exploitation of a dependent adult by a caretaker. "Sexual exploitation" means any consensual or nonconsensual sexual contact with a dependent adult which includes but is not limited to kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act, as defined in Iowa Code section 702.17. "Sexual exploitation" includes the transmission, display, taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment or diagnosis or as part of an ongoing assessment, evaluation or investigation. "Sexual exploitation" does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses.~~

~~2. The deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, and other care necessary to maintain a dependent adult's life or health as a result of the acts or omissions of the dependent adult.~~

ITEM 2. Amend subrule 176.13(2) as follows:

**176.13(2) *Unfounded reports.*** A report of dependent adult abuse determined to be unfounded shall be expunged ~~one year~~ five years from the date it is determined to be unfounded, in accordance with Iowa Code section 235B.9, subsection 2, as amended by 2009 Iowa Acts, Senate File 484.

ITEM 3. Adopt the following **new** subrule 176.13(3):

**176.13(3) *Rejected intakes.*** Reports that are found not to meet the criteria to be accepted for evaluation or assessment of abuse shall be kept in the local office for three years from the date the report of abuse was determined to be rejected.

[Filed Emergency 8/13/09, effective 8/13/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8103B****IOWA FINANCE AUTHORITY[265]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12, the Iowa Finance Authority hereby amends Chapter 32, “Iowa Jobs Program,” Iowa Administrative Code.

The purpose of these amendments is to implement 2009 Iowa Acts, Senate File 376, sections 5 to 12, by clarifying certain rules that regulate the operation of the Iowa Jobs Program.

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

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that the normal notice and public participation process would delay implementation of the new program, which is designed to provide disaster relief and economic stimulus. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 8108B** herein to allow for public comment.

The Authority finds that adoption of these amendments confers a benefit on the public in that these rules promote disaster recovery and economic stimulus. The Authority finds that these amendments should be implemented as soon as feasible in order to facilitate the awarding of grants under the program. Furthermore, 2009 Iowa Acts, Senate File 376, section 12, specifically provides for emergency rule making. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(1) and (2), and the normal effective date of these amendments is waived.

The Authority adopted these amendments on August 17, 2009.

These amendments became effective August 19, 2009.

These amendments are intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

The following amendments are adopted.

ITEM 1. Amend subrule 32.4(4) as follows:

**32.4(4) Ineligible projects.** The board shall not approve an application for a competitive grant for either of the following purposes:

- a. To refinance a loan existing prior to the date of the initial financial assistance application.
- b. For a project that has previously received financial assistance under the local infrastructure competitive grant program, unless the applicant demonstrates that the financial assistance would be used for a significant expansion of such a project.

ITEM 2. Amend subrule 32.4(7) as follows:

**32.4(7) Application review criteria.** The Iowa jobs program review committee shall evaluate and rank applications based on the following criteria:

a. and b. No change.

c. *Sustainability and energy efficiency.* The sustainability and energy efficiency of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) Sustainability (0-20 points). The extent to which the project has taken sustainability planning principles into consideration.

1. The project shall be evaluated based on the following specific factors:

- Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; conservation of open space and farmland and preservation of critical environmental areas; and promotion of the safety, livability, and revitalization of existing urban and rural communities. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bicycle and pedestrian networks, and interconnection with the existing street grid.

- Provision for a variety of transportation choices, including public transit and pedestrian and bicycle traffic.

IOWA FINANCE AUTHORITY[265](cont'd)

- Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

- Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

- The extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: (1) office of energy independence's Iowa energy independence plan; and (2) general reduction of greenhouse gas emissions.

2. Alternatively, in lieu of being evaluated on each of the criteria set forth above, projects which are designed to receive certification (either platinum level, gold level, silver level, or basic LEED certification) from the United States Green Building Council in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System version 3.0, and which comply with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329, shall receive 20 points.

(2) Energy efficiency (0-20 points). The extent to which the project has taken energy efficiency planning principles into consideration.

1. In the case of new construction, whether the project ~~meets~~ is designed to meet the current state building energy code. The application for the project must include a letter from the engineer or architect to IFA certifying whether the proposed construction meets the current state building energy code. Additionally, the application should address whether the proposed project ~~meets~~ is designed to meet energy star standards. If the project is of such a nature that the current state building energy code does not apply to it, the letter shall so state.

2. In the case of rehabilitation of existing structures, an energy audit conducted by a certified energy rater should be provided on each building prior to the preparation of the final work rehabilitation order to determine the feasibility of meeting the requirements of the current state building energy code and energy star standards prior to the start of the rehabilitation. If it is determined to be feasible to meet the current state building energy code standards and energy star standards, appropriate specifications will be written into the work order. If it is not feasible to meet the requirements of the current state building energy code and energy star standards (or either of them), the application will provide information indicating what effective and cost-effective energy improvements will be included as a part of the rehabilitation project.

*d. to f.* No change.

[Filed Emergency 8/19/09, effective 8/19/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8106B**

## **NATURAL RESOURCE COMMISSION[571]**

### **Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules set regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. These amendments adjust season dates to comply with federal law and to ensure that seasons open on weekends. The amendments adjust the season dates for calendar date changes; change bag limits for scaup, mottled ducks, and canvasbacks pursuant to 2009 federal regulations; change the boundary dividing the state into north and south goose

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

hunting zones so that it is the same as the boundary that divides the state into north and south duck hunting zones; allow landowners to hunt in Canada goose closed hunting zones until October 31 instead of October 15; and decrease the size of the Worth-Winnebago and Monona-Woodbury Canada goose closed hunting zones.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 8, 2009, as **ARC 7686B**. A public hearing was held on April 29, 2009. A total of 29 comments were received during the comment period. Twenty of those comments requested that the duck season in the north zone be open as early as possible so that hunters in northern Iowa could hunt ducks during October when the marshes are open rather than in December when most areas are frozen. Nine comments favored the later season so that hunters could hunt late-season mallards.

Based upon these comments and historical migration patterns, the season dates were changed from the Notice of Intended Action. The starting date of the duck season in the north zone was changed from October 17 to October 10. Also, the Canada goose season was changed so that it is closed December 14 to 18 instead of December 21 to 25 in both the north and south zones so the season is open over the Christmas holiday.

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 these amendments should be made effective upon filing with the Administrative Rules Coordinator on August 18, 2009, as the amendments confer a benefit.

These amendments became effective August 18, 2009.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48. The following amendments are adopted.

ITEM 1. Amend subrules 91.1(2) to 91.1(4) as follows:

**91.1(2) Season dates - north zone.** For all ducks: September ~~20~~ 19 through September 24 23 and October ~~18~~ 10 through December ~~11~~ 3.

**91.1(3) Season dates - south zone.** For all ducks: September ~~20~~ 19 through September 24 23 and October ~~18~~ 17 through December ~~11~~ 10.

**91.1(4) 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, 1 pintail, ~~3~~ 1 mottled ducks duck, 1 canvasback, 2 redheads, and ~~1~~ 2 scaup, ~~except during November 1 through November 20 when the daily limit for scaup is 2. No canvasbacks may be included in the daily bag limit; the canvasback season is closed.~~ The daily bag limit of mergansers is 5, only 2 of which may be hooded mergansers.

ITEM 2. Amend subrules 91.3(1) to 91.3(3) as follows:

**91.3(1) Zone boundaries.** ~~The north goose hunting zone is that part of Iowa north of U.S. Highway 20. The north goose hunting zone is that part of Iowa north of a line beginning on the Nebraska-Iowa border at State Highway 175, east to State Highway 37, southeast to State Highway 183, northeast to State Highway 141, east to U.S. Highway 30, and along U.S. Highway 30 to the Iowa-Illinois border.~~ The north goose hunting zone is that part of Iowa north of a line beginning on the Nebraska-Iowa border at State Highway 175, east to State Highway 37, southeast to State Highway 183, northeast to State Highway 141, east to U.S. Highway 30, and along U.S. Highway 30 to the Iowa-Illinois border. The south goose hunting zone is the remainder of the state.

**91.3(2) Season dates - north zone.** Canada geese and brant: September ~~27~~ 26 through October ~~5~~ 4 and October ~~18~~ 10 through December ~~21~~ 13 and December ~~27~~ 19 through January ~~11, 2009~~ 3, 2010. White-fronted geese: September ~~27~~ 26 through December ~~7~~ 6. Light geese (white and blue-phase snow geese and Ross' geese): September ~~27~~ 26 through January ~~11, 2009~~ 10, 2010.

**91.3(3) Season dates - south zone.** Canada geese and brant: September ~~27~~ 26 through October ~~5~~ 4 and October ~~18~~ 17 through December ~~21~~ 13 and December ~~27~~ 19 through January ~~11, 2009~~ 10, 2010. White-fronted geese: September ~~27~~ 26 through December ~~7~~ 6. Light geese (white and blue-phase snow geese and Ross' geese): September ~~27~~ 26 through January ~~11, 2009~~ 10, 2010.

ITEM 3. Amend subrule 91.3(7), introductory paragraph, as follows:

**91.3(7) 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 ~~12, 2009~~ 11, 2010, through April 15, ~~2009~~ 2010.

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

ITEM 4. Amend paragraphs **91.4(2)“d”** and **“i”** as follows:

*d. Area four.* Portions of Winnebago and Worth Counties bounded as follows: Beginning at a point two and one-half miles east of Lake Mills, Iowa, at the junction of State Highway 105 and County Road S10 (also named Bluebill Ave.); thence south along County Road S10 (including the right of way), i.e., Bluebill Ave., three-fourths mile to 448th St.; thence east three-fourths mile on 448th St. to Cardinal Ave.; thence south one-fourth mile to 445th St.; thence east one-fourth mile to Cedar Ave.; thence south one-half mile on Cedar Ave. to 440th St.; thence east three-fourths mile on 440th St. to Dove Ave.; thence south on Dove Ave. one-half mile to 435th St.; thence east one-fourth mile on 435th St. to Dove Ave.; thence south on Dove Ave. to County Road A34; thence east one mile on County Road A34 (including the right of way) to Evergreen Ave.; thence south two miles to County Road A38 (also named 410th St.); thence west eight and one-half miles along County Road A38 including the right of way; thence north four miles along County Road R72 (also named 210th Ave.) (including the right of way); thence east along State Highway 69 approximately one mile (including the right of way) to the intersection with State Highway 105; thence east along State Highway 105 (including the right of way) five miles to the point of beginning. Portions of Winnebago and Worth Counties bounded as follows: Beginning at the junction of U.S. Highway 69 and County Road 105 in the city of Lake Mills; thence east along County Road 105 (including the right-of-way and all other road right-of-ways identified in this description) approximately 5 miles to Dogwood Ave.; thence south along Dogwood Ave. to 440th St.; thence east one-fourth mile on 440th St. to Dove Ave.; thence south on Dove Ave. one-half mile to 435th St.; thence east one-fourth mile on 435th St. to Dove Ave.; thence south on Dove Ave. to County Road A34; thence east one mile on County Road A34 (also named 430th St.) to Evergreen Ave.; thence south one mile to 420th St.; thence west along 420th St. to Cedar Ave.; thence south one-half mile along Cedar Ave. to Lake St.; thence west one-fourth mile along Lake St. to Front St.; thence southeast one-half mile along Front St. to County Road A38 (also named 410th St.); thence west along County Road A38 to County Road R74 (also named 225th Ave.); thence north along County Road R74 to 420th St.; thence west along 420th St. to County Road R72 (also named 210th Ave.); thence north along County Road R72 to U.S. Highway 69; thence east along U.S. Highway 69 to point of beginning.

*i. Area nine.* Portions of Monona and Woodbury Counties bounded as follows: For the portion in Monona County, beginning at the junction of County Road K42 and 120th Street; thence south along County Road K42 (including the right-of-way and all other road right-of-ways identified in this description) approximately 4 miles; thence south on Berry Avenue approximately 1 mile to 170th Street; thence east along 170th Street to Cashew Avenue; thence south along Cashew Avenue to ~~200th~~ 190th Street; thence east along ~~200th~~ 190th Street to County Road K42; thence south and east along County Road K42 to Cherry Avenue; thence south along Cherry Avenue to 243rd Street; thence east along 243rd Street to Cypress Avenue; thence south along Cypress Avenue to 245th Street; thence east and northeast along 245th Street to Filbert Avenue; thence north and northwest along Filbert Avenue to State Highway 175; thence east along State Highway 175 to County Road K45; thence north and northwest approximately ~~4~~ 7 miles along Monona County Road K45 to 120th Street; thence west along 120th Street to the point of beginning; and for the portion in Woodbury County, beginning at the junction of County Road K45 and State Highway 141; thence northwest along County Road K45 approximately 6 miles to the intersection with Woodbury County Road K25; thence west approximately 3 miles along Woodbury County Road K25 to the intersection with Port Neal Road; thence continuing along the same westerly line approximately 1 mile on the north border of section 6, township 86 north, range 47 west, to the Iowa-Nebraska state line along center of the Missouri River; thence southerly along the state line Missouri River channel approximately 8 miles to a point where 340th Street meets the Iowa-Nebraska state line on the Missouri River except that portion of Nebraska lying on the east side of the Missouri River; thence east to and along 340th Street approximately 5.5 miles to County Road K42; thence north and east along County Road K42 approximately 2.5 miles to the point of beginning.

ITEM 5. Amend subrule 91.5(1), introductory paragraph, as follows:

**91.5(1)** *Clay County; Dickinson County; Emmet County; Jackson County; and Butler County closed areas.* Closed areas. Area one (Emmet Co.), Area two (Clay and Palo Alto Cos.), Area three (Dickinson

NATURAL RESOURCE COMMISSION[571](cont'd)

Co.), Area four (Winnebago and Worth Cos.), Area eleven (Jackson Co.), and Area fifteen (Butler Co.) as described in subrule 91.4(2).

ITEM 6. Amend subparagraph **91.5(1)“b”(7)** as follows:

(7) Hunting within the closed area will be allowed through October ~~15~~ 31.

ITEM 7. 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 ~~4 and 5, 2008~~ 3 and 4, 2009, in the north duck hunting zone and October ~~4 and 5, 2008~~ 3 and 4, 2009, in the south 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 8/18/09, effective 8/18/09]

[Published 9/9/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8114B**

## **PUBLIC SAFETY DEPARTMENT[661]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 101.5, the State Fire Marshal hereby amends Chapter 221, “Flammable and Combustible Liquids,” Iowa Administrative Code.

This amendment deals solely with one of the conditions under which blends of biodiesel may be dispensed legally. Recent rule making was completed which addressed this issue; the rules were Adopted and Filed Emergency After Notice and published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 7977B**. Included in that action was a provision that allows for the dispensing of biodiesel blends if “[t]he dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and information published or provided by the manufacturer of the dispenser is available stating that the dispenser is compatible with B-blend.” The difficulty with this provision is that no independent testing laboratory, to the knowledge of the State Fire Marshal, has yet finalized a protocol for testing dispensers for compatibility with biodiesel blends, which is a precondition to submission of a dispenser to a laboratory. The State Fire Marshal finds that the adoption of a provision with which it is impossible to comply constitutes a ministerial error; the amendment adopted herein corrects that error by striking the words “The dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and,” which will enable compliance with the provision.

Pursuant to Iowa Code section 17A.4(3), the State Fire Marshal finds that notice and public participation are unnecessary because the amendment is necessitated by a ministerial error made in the adoption of language with which is impractical to comply. The adoption was effective on July 2, 2009, and had been the subject of a public comment period, during which extensive comments were received, which terminated on June 9, 2009.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the State Fire Marshal further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective September 1, 2009. The public will benefit from the avoidance of confusion and uncertainty that would be occasioned by retaining language with which it is impractical to comply.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

This amendment is intended to implement Iowa Code section 101.1.

This amendment became effective September 1, 2009.

The following amendment is adopted.

Amend subrule 221.4(2) as follows:

**221.4(2)** Add the following new sections:

2206.7.1.1 Dispensing of blended biofuels.

2206.7.1.1.1 Definitions.

“*B-blend*” means biodiesel blended fuel as defined in Iowa Code section 214A.1 with the blend including no more than 20 percent biodiesel, as defined in Iowa Code section 214A.1.

“*E-10*” means a blend of petroleum and ethanol including no more than 15 percent ethanol intended for use as a motor vehicle fuel.

“*E-blend*” means a blend of petroleum and ethanol including more than 15 percent ethanol intended for use as a motor vehicle fuel.

2206.7.1.1.2 E-blend may only be dispensed if (a) or (b) applies:

(a) Only a dispenser listed by an independent testing laboratory as compatible with E-10 gasoline shall be used to dispense E-blend, and the retail dealer shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure. The dealer shall maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

(b) The dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with E-85 gasoline. In addition, the retail dealer shall install an under-dispenser containment system with electronic monitoring.

2206.7.1.1.3 B-blend may only be dispensed if (a) and either (b), (c), or (d) apply:

(a) Only a dispenser listed by an independent testing laboratory as compatible with diesel fuel shall be used to dispense B-blend.

(b) The retail dealer shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

(c) The dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and the retail dealer has installed an under-dispenser containment system with electronic monitoring.

(d) ~~The dispenser’s manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and information~~ Information published or provided by the manufacturer of the dispenser is available stating that the dispenser is compatible with B-blend.

NOTE: If ~~options~~ option (b) or (d) ~~are~~ is used, under-dispenser containment shall be provided if otherwise required by the rules in this chapter, rules of the department of natural resources, or any other applicable provision of law.

[Filed Emergency 8/18/09, effective 9/1/09]

[Published 9/9/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8090B****STATE PUBLIC DEFENDER[493]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 11, "Attorney Fee Contracts," and Chapter 12, "Claims for Indigent Defense Services," Iowa Administrative Code.

These amendments implement 2009 Iowa Acts, Senate File 475, which revises the procedure for appointment of court-appointed attorneys and submission of fee claims from the attorneys.

Pursuant to Iowa Code section 17A.4(3), the State Public Defender finds that notice and public participation are impractical because legislative changes affecting implementation of these rules became effective July 1, 2009.

The State Public Defender also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that these amendments should be made effective September 15, 2009, because the amendments are required by a statutory amendment to Iowa Code chapter 13B, which became effective on July 1, 2009, and the amendments confer a benefit on the public by ensuring that state resources are expended only on properly appointed attorneys in all cases. The amendments also confer a benefit on court-appointed attorneys by providing a grace period for submission of claims.

These amendments are also published herein under Notice of Intended Action as **ARC 8091B** to allow for public comment.

These amendments are intended to implement Iowa Code chapter 13B as amended by 2009 Iowa Acts, Senate File 475.

These amendments will become effective September 15, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 11.5(4) as follows:

**11.5(4)** ~~One~~ After a contract has been awarded, the state public defender shall notify the clerks of court of the counties in which the contracting attorney has ~~agreed to provide services~~ requested placement on the list of attorneys willing to provide services in those counties.

ITEM 2. Amend subrule 12.2(9) as follows:

**12.2(9)** Claims for compensation ~~that do~~ from attorneys whose appointment as counsel or guardian ad litem at the appellate level does not comply with Iowa Code section 814.11 ~~or 815.10(5)~~ will be denied.

ITEM 3. Renumber subrules **12.2(10)** to **12.2(13)** as **12.2(11)** to **12.2(14)**.

ITEM 4. Adopt the following new subrule 12.2(10):

**12.2(10)** Claims for compensation from attorneys whose appointment as counsel or guardian ad litem at the trial level was entered on or after July 1, 2009, and received by the state public defender on or after September 15, 2009, will be denied if the appointment does not comply with Iowa Code section 815.10.

[Filed Emergency 8/12/09, effective 9/15/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

## ARC 8135B

## EDUCATIONAL EXAMINERS BOARD[282]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby adopts Chapter 8, "Debt to State or Local Government—Noncompliance," Iowa Administrative Code.

New Chapter 8 complies with legislation that was passed during the 2008 legislative session. These rules describe the steps that will be taken if a licensee does not comply with state or local government obligations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7862B**. A public hearing on the rules was held on Wednesday, July 8, 2009. No one attended the public hearing, and no written comments were received. These rules are identical to those published under Notice.

These rules are intended to implement Iowa Code chapter 272D.

These rules will become effective October 14, 2009.

The following amendment is adopted.

Adopt the following new 282—Chapter 8:

## CHAPTER 8

## DEBTS TO STATE OR LOCAL GOVERNMENT—NONCOMPLIANCE

**282—8.1(272D) Issuance or renewal of a license—denial.** The board shall deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D. In addition to the procedures contained in Iowa Code chapter 272D, the following shall apply.

**8.1(1)** The notice required by Iowa Code chapter 272D shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

**8.1(2)** The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code chapter 272D, shall be 60 days following service of the notice upon the applicant or licensee.

**8.1(3)** The board's administrator is authorized to prepare and serve the notice required by Iowa Code chapter 272D upon the applicant or licensee.

**8.1(4)** Applicants and licensees shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code chapter 272D, court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

**8.1(5)** All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 272D.

**8.1(6)** In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code chapter 272D, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**8.1(7)** The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

date of the denial of the issuance or renewal of a license and shall similarly notify the applicant or licensee when the license is issued or renewed following the board's receipt of the certificate of noncompliance.

**282—8.2(272D) Suspension or revocation of a license.** The board shall suspend or revoke a license upon receipt of a certificate of noncompliance from the centralized collection unit according to the procedures set forth in Iowa Code chapter 272D. In addition to the provisions contained in Iowa Code chapter 272D, the following shall apply.

**8.2(1)** The notice required by Iowa Code chapter 272D shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

**8.2(2)** The effective date of the suspension or revocation of a license, as specified in the notice required by Iowa Code chapter 272D, shall be 60 days following service of the notice upon the licensee.

**8.2(3)** The board's administrator is authorized to prepare and serve the notice required by Iowa Code chapter 272D and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event a license is on suspension, the administrator shall notify the licensee of the board's intention to continue the suspension.

**8.2(4)** Licensees shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code chapter 272D, court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

**8.2(5)** All board fees required for license renewal or license reinstatement must be paid by licensees and all continuing education requirements must be met before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 272D.

**8.2(6)** In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code chapter 272D, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**8.2(7)** The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license and shall similarly notify the licensee when the license is reinstated following the board's receipt of the certificate of noncompliance.

**282—8.3(17A,22,272D) Sharing of information.** Notwithstanding any statutory confidentiality provision, the board may share information with the centralized collection unit for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code chapter 272D.

These rules are intended to implement Iowa Code chapter 272D.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8139B**

**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.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

The Board has begun to adapt its rules because of requests from nontraditionally prepared applicants. In a review of Board rules for out-of-state applicants and the application process for nontraditionally prepared applicants, several changes that needed to be made were identified, including this amendment. This change specifically removes the language regarding teacher preparation at non-Iowa institutions; due to the changes to the exchange license, this language is not needed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7872B**. A public hearing on the amendment was held on Wednesday, July 8, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

Amend rule 282—13.3(272) as follows:

**282—13.3(272) Applicants from recognized non-Iowa institutions.** An applicant for initial licensure who completes the teacher, administrator, or school service personnel preparation program from a recognized non-Iowa institution shall verify the requirements of either subrule 13.18(4) or 13.18(5).

~~13.3(1) Non-Iowa teacher preparation program. Provided all requirements for Iowa licensure have been met, the applicant shall:~~

~~a. — Have the recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized institution where the preparation was completed, and~~

~~b. — Submit a copy of a valid regular teaching certificate or license exclusive of a temporary, emergency or substitute license or certificate, and~~

~~c. — Provide verification of successfully passing mandated tests in the state in which the applicant is currently licensed if the applicant has completed fewer than three years of teaching experience.~~

~~13.3(2)~~ **13.3(1)** Requirements for an alternative preparation license for out-of-state candidates. An applicant who holds a valid license from another state and whose preparation was completed through a state-approved alternative teacher preparation program must:

a. Hold a baccalaureate degree with a minimum cumulative grade point average of 2.50 on a 4.0 scale from a regionally accredited institution.

b. Provide a valid out-of-state teaching license based on a state-approved alternative preparation program.

c. Provide a recommendation from a regionally accredited institution, department of education, or a state's standards board indicating the completion of an approved alternative teacher preparation program.

d. Provide an official institutional transcript(s) to be analyzed for the requirements necessary for full Iowa licensure based on 13.9(4) "a"(1) to (7) and 13.9(4) "c"(1) to (5).

e. If the applicant has completed fewer than three years of teaching experience, provide verification from the state licensing agency/department in the state where the alternative preparation program was completed indicating that the applicant has successfully passed that state's mandated tests.

f. Verify three years of teaching experience, which will waive the student teaching requirement.

~~13.3(3)~~ **13.3(2)** A recognized non-Iowa teacher preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8134B****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.

This amendment removes the option that allows an applicant to be issued a teaching license before the applicant receives a degree. There has been concern that an applicant who is issued a teaching license before the applicant receives a degree would not be considered highly qualified based on federal requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7860B**. A public hearing on the amendment was held on Wednesday, July 8, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

Rescind and reserve subrule **13.10(4)**.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8133B****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.

This amendment provides that Class B licenses shall expire on the same date for everyone. The new subrule states that a Class B license will expire on June 30 of the fiscal year in which it was issued plus one year. This change eliminates confusion and may assist the district in making personnel decisions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 20, 2009, as **ARC 7778B**. A public hearing on the amendment was held on Wednesday, June 10, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

Adopt the following new subrule 13.11(5):

**13.11(5) Expiration.** This license will expire on June 30 of the fiscal year in which it was issued plus one year.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8138B****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.

The Board has begun to adapt its rules because of requests from nontraditionally prepared applicants. In a review of Board rules for out-of-state applicants and the application process for nontraditionally prepared applicants, several changes that needed to be made were identified, including the amendment to rule 282—13.17(272). This amendment changes the duration of the exchange license from two years to one year and changes the type of preparation programs that will be accepted.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7871B**. A public hearing on the amendment was held on Wednesday, July 8, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

Amend rule 282—13.17(272) as follows:

**282—13.17(272) Specific requirements for exchange licenses.** An applicant seeking Iowa licensure who completes the teacher preparation program from a recognized non-Iowa institution shall verify the requirements of subrules 13.18(4) and 13.18(5) through traditional course-based preparation program and transcript review. A recognized non-Iowa teacher preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.

**13.17(1) ~~Two-year~~ One-year teacher exchange license.**

*a.* A ~~two-year~~ one-year nonrenewable exchange license may be issued to an applicant under the following conditions:

(1) The applicant has completed a state-approved, regionally accredited teacher education program; and

(2) The applicant has the recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized non-Iowa institution where the preparation was completed; and

~~(2) (3)~~ The applicant holds and submits a copy of a valid regular certificate or license in the state in which the preparation was completed, exclusive of a temporary, emergency or substitute license or certificate; and

~~(3) —The applicant is not subject to any pending disciplinary proceedings in any state or country; and~~

~~(4) —The applicant complies with all requirements with regard to application processes and payment of licensure fees; and~~

~~(5) (4)~~ If the applicant has fewer than three years of teaching experience or is being recommended for a K-6 elementary education endorsement, the applicant must verify successful completion of mandated tests in the state in which the applicant is currently licensed; and

~~b. (5) Authorization.~~ Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application, the transcripts and the license or certificate held in the state in which the basic preparation for licensure was completed or of the application and the credential evaluation report. The applicant must have completed at least 50 percent of the endorsement requirements through a two- or four-year institution in order for the endorsement to be included on the exchange license; and

~~(6) The applicant is not subject to any pending disciplinary proceedings in any state or country; and~~

~~(7) The applicant complies with all requirements with regard to application processes and payment of licensure fees.~~

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

~~e. b. Conversion.~~ After the term of the exchange license has expired, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

**13.17(2)** and **13.17(3)** No change.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8142B**

**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 18, "Issuance of Administrator Licenses and Endorsements," Iowa Administrative Code.

The Board has begun to adapt its rules because of requests from nontraditionally prepared applicants. In a review of Board rules for out-of-state applicants and the application process for nontraditionally prepared applicants, several changes that needed to be made were identified, including the proposed rescission of rule 282—18.3(272). This amendment removes the language regarding non-Iowa institutions for administrators. Because of the modifications to the administrator exchange license, this language is no longer needed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7874B**. A public hearing on the amendment was held on Wednesday, July 8, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

Rescind and reserve rule **282—18.3(272)**.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8141B**

**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 18, "Issuance of Administrator Licenses and Endorsements," Iowa Administrative Code.

The Board has begun to adapt its rules because of requests from nontraditionally prepared applicants. In a review of Board rules for out-of-state applicants and the application process for nontraditionally prepared applicants, several changes that needed to be made were identified, including the proposed amendment to rule 282—18.6(272). This amendment changes the length of the administrator exchange license from two years to one year and changes the type of preparation programs that will be accepted.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7873B**. A public hearing on the amendment was held on Wednesday, July 8, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

Amend rule 282—18.6(272) as follows:

**282—18.6(272) Specific requirements for a ~~two-year~~ an administrator exchange license.** An applicant seeking Iowa licensure who completes an administrator preparation program from a recognized non-Iowa institution shall verify the requirements of rules 282—18.1(272) and 282—18.4(272) through traditional course-based preparation program and transcript review. A recognized non-Iowa administrator preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.

**18.6(1) Specific requirements.** A ~~two~~ one-year nonrenewable administrator exchange license may be issued to an individual who completes the requirements in paragraphs 18.4(2) “a” through “f” and ~~who~~ satisfies the following:

a. Has completed a state-approved, regionally accredited administrator preparation program in a college or university approved by the state board of education or the state licensing agency in the individual’s preparation state; and

b. Has the recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized non-Iowa institution where the preparation was completed; and

~~b- c.~~ Holds and submits a copy of a valid regular administrator certificate or license in the state in which the preparation was completed, exclusive of a temporary, emergency or substitute license or certificate ; and

~~e. —Is not subject to any pending disciplinary proceedings in any state.~~

d. Meets the experience requirements for the administrator ~~endorsements~~ endorsement(s). Verified successful completion of three years of full-time teaching experience in other states, on a valid license, shall be considered equivalent experience necessary for the principal endorsement. Verified successful completion of six years of full-time teaching and administrative experience in other states, on a valid license, shall be considered equivalent experience for the superintendent endorsement provided that at least three years were as a teacher and at least three years were as a building principal or other PK-12 districtwide administrator; and

e. Is not subject to any pending disciplinary proceedings in any state; and

f. Complies with all requirements with regard to application processes and payment of licensure fees.

**18.6(2) Authorization.** Each exchange license shall be limited to the area(s) and level(s) of administration as determined by an analysis of the application, the transcripts, and the license or certificate held in the state in which the basic preparation for the administrator licensure was completed.

**18.6(3) Conversion.** Each individual receiving the ~~two~~ one-year exchange license must complete any identified licensure deficiencies in order to be eligible for a ~~regular educational and~~ professional administrator license in Iowa.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8131B**

**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 23, “Behind-the-Wheel Driving Instructor Authorization,” Iowa Administrative Code.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

This amendment sets forth the requirement that the behind-the-wheel driving instructor must meet the qualifications set forth in subrule 23.1(1) in order for the authorization to remain valid.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7861B**. A public hearing on the amendment was held on Wednesday, July 8, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

Amend rule 282—23.2(272,321) as follows:

**282—23.2(272,321) Validity.** All fees are nonrefundable as set out in 282—Chapter 12. The behind-the-wheel driving instructor authorization shall be valid for one calendar year, and it shall expire one year after issue date. The behind-the-wheel driving instructor authorization shall be valid only if the holder continues to be qualified under 282—subrule 23.1(1).

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8137B**

**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 25, "Code of Professional Conduct and Ethics," Iowa Administrative Code.

This amendment is proposed to help clarify the definition of "fraud" in the code of professional conduct and ethics. It removes a conflicting definition in paragraph 25.3(1)"a" and allows the definition in rule 282—25.2(272) to stand.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7868B**. A public hearing on the amendment was held on Wednesday, July 8, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

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. Fraud.* ~~Fraud in the procurement or renewal of a practitioner's license~~ Fraud means the same as defined in rule 282—25.2(272).

*b. to e.* No change.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8136B****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 25, “Code of Professional Conduct and Ethics,” Iowa Administrative Code.

This amendment complies with legislation that was passed in the 2008 legislative session. The law states that if a licensee fails to fulfill the licensee’s obligations to the state or local government, action may be taken against the license; therefore, it is necessary to amend the code of professional conduct and ethics.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7864B**. A public hearing on the amendment was held on Wednesday, July 8, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

Amend subrule 25.3(7) as follows:

**25.3(7) Standard VII—compliance with state law governing obligations to state or local governments, student loan obligations, and child support obligations.** Violation of this standard includes:

a. Failing to comply with 282—Chapter 8 concerning payment of debts to state or local governments.

~~a.~~ b. Failing to comply with 282—Chapter 9 concerning repayment of student loans.

~~b.~~ c. Failing to comply with 282—Chapter 10 concerning child support obligations.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8102B****ENERGY INDEPENDENCE, OFFICE OF[350]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 469.3, the Office of Energy Independence hereby adopts Chapter 5, “Energy Efficiency Community Grant Program,” Iowa Administrative Code.

The new chapter establishes a competitive grant program to make funding available to local communities from four percent of the moneys appropriated annually to the Iowa Power Fund.

Notice of Intended Action for this chapter was published in the Iowa Administrative Bulletin on July 1, 2009, as **ARC 7913B**. The Office received public comments from the Iowa Environmental Council and the Iowa League of Cities on the Notice of Intended Action.

The Office made changes based upon public comment. Commenters expressed concern that rule 350—5.2(469) did not encompass all of the entities that were eligible based upon the legislation. The concern regarding subrule 5.5(1) was the omission of renewable energy systems from the description. In response to public comment, the following changes have been made from the Notice of Intended Action:

The phrase “city, county, nonprofit organization” was added to the definition of “Eligible applicant” in rule 350—5.2(469). Language regarding organizations that have a specific mission or program was omitted from the definition.

## ENERGY INDEPENDENCE, OFFICE OF[350](cont'd)

In subrule 5.5(1), the catchwords were changed from “Energy efficiency” to “Promotion of energy efficiency or renewable generation.” The language in the subrule was changed to include renewable energy and the reduction of energy consumption.

This amendment does not provide for a waiver.

These rules are intended to implement 2009 Iowa Acts, Senate File 452, section 2.

These rules shall become effective on October 14, 2009.

The following amendment is adopted.

Adopt the following **new** 350—Chapter 5:

CHAPTER 5  
ENERGY EFFICIENCY COMMUNITY GRANT PROGRAM

**350—5.1(469) Purpose.** The purpose of the energy efficiency community grant program is to make funding available to local communities for energy efficiency projects or programs. The program is established with moneys from the Iowa power fund, which is under the authority of the Iowa office of energy independence pursuant to Iowa Code chapter 469.

**350—5.2(469) Definitions.**

“*Eligible applicant*” means a city, county, nonprofit organization, organization involved with energy efficiency or conservation efforts, environmental organization, or group that has a tax identification number.

“*Eligible project*” means any project or program that would save energy dollars or energy units.

“*In kind*” means any matching funds in the form of salaries and materials. Equipment and indirect costs will not be counted as in-kind matching funds. Volunteer hours that are submitted for salary match must use an hourly rate equivalent to the average national hourly earnings of all production and nonsupervisory workers on private, nonfarm payrolls as determined by the U.S. Bureau of Labor Statistics.

**350—5.3(469) Requests for applications.** The office shall determine the form of the application and issue requests for applications a minimum of two times during a fiscal year.

**350—5.4(469) Geographic distribution.** Consideration will be given to applications based on distribution throughout Iowa’s five congressional districts. The office may consider multiple applications from the same community. The office may take into account geographic distribution in determining awards.

**350—5.5(469) Criteria for review.** In reviewing applications, the office shall consider the following:

**5.5(1) *Promotion of energy efficiency or renewable generation.*** The office shall consider the project’s potential promotion of residential or small-scale renewable energy systems and the project’s ability to reduce energy consumption, energy units, or dollars spent on energy.

**5.5(2) *Collaboration.*** The office shall consider the following:

*a.* Whether the project establishes or supports a community-based, county-based or regional energy efficiency project or program.

*b.* The breadth and depth of community, county or regional involvement in the energy efficiency project or program.

*c.* The involvement of local schools, civic organizations, chambers of commerce, and private groups.

*d.* The project’s support of any existing or proposed ordinances encouraging energy efficiency and conservation or energy efficient building code provisions and enforcement.

*e.* The project’s efforts to secure local funding for the community-based, county-based or regional energy efficiency project or program or for a funding sustainability plan.

ENERGY INDEPENDENCE, OFFICE OF[350](cont'd)

**350—5.6(469) Project approval and award of funds.** Projects shall be approved by the director of the office after staff review and recommendation. All funding decisions shall be reported monthly to the Iowa power fund board. Funds will be distributed to approved projects based on mutually agreed-upon contract terms.

These rules are intended to implement 2009 Iowa Acts, Senate File 452, section 2.

[Filed 8/17/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8123B**

## **ENVIRONMENTAL PROTECTION COMMISSION[567]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.173 and 455B.197, the Environmental Protection Commission hereby amends Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions," and Chapter 63, "Monitoring, Analytical and Reporting Requirements," Iowa Administrative Code.

Chapters 62 and 63 were recently amended by the rule making designated **ARC 7625B**. The amendments were approved by the Commission on February 17, 2009, and were published under Notice of Intended Action in the March 11, 2009, Iowa Administrative Bulletin. On April 8, 2009, the Administrative Rules Review Committee unanimously placed a 70-day delay on the effective date of portions of **ARC 7625B**. This adopted rule making addresses some of the issues that contributed to the 70-day delay. Based upon public comment and internal review, the Department has determined that additional revisions are appropriate at this time.

The adopted amendment to subrule 62.8(2) is designed to address new technical data received by the Department from the United States Environmental Protection Agency indicating that the methodology set forth in the Department's "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004, for establishing E. coli effluent limits is not supported by the technical data upon which the methodology is intended to be based.

The adopted amendment to Table II of Chapter 63 is intended to reduce the burden on smaller communities in regard to nutrient monitoring requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 3, 2009, as **ARC 7813B**. One public hearing was held with notice of the hearing sent to various individuals, organizations, and associations, and to statewide news network organizations. Comments were received from six persons and organizations. A responsiveness summary addressing the comments may be obtained from the Department of Natural Resources. The amendments have not been modified from those published under Notice.

Additional information on the Department's rules can be found on the Department's Web site at <http://www.iowadnr.gov/water/npdes/rulemaking.html>.

These amendments are intended to implement Iowa Code sections 455B.173, 455B.197 and 455B.105(11).

These amendments shall become effective October 14, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 62.8(2) as follows:

**62.8(2) Effluent limitations necessary to meet water quality standards.** No effluent, alone or in combination with the effluent of other sources, shall cause a violation of any applicable water quality standard. When it is found that a discharge that would comply with applicable effluent standards in 567—62.3(455B), 567—62.4(455B) or 567—62.5(455B) or effluent limitations in 567—62.6(455B) would cause a violation of water quality standards, the discharge will be required to meet the water quality-based effluent limits (WQBELs) necessary to achieve the applicable water quality standards as

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

established in 567—Chapter 61. Any such effluent limit shall be derived from the calculated waste load allocation, as described in “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on June 16, 2004, or the waste load allocation as required by a total maximum daily load, whichever is more stringent. The translation of waste load allocations to WQBELs shall use Iowa permit derivation methods, as described in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on June 16, 2004, except that the daily sample maximum criteria for *E. coli* set forth in Part E of the “Supporting Document for Iowa Water Quality Management Plans” shall not be used as an end-of-pipe permit limitation.

ITEM 2. Amend **567—Chapter 63**, Table II, as follows:

Table II Minimum Self-Monitoring in Permits for Organic Waste Dischargers  
Continuous Discharge Wastewater Treatment Plants

Wastewater Parameter	Sampling Location	Sample Type <sup>3,11</sup>	Frequency by P.E. <sup>1,6</sup>						
			≤ 100	101-500	501-1,000	1,001-3,000	3,001-15,000	15,001-105,000	> 105,000
Flow <sup>2</sup>	Raw or Final	24-Hr Total	1/week	Daily	Daily	Daily	Daily	Daily	Daily
BOD <sub>5</sub>	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/Week	1/Week	2/Week	2-5/Week <sup>5</sup>	Daily
CBOD <sub>5</sub>	Final	24-Hr Comp.	1/3 Months	1/Month	1/Week	1/Week	2/Week	2-5/Week <sup>5</sup>	Daily
Total Suspended Solids (TSS)	Raw	24-Hr Comp.	1/6 Months	1/3 Months	1/Month	1/2 Weeks	1/Week	2-5/Week <sup>5</sup>	Daily
	Final	24-Hr Comp.	1/3 Months	1/3 Months	1/Month	1/2 Weeks	1/Week	2-5/Week <sup>5</sup>	Daily
Ammonia Nitrogen <sup>10</sup>	Final	24-Hr Comp.	1/Month	1/Month	1/Week	1/Week	2/Week	2-5/Week <sup>5</sup>	Daily
TKN <sup>8</sup>	Raw	24-Hr Comp.	—	—	—	<del>1/2 Months</del> —	1/Month	1/Month	1/2 Weeks
Total Nitrogen <sup>9</sup>	Final	24-Hr Comp.	—	—	—	<del>1/3 Months</del> —	1/3 Months	1/2 Months	1/2 Months
Total Phosphorus <sup>9</sup>	Final	24-Hr Comp.	—	—	—	<del>1/3 Months</del> —	1/3 Months	1/2 Months	1/2 Months
pH	Raw	Grab	—	—	1/Week	1/Week	2/Week	2-5/Week <sup>5</sup>	Daily
	Final	Grab	1/3 Months	1/Month	1/Week	1/Week	2/Week	5/Week	Daily
<i>E. coli</i> <sup>4,7</sup>	Final	Grab	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months	5 samples, 1/3 Months
Temperature	Raw	Grab	—	—	1/Week	1/Week	2/Week	2-5/Week <sup>5</sup>	Daily
	Final	Grab	1/3 Months	1/Month	1/Week	1/Week	2/Week	2-5/Week <sup>5</sup>	Daily

[Filed 8/19/09, effective 10/14/09]

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**ARC 8120B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 459.103 and 459A.104, the Environmental Protection Commission hereby amends Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

These amendments correct definitions and requirements related to animal feeding operations that are needed to make Chapter 65 consistent with statutory amendments adopted during the 2008 legislative session. Additional changes are adopted to bring administrative rules into compliance with federal regulations related to the NPDES permit program and to address outdated references.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 11, 2009, as **ARC 7564B**. Oral comments were received at two of the four public hearings and 11 written comments were received during the comment period.

As a result of the written and oral comments, the following changes have been made to the amendments as published under Notice of Intended Action:

In Items 3 and 6, the “equivalent or better” demonstration in subparagraph 65.3(3)“g”(1) and subparagraph 65.101(6)“b”(1), respectively, is modified to refer to the federal 100-foot setback rather than to Iowa’s 200- or 800-foot setbacks. Subparagraph (1) of 65.3(3)“g” and 65.101(6)“b” now reads as follows:

“(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. For purposes of the NPDES permit program if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback required by 40 CFR 412.4(c)(5).”

In Item 4, the last sentence in paragraph 65.17(6)“b” regarding penalty preclusion is retained and a sentence is added indicating that the preclusion does not apply to a confinement feeding operation owner subject to the NPDES permit program. Paragraph 65.17(6)“b” now reads as follows:

“b. Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map may be used to indicate crop schedules by field or farm. The planned crop schedule shall name the crop(s) planned to be grown for the length of the crop rotation beginning with the crop planned or actually grown during the year this plan is submitted or the first year manure will be applied. The confinement feeding operation owner shall not be penalized for exceeding the nitrogen or phosphorus application rate for an unplanned crop, if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances. However, the penalty preclusion in the previous sentence does not apply to a confinement feeding operation owner subject to the NPDES permit program.”

These amendments shall become effective October 14, 2009.

These amendments are intended to implement Iowa Code sections 459.102, 459.103, 459.312, 459.314, 459A.103, 459A.104, 459A.208 and 459A.303.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 65] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7564B**, IAB 2/11/09.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

[For replacement pages for IAC, see IAC Supplement 9/9/09.]

**ARC 8124B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby amends Chapter 134, “Underground Storage Tank Licensing Certification Programs,” and Chapter 135, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,” Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7854B**. Three public hearings were held and six comments on the amendments were received.

The Notice of Intended Action proposed new rules requiring underground storage tank (UST) operator training, requiring closure investigations be conducted by a certified groundwater professional, amending the conflict of interest provisions for conducting compliance inspections, clarifying the

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biennial compliance inspection requirement, and phasing in new piping leak detection requirements at unstaffed sites.

These amendments provide for three classes of operators: Class A operators responsible for managing resources and personnel to achieve and maintain compliance; Class B operators responsible for implementing day-to-day aspects of operating, maintaining and record keeping for one or more facilities; and Class C operators who are the on-site employees controlling or monitoring the dispensing of fuel and who are the first line of response to emergency conditions. One person can be more than one class of operator.

The amendments provide responsibilities for each class of operator and criteria for training. The training will be provided by third parties or within a company's normal training of personnel. All training must be approved by the Department. The amendments do allow for approval of on-line computer training that meets the requirements. Class C operators can be trained by the Class B operator.

Upon further consideration of the duties of a Class A operator as described in 135.4(7)"a," the Department has added a provision at 135.4(7)"a"(4) that requires the designated Class A operator to notify the Department as soon as possible when the operator becomes aware that there has been a change of UST ownership, property ownership and change in operator status. This is similar to the duty placed on the Class A operator of the new UST owner and new UST operator to ensure that the UST system satisfies all compliance obligations prior to bringing the system into operation.

The amendments to the conflict of interest provisions for compliance inspections are adopted to meet the EPA guidance for inspections required in the Energy Policy Act. The EPA guidance does not allow compliance inspections to be conducted by licensed inspectors who are employees of the underground storage tank owner or operator.

The public comments concerned 135.4(6), 135.4(10), 135.4(11), 135.5(1)"e" and 135.15(3)"a" in the proposed amendments. Based on the comments, the date Class A and Class B operators have to be trained was changed from August 8, 2011, to December 31, 2011, to allow more time for training. In addition, a copy of training documentation no longer has to be posted but kept on site and available.

The comments also addressed concerns with the amendment which required the phased-in installation of piping leak detection systems which have the capacity to automatically shut off product to the submersible pump at unstaffed facilities. The comments concerned the cost of these upgrades, the potential effect on reducing the availability of fueling stations in some parts of the state, and the issue of whether this amendment was more restrictive than federal regulations and, if so, whether state law prohibits such a rule. The Environmental Protection Commission at its public meeting on August 18, 2009, decided to table this provision (Item 4 in the Notice of Intended Action) for further consideration.

The amendments require that a groundwater professional certified by the Department under 567–Chapter 134, Part A, conduct or supervise the soil and groundwater investigation required when underground storage tanks are permanently closed by removal or filling in place. This change proposed under Notice of Intended Action and adopted herein gives the Department discretion to waive this requirement under certain circumstances and if Department staff are willing and able to provide direct supervision of the tank closure. This change is consistent with new licensing rules that were previously approved (see **ARC 7946B** in the July 15, 2009, Iowa Administrative Bulletin).

These amendments are intended to implement Iowa Code section 455B.474.

These amendments shall become effective October 14, 2009.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 134.14(6):

**134.14(6)** Conflict of interest. A compliance inspector shall not conduct a compliance inspection if the compliance inspector is the owner or operator of the UST system, an employee of the owner or operator of the UST system, or a person having daily on-site responsibility for the operation and maintenance of the UST system.

ITEM 2. Adopt the following **new** definitions in rule **567—135.2(455B)**:

"Class A operator" means a person responsible for managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter. This includes ensuring appropriate

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individuals are trained in the proper operation and maintenance of the underground storage tank system, the maintenance of all required records, the procedures for response to emergencies caused by releases or spills, and assuring financial responsibility and documentation to the department or its representatives as required.

“*Class B operator*” means a person who implements applicable underground storage tank regulatory requirements and standards. This includes implementing the day-to-day aspects of operating, maintaining, and record keeping for underground storage tanks at one or more facilities. A Class B operator typically monitors, maintains and ensures that release detection methods, record-keeping, and reporting requirements are met; release prevention equipment, record-keeping, and reporting requirements are met; all relevant equipment complies with performance standards; and appropriate individuals are trained to properly respond to emergencies caused by releases and spills.

“*Class C operator*” means an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and who is the first line of response to events indicating emergency conditions.

ITEM 3. Adopt the following **new** subrules 135.4(6) to 135.4(11):

**135.4(6) Training required for UST operators.**

a. An owner or operator shall designate Class A, Class B, and Class C operators for each underground storage tank system or facility that has underground storage tanks regulated by the department, except for unstaffed facilities, which may designate only Class A and Class B operators.

b. A facility may not operate after December 31, 2011, unless operators have been designated and trained as required in this rule, or unless otherwise agreed upon by the department based on a finding of good cause for failure to meet this requirement and a plan for designation and training at the earliest practicable date.

c. Trained operators must be readily available to respond to suspected or confirmed releases, equipment shut-offs or failures, and other unusual operating conditions.

d. A Class A or Class B operator should be immediately available for telephone consultation with the Class C operator when a facility is in operation. A Class A or Class B operator should be able to be on site at the storage tank facility within four hours.

e. For staffed facilities, a Class C operator must be on site whenever the UST facility is in operation.

f. For unstaffed facilities, a Class B operator must be geographically located such that the person can be on site within two hours of being contacted by the public, the owner or operator of the facility, or the department. Emergency contact information and emergency procedures must be prominently displayed at the site. An unstaffed facility shall have an emergency shutoff device as provided in 135.5(1) and a sign posted in a conspicuous place that includes the name and telephone number of the facility owner, an emergency response telephone number to contact the Class B operator, and information on local emergency responders.

g. Designated operators must successfully complete required training under subrule 135.4(9) no later than December 31, 2011.

h. A person may be designated for more than one class of operator.

i. When a facility is found to be out of compliance, the department may require the owner and operator to retrain the designated UST system Class A, B, or C operator under a plan approved by the department. The retraining must occur within 60 days from departmental notice for Class A and Class B operators and within 15 days for Class C operators.

**135.4(7) UST operator responsibilities.**

a. *Class A operator.*

(1) Class A operators have the primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator’s responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter in the following ways:

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1. Class A operators assist the owner by ensuring that underground storage tank systems are properly installed and expeditiously repaired and inspected; financial responsibility is maintained; and records of system installation, modification, inspection and repair are retained and made available to the department and licensed compliance inspectors. The Class A operator shall properly respond to and report emergencies caused by releases or spills from UST systems, ensure that the annual tank management fees are paid, and ensure that Class B and Class C operators are properly trained.

2. Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

3. Class A operators shall provide site drawings that indicate equipment locations for Class B and Class C operators.

(2) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class A operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class A operators pursuant to subrules 135.4(9) through 135.4(11). Class A operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but shall not perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility required by rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(3) When there is a change in ownership or operator status, the new owner or operator is responsible for designating a Class A operator prior to bringing the UST system into operation. The Class A operator is responsible for ensuring that all necessary documentation for change of ownership is completed and submitted to the department and that all compliance requirements of this chapter are satisfied prior to bringing the UST system into operation. The compliance requirements may be provided to the owner or operator using the department's checklist.

If the UST system was temporarily closed, the designated Class A operator must ensure the department's checklist for returning a UST into service is followed, all compliance requirements of this chapter have been met, and the necessary documentation is submitted to the department.

(4) When there is a change in UST ownership, property ownership or operator status, the designated Class A operator for the current owner and operator is responsible for notifying the department when the change is final and, if possible, prior to the new owner or operator taking possession of the site.

*b. Class B operator.*

(1) A Class B operator implements applicable underground storage tank regulatory requirements and standards in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operation, maintenance, and record keeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator's principal place of business. A Class B operator's responsibilities include, but are not limited to:

1. Performing mandated system tests at required intervals and making sure spill prevention, overfill control equipment, and corrosion protection equipment are properly functioning.

2. Assisting the owner by ensuring that release detection equipment is operational, release detection monitoring and tests are performed at the proper intervals, and release detection records are retained and made available to the department and compliance inspectors.

3. Making sure record-keeping and reporting requirements are met and that relevant equipment manufacturers' or third-party performance standards are available and followed.

4. Properly responding to, investigating, and reporting emergencies caused by releases or spills from USTs.

5. Performing UST release detection in accordance with rule 567—135.5(455B).

6. Monitoring the status of UST release detection.

7. Meeting spill prevention, overfill prevention, and corrosion protection requirements

8. Reporting suspected and confirmed releases and taking release prevention and response actions according to the requirements of rule 567—135.6(455B).

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9. Training and documenting Class C operators to make sure at least one Class C operator is on site during operating hours. Class B operators shall be familiar with Class C operator responsibilities and may provide required training for Class C operators.

(2) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class B operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class B operators under subrules 135.4(9) through 135.4(11). Class B operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility pursuant to rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(3) The owner or operator of a site undergoing a change in ownership shall designate a Class B operator prior to bringing the UST system into operation. The Class B operator must conduct an inspection using the department's inspection checklist and submit the completed checklist along with the change of ownership form prior to operation. If a UST system was temporarily closed, the Class B operator shall ensure that the department's checklist for returning a UST to service is followed and that the necessary documentation is submitted to the department prior to operation of the UST system.

*c. Class C operator.* A Class C operator is an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and is the first to respond to events indicating emergency conditions. A Class C operator must be present at the facility at all times during normal operating hours. A Class C operator monitors product transfer operations to ensure that spills and overfills do not occur. The Class C operator must know how to properly respond to spills, overfills and alarms when they do occur. In the event of a spill, overfill or alarm, a Class C operator shall notify the Class A and Class B operators, as well as the department and appropriate local emergency authorities as required by rule.

(1) Within six months after October 14, 2009, written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site.

(2) There may be more than one Class C operator at a storage tank facility, but not all employees of a facility need be Class C operators.

**135.4(8) UST operator training course requirements.** Individuals must attend a department-approved training course covering material designated for each operator class. Individuals must attend every session of the training, take the examination, and attend examination review.

*a. Class A operators.* To be certified as a Class A operator, the applicant must successfully complete a department-approved training course that covers underground storage tank system requirements as outlined in 567—Chapters 134 to 136. The course must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. The training must include, but is not limited to, the following:

(1) Components and materials of underground storage tank systems.

(2) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(3) Spill and overfill prevention, to include the American Petroleum Institute (API) Publication RP1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals."

(5) Proper fuel ordering and delivery, including procedures in API RP1007, "Loading and Unloading of MC/DOT 406 Cargo Tank Motor Vehicles."

(6) Release detection methods and related reporting requirements.

(7) Corrosion protection and inspection requirements, including the requirement to have a department-licensed cathodic protection tester.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) How to properly respond to an emergency, including hazardous conditions.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Temporary and permanent closure procedures and requirements.

(16) NESHAP vapor recovery requirements.

(17) Conditions under which the department may stop fuel delivery and take enforcement action.

(18) Ensuring that annual tank management fees are paid.

(19) Ensuring that suspected and confirmed releases are investigated and reported according to subrule 135.6(1).

*b. Class B operators.* To be certified as a Class B operator, the individual must successfully complete a department-approved training course that provides in-depth understanding of UST system regulations applicable to this class. Training must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. Training shall cover the operation and maintenance requirements set forth in this chapter, including, but not limited to, the following:

(1) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(2) Components and materials of underground storage tank systems.

(3) Spill and overflow prevention.

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637.

(5) Proper fuel ordering and delivery, including procedures from API RP1007.

(6) Methods of release detection and related reporting requirements.

(7) Corrosion protection and related testing.

(8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) Emergency response, reporting and investigating releases.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Reporting and record-keeping requirements.

(16) Overview of Class C operator training requirements.

(17) NESHAP vapor recovery requirements.

(18) Conditions under which the department may stop fuel delivery and take enforcement action.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*c. Class C operators.* To be certified as a Class C operator, an individual must complete a department-approved training course that covers, at a minimum, a general overview of the department's UST program and purpose; groundwater protection goals; public safety and administrative requirements; and action to be taken in response to an emergency condition due to a spill or release from a UST system. Training must include written procedures for the Class C operator, including notification instructions necessary in the event of emergency conditions. The written instructions and procedures must be readily available on site. A Class A or Class B operator may provide Class C training.

**135.4(9) Examination and review requirement.** Class A and Class B operators must complete the department-approved training course and take an examination to verify their understanding and knowledge. The examination may include both written and practical (hands-on) testing activities. The trainer must follow up the examination with a review of missed test questions with the class or individual to ensure understanding of problem areas. Upon successful completion of the training course, the applicant will receive a certificate verifying the applicant's status as a Class A, Class B, or Class C operator.

*a. Reciprocity.* The department may waive the training course for operators upon a showing of successful completion of a training course and examination approved by another state or regulatory agency that the department determines are substantially equivalent to the UST requirements contained in this chapter.

*b. Transferability to another UST site.* Class A and Class B operators may transfer to other UST facilities in Iowa provided the operator is properly designated by the facility owner as a Class A or Class B operator according to 567—subrule 134.4(13). Class A and Class B operators transferring from other states shall seek prior approval of training qualifications, unless the department has preapproved the out-of-state program as substantially equivalent to the requirements of this chapter.

**135.4(10) Timing of UST operator training.**

*a.* An owner shall ensure that Class A, Class B, and Class C operators are trained as soon as practicable after October 14, 2009, contingent upon availability of approved training providers, but not later than December 31, 2011, except as provided in paragraph 135.4(6) "b."

*b.* When a Class A or Class B operator is replaced, a new operator must be trained prior to assuming duties for that class of operator.

*c.* Class C operators must be trained before assuming the duties of a Class C operator. Within six months after October 14, 2009, written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site. A Class C operator may be briefed on these procedures concurrent with annual safety training required under Occupational Safety and Health Administration regulations, 29 CFR, Part 1910.

**135.4(11) Documentation of operator training.**

*a.* The owner of an underground storage tank facility shall maintain a list of designated operators. The list shall be made available to the department in accordance with subrule 135.4(5). The list shall represent the current Class A, Class B and Class C operators for the UST facility and must include:

(1) The name of each operator and the operator's class(es); contact information for Class A and Class B operators; the date each operator successfully completed initial training and refresher training, if any; the name of the company providing the training; and the name of the trainer.

(2) For all classes of operators, the site(s) for which an operator is responsible if more than one site.

*b.* A copy of the certificates of training for Class A and Class B operators shall be on file and readily available for inspection in accordance with subrule 135.4(5).

*c.* A copy of the certificates of training for Class B and Class C operators shall be available at each facility for which the operator is responsible.

*d.* Class A and Class B operator contact information, including names and telephone numbers and any emergency information, shall be conspicuously posted at unstaffed facilities near the dispensers and the station building.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 4. Amend paragraph **135.15(3)“a,”** introductory paragraph, as follows:

*a.* Before permanent closure or a change-in-service is completed, owners or operators must measure for the presence of a release where contamination is most likely to be present at the UST site. This soil and groundwater closure investigation must be conducted or supervised by a groundwater professional certified under 567—Chapter 134, Part A, unless the department in its discretion grants an exemption and provides direct supervision of the closure investigation. In selecting the sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release.

ITEM 5. Rescind subrule 135.20(1) and adopt the following **new** subrule in lieu thereof:

**135.20(1)** The owner or operator must have the UST system inspected and an inspection report submitted to the department by a UST compliance inspector certified by the department under 567—Chapter 134. An initial compliance site inspection shall be conducted no later than December 31, 2007. All subsequent compliance site inspections conducted after the compliance site inspection for the 2008-2009 biennial period shall be conducted within 24 months of the prior compliance site inspection. Compliance site inspections must be separated by at least six months.

ITEM 6. Adopt the following **new** subrule 135.20(4):

**135.20(4)** Conflict of interest. A compliance site inspection must be conducted by a certified compliance inspector who is not the owner or operator of the UST system being inspected, an employee of the owner or operator of the UST system being inspected, or a person having daily on-site responsibility for the operation and maintenance of the UST system.

[Filed 8/19/09, effective 10/14/09]

[Published 9/9/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8116B**

**HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DIVISION[605]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8(3)“c,” the Homeland Security and Emergency Management Division hereby amends Chapter 7, “Local Emergency Management,” Iowa Administrative Code.

The Homeland Security and Emergency Management Division amends paragraph 7.4(4)“a” to update continuing education requirements for local emergency management coordinators. This amendment changes the course numbers to accurately reflect the current Federal Emergency Management Agency training catalog. This amendment was developed in consultation with the Iowa Emergency Management Association.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 15, 2009, as **ARC 7951B**. No comments were made by the public regarding the proposed amendment. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 29C.

This amendment will become effective on October 14, 2009.

The following amendment is adopted.

Amend paragraph **7.4(4)“a”** as follows:

*a.* Within five years of appointment as an emergency management coordinator, the person must complete the following ten independent study courses as prescribed by the Federal Emergency Management Agency:

- (1) Citizens Guide to Disaster Assistance IS-7.

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- (2) The EOC’s Role in Community Preparedness, Response and Recovery Activities IS- ~~275~~ 775.
- (3) Emergency Manager: An Orientation to the Position IS-1.
- (4) Are You Ready? An In-depth Guide to Citizen Preparedness IS-22.
- (5) An Introduction to Hazardous Materials IS-5A.
- (6) Introduction to Incident Command System IS-100a.
- (7) ICS for Single Resources and Initial Action Incidents IS-200a.
- (8) Radiological Emergency Management IS-3.
- (9) Introduction to Hazard Mitigation IS-393A.a.
- (10) Emergency Management Program Development.

[Filed 8/19/09, effective 10/14/09]

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**ARC 8119B**

**HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DIVISION[605]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3, 23A.2(10)“m,” and 29C.8(5), the Homeland Security and Emergency Management Division hereby amends Chapter 11, “Repair, Calibration, and Maintenance of Radiological Monitoring, Detection, and Survey Equipment,” Iowa Administrative Code.

The Homeland Security and Emergency Management Division amends rule 605—11.6(29C) to update the fees charged for the various services that the Division provides under Chapter 11. This increase in fees reflects the increased costs associated with performing the services set forth within this chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 15, 2009, as **ARC 7958B**. No comments were made by the public regarding the proposed amendment. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 29C.

This amendment will become effective on October 14, 2009.

The following amendment is adopted.

Amend rule 605—11.6(29C) as follows:

**605—11.6(29C) Fees.** Unless otherwise specified by contract, the division will charge the following fees for the performance of its services:

Calibration Fees:

One radiation instrument and one radiation detector	<del>\$50</del> <u>70</u>
Each additional radiation detector	<del>\$15</del> <u>20</u>
Each dosimeter	\$10

Repair Fees:

Hourly rate	<del>\$40</del> <u>70</u>
Parts	Cost plus 15 percent

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

The division will also assess a fee to recover actual shipping expenses, to include insurance coverage for the equipment being shipped.

Estimates will be given for instruments that are in need of repair. The customer will have the option of having the instrument repaired at the established rates or may have the instrument returned, at which time shipping expenses will be charged.

The division may offer to replace equipment with like equipment that is fully functional and that has been properly calibrated, in lieu of making calibrations or the necessary repairs. If the customer accepts this offer, the fee charged is the fee that would normally be charged for the calibration or repair of the instrument or dosimeter.

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**ARC 8094B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 218.4, the Department of Human Services amends Chapter 28, "Policies for All Institutions," rescinds Chapter 29, "Mental Health Institutes," and Chapter 30, "State Resource Centers," Iowa Administrative Code, and adopts new Chapters 29 and 30 with the same titles.

These amendments update and reorganize rules relating to state mental health institutes and resource centers. Most of the changes are technical changes to reflect the current Department management structure for the facilities. The amendments create a uniform term for the persons being served, update form numbers, and remove obsolete forms and procedures to reflect current practice. Rules specific to one type of facility have been moved from Chapter 28 to Chapter 29 or 30, as applicable.

An individual's right to file a grievance is clarified and established by rule. Clarification has been made as to which persons, besides the individual being served, have the right to make decisions of behalf of the individual. The lists of rights for individuals with mental illness or mental retardation have been updated to reflect current language and practice.

The voluntary application process for admissions to state mental health institutes is revised to reflect the change in Iowa Code section 331.440(3) requiring all applications for admission to go through the individual's county of residence central point of coordination process. As required by Iowa Code section 229.42, applications are required to have an authorized county signature before the mental health institute can accept the application. Counties will have broad discretion in determining which person or persons may provide the authorization.

These amendments do not provide for waivers in specified situations except for waivers to the established catchment areas for the facilities. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). However, Iowa law places authority and responsibility with county government to accept, process, and approve applications. The rights of individuals served to confidentiality and privacy are also defined by law. The Department has no authority to waive those requirements. Individuals are given the right to make their own decisions about maintaining confidentiality and privacy.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 22, 2009, as **ARC 7717B**. The Department received comments on the Notice of Intended Action from two people. As a result of these comments, the Department has made the following changes to the amendments as published under Notice of Intended Action:

- Added a definition of "County of residence" to rule 441—28.1(218), which reads as follows: " 'County of residence' means the same as defined in rule 441—25.11(331)." This change is made to conform to the definition adopted by the Mental Health, Mental Retardation, Developmental Disabilities,

## HUMAN SERVICES DEPARTMENT[441](cont'd)

and Brain Injury Commission in a rule making that was published in the Iowa Administrative Bulletin on May 20, 2009, as **ARC 7668B**.

- Removed subrules 29.7(3) and 30.6(2) and renumbered the subrules in each rule accordingly. These subrules required approval of visitors by the attending physician (at a mental health institute) or social worker (at a resource center). These provisions conflict with the rules concerning self-determination.

The Department is not removing the term “admitting county” as suggested by comments, because there are times when an individual is admitted from a county that is neither the individual’s county of residence nor the individual’s county of legal settlement.

The Council on Human Services adopted these amendments on August 12, 2009.

These amendments are intended to implement Iowa Code chapters 217, 218, 222, 225C, 228, 229, and 230.

These amendments will become effective November 1, 2009.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amend Ch 28; adopt Chs 29, 30] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7717B**, IAB 4/22/09.

[Filed 8/13/09, effective 11/1/09]

[Published 9/9/09]

[For replacement pages for IAC, see IAC Supplement 9/9/09.]

**ARC 8095B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2008 Iowa Acts, chapter 1187, section 6(6), the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

This amendment removes two of the requirements for an infant to be deemed Medicaid-eligible for 12 months because of “newborn” status, a mandatory coverage group under the Medicaid program. Based on legislation enacted in the Children’s Health Insurance Program Reauthorization Act (CHIPRA), Public Law 111-3, states shall no longer require that the infant live with the mother or that the mother continue to meet the Medicaid eligibility requirements that would apply if she were still pregnant.

The effect of this amendment is that any infant in Iowa who was born to a woman who was Medicaid-eligible at the time of the infant’s birth shall remain eligible through the month of the infant’s first birthday, even if the infant is no longer living with the mother or the mother would no longer qualify for Medicaid. This change will ensure the continuous availability of medical care to infants during their first year of life and is in line with the state’s vision to provide health care to all Iowa children.

This amendment was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 1, 2009, as **ARC 7929B**. Notice of Intended Action to solicit public comments on the amendment was published on the same date as **ARC 7930B**. The Department received one comment on this amendment, which was in support of the amendment.

The Department has made the following changes to the amendment as published in the Notice of Intended Action:

- The catchwords of subrule 75.1(20) have been shortened from “Newborn children of Medicaid-eligible mothers” to “Newborn children” at the request of the Administrative Rules Review Committee. Although birth to a mother who is eligible for Medicaid is an initial eligibility requirement for this coverage group, the mother no longer has to remain eligible for Medicaid throughout the “newborn” period for the infant to maintain eligibility.

- The qualifier “Effective April 1, 2009” has been added to the beginning of the third sentence in the subrule. The Centers for Medicare and Medicaid Services is requiring states to make these

## HUMAN SERVICES DEPARTMENT[441](cont'd)

eligibility factors retroactive to April 1, 2009, because that is the effective date specified in CHIPRA. The Department is identifying any newborns whose coverage was canceled in April, May, or June due to one of the excluded conditions and is restoring the infants' eligibility.

This amendment does not provide for waivers in specified situations, since the change is a benefit to the infants affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on August 12, 2009.

This amendment is intended to implement Iowa Code section 249A.4 and Public Law 111-3, Section 113(b)(1).

This amendment will become effective on October 14, 2009.

The following amendment is adopted.

Amend subrule 75.1(20) as follows:

**75.1(20)** *Newborn children of Medicaid-eligible mothers.* Medicaid shall be available without an application to newborn children of women who are determined eligible for Medicaid for the month of the child's birth or for three-day emergency services for labor and delivery for the child's birth. Eligibility Effective April 1, 2009, eligibility begins with the month of the birth and continues through the month of the first birthday as long as the child lives with the mother and the mother remains eligible for Medicaid or would be eligible if she were still pregnant or qualified for emergency services for childbirth an Iowa resident.

*a. and b.* No change.

[Filed 8/13/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8096B**

**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 Participation," Iowa Administrative Code.

This amendment reflects the action of the Iowa General Assembly directing the Department to provide Medicaid coverage to all eligible children for whom federal funding is available. The Children's Health Insurance Program Reauthorization Act of 2009 allows states the option to extend coverage to all children who are lawful permanent residents of the United States.

Previously, children who entered the United States on or after August 22, 1996, were barred from participating in any federal means-tested program for five years from their date of entry. This amendment provides that children in lawful permanent resident status may receive Medicaid coverage if they are otherwise eligible, regardless of their date of entry to the United States. This amendment does not extend coverage to children who do not have documentation of their legal entry to the United States. The rule is also amended to conform to current formatting standards and to clarify the conditions of eligibility.

This amendment does not provide for waivers in specified situations since it benefits the children affected by expanding eligibility. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was previously Adopted and Filed Emergency and was published in the Iowa Administrative Bulletin on July 1, 2009, as **ARC 7932B**. Notice of Intended Action to solicit comment on the amendment was published on the same date as **ARC 7934B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on August 12, 2009.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment is intended to implement Public Law 111-3 and Iowa Code chapter 249A as amended by 2009 Iowa Acts, Senate File 389, section 13.

This amendment will become effective on October 14, 2009, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend paragraph **75.11(2)“a”** as follows:

a. To be eligible for Medicaid a person must be one of the following:

- (1) A citizen or national of the United States.
- (2) A qualified alien ~~as defined in subrule 75.11(1)~~ residing in the United States ~~prior to~~ before August 22, 1996.
- (3) ~~A qualified~~ An alien child under the age of 19 who entered the United States on or after August 22, 1996, and who is: lawfully admitted for permanent residence under the Immigration and Nationality Act.
  - ~~—A refugee who is admitted to the United States under Section 207 of the Immigration and Nationality Act;~~
  - ~~—Granted asylum under Section 208 of the Immigration and Nationality Act;~~
  - ~~—An alien whose deportation is being withheld under Section 243(h) of the Immigration and Nationality Act; or~~
  - ~~—A veteran with a discharge characterized as an honorable discharge and not on account of alienage, an alien who is on active duty in the Armed Forces of the United States other than active duty for training, or the veteran’s spouse or unmarried dependent child.~~
- (4) A refugee who is admitted to the United States under Section 207 of the Immigration and Nationality Act.
- (5) An alien who has been granted asylum under Section 208 of the Immigration and Nationality Act.
- (6) An alien whose deportation is being withheld under Section 243(h) of the Immigration and Nationality Act.
- (7) A qualified alien veteran who has an honorable discharge that is not due to alienage.
- (8) A qualified alien who is on active duty in the Armed Forces of the United States other than active duty for training.
- (9) A qualified alien who is the spouse or unmarried dependent child of a qualified alien described in subparagraph (7) or (8), including a surviving spouse who has not remarried.
- (4) (10) ~~A qualified alien who entered the United States on or after August 22, 1996, and who has resided in the United States for a period of at least five years.~~

[Filed 8/13/09, effective 10/14/09]

[Published 9/9/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8097B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

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

These amendments change the list of covered nonprescription drugs under the Medicaid program to:

- Remove the nonprescription drug omeprazole magnesium delayed-release tablets 20 mg (base equivalent), as duplicative of the payable and less costly prescription product omeprazole.
- Remove the following nonprescription drugs because the products are no longer available: benzoyl peroxide 10% wash; ferrous sulfate tablets 300 mg; ferrous gluconate 300 mg; niacin (nicotinic acid)

## HUMAN SERVICES DEPARTMENT[441](cont'd)

tablets 25 mg; pseudoephedrine/dextromethorphan 15 mg/5 mg/5 mL syrup; sennosides granules 15 mg/5 ml; sennosides tablets 187 mg; and sodium chloride solution 0.9% for inhalation with metered dispensing valve 90 ml, 240ml.

- Add the following products established as preferred on the preferred drug list: cetirizine hydrochloride liquid 1 mg/ml; cetirizine hydrochloride tablets 5 mg; cetirizine hydrochloride tablets 10 mg; epinephrine racemic solution 2.25%; loratadine syrup 5 mg/5 ml; sennosides syrup 8.8 mg/5 ml; and sennosides tablets 8.6 mg.

Omeprazole magnesium delayed-release tablets 20 mg (base equivalent) are available by prescription in a generic form that can have a state maximum allowable cost rate applied, resulting in significant savings to the Iowa Medicaid program. In addition, this drug is in the therapeutic class of proton pump inhibitors, which is a covered therapeutic class for prescription products under Medicare Part D. Therefore, removal of this product from the Medicaid nonprescription drug list also eliminates Medicaid payment for the drug for Medicare Part D dual eligibles, resulting in additional savings to the program.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 3, 2009, as **ARC 7816B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on August 12, 2009.

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

These amendments shall become effective on November 1, 2009.

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

The following amendments are adopted.

ITEM 1. Rescind the following entries in subrule **78.2(5)**:

~~Omeprazole magnesium delayed-release tablets 20 mg (base equivalent)~~

~~Pseudoephedrine/dextromethorphan 15 mg/5 mg/5 mL syrup~~

~~Sennosides granules 15 mg/5 ml~~

~~Sodium chloride solution 0.9% for inhalation with metered dispensing valve 90 ml, 240ml~~

ITEM 2. Amend the following entries in subrule **78.2(5)**:

Benzoyl peroxide 10% gel, lotion, ~~wash~~

Ferrous sulfate tablets ~~300 mg~~, 325 mg

Ferrous gluconate tablets ~~300 mg~~, 325 mg

Niacin (nicotinic acid) tablets ~~25 mg~~, 50 mg, 100 mg, 250 mg, 500 mg

Sennosides tablets ~~187~~ 8.6 mg

ITEM 3. Adopt the following **new** entries in subrule **78.2(5)** in alphabetical order:

Cetirizine hydrochloride liquid 1 mg/ml

Cetirizine hydrochloride tablets 5 mg

Cetirizine hydrochloride tablets 10 mg

Epinephrine racemic solution 2.25%

Loratadine syrup 5 mg/5 ml

Sennosides syrup 8.8 mg/5 ml

[Filed 8/13/09, effective 11/1/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8109B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

This amendment reflects the action of the Iowa General Assembly directing the Department to provide coverage under the Healthy and Well Kids in Iowa (HAWK-I) Program to all eligible children for whom federal funding is available. The Children's Health Insurance Program Reauthorization Act of 2009 allows states the option to extend coverage funded through the federal Children's Health Insurance Program (HAWK-I in Iowa) to all children who are lawful permanent residents of the United States.

Previously, children who entered the United States on or after August 22, 1996, were barred from participating in any federal means-tested program for five years from their date of entry. This amendment provides that children in lawful permanent resident status may receive HAWK-I coverage if they are otherwise eligible, regardless of their date of entry to the United States. This amendment does not extend coverage to children who do not have documentation of their legal entry to the United States.

This amendment does not provide for waivers in specified situations since it benefits the children affected by expanding eligibility. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 1, 2009, as **ARC 7881B**. Notice of Intended Action to solicit comment on the amendment was published as **ARC 7882B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The HAWK-I Board adopted this amendment on August 17, 2009.

This amendment is intended to implement Iowa Code chapter 514I as amended by 2009 Iowa Acts, Senate File 389, section 14, and Public Law 111-3.

This amendment will become effective on October 14, 2009, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subrule 86.2(7) as follows:

**86.2(7) *Citizenship and alien status.*** The child shall be a citizen or lawfully admitted alien. The criteria established under ~~8 U.S.C. Section 1612(a)(2)(A) and the Balanced Budget Act of 1997, subsection 5302,~~ 441—subrule 75.11(2) shall be followed when determining whether a lawfully admitted alien child is eligible to participate in the HAWK-I program. The citizenship or alien status of the parents or other responsible person shall not be considered when determining the eligibility of the child to participate in the program.

[Filed 8/18/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8098B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 237A.12 and 2008 Iowa Acts, chapter 1187, section 35, the Department of Human Services amends Chapter 110, "Child Development Homes," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment implements a new condition on registration as a child development home for an applicant who provides child care in a home built before 1960. The amendment requires the provider to conduct a visual inspection for lead hazards as evidenced by chipping or peeling paint and to complete interim controls using safe work methods as defined by the Department of Public Health if chipping or peeling paint is found. Providers must meet these requirements before initial registration and before registration renewal. The amendment sets a phase-in period of seven months for compliance for child development homes that are already registered when the amendment goes into effect.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on June 3, 2009, as **ARC 7815B**. The Department received three comments on the Notice of Intended Action.

In response to these comments, the Department has changed the cross-reference in subparagraph 110.5(1)“x”(2) to read “as defined by department of public health rules at 641—Chapters 69 and 70.” Rules in 641—Chapter 69, “Renovation, Remodeling, and Repainting—Lead Hazard Notification Process,” also apply to child care facilities. The effective date of the rule has also been added to the exception language.

This amendment waives the requirement for interim controls if the chipping or peeling paint is certified as non-lead-based. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on August 12, 2009.

This amendment is intended to implement Iowa Code section 237A.12 and 2008 Iowa Acts, chapter 1187, section 35.

This amendment shall become effective on November 1, 2009.

The following amendment is adopted.

Adopt the following **new** paragraph **110.5(1)“x”**:

x. A provider operating in a facility built before 1960 shall assess and control lead hazards before being issued an initial child development home registration or a renewal of the registration. To comply with this requirement, the provider shall:

(1) Conduct a visual assessment of the facility for lead hazards that exist in the form of peeling or chipping paint;

(2) Apply interim controls on any chipping or peeling paint found, using lead-safe work methods in accordance with and as defined by department of public health rules at 641—Chapters 69 and 70, unless a certified inspector as defined in 641—Chapter 70 determines that the paint is not lead-based paint; and

(3) Submit Form 470-4755, Lead Assessment and Control, as verification of the visual assessment and completion of interim controls, if necessary.

EXCEPTION: Providers that have a valid registration on November 1, 2009, shall assess and control lead hazards by June 30, 2010.

[Filed 8/13/09, effective 11/1/09]

[Published 9/9/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8088B**

## **LABOR SERVICES DIVISION[875]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner amends Chapter 10, “General Industry Safety and Health Rules,” Iowa Administrative Code.

The amendment adopts by reference changes to federal occupational safety and health regulations. The federal changes deleted an unenforceable standard governing the use of powered industrial trucks to lift personnel.

LABOR SERVICES DIVISION[875](cont'd)

The principal reasons for adoption of this amendment are to implement Iowa Code chapter 88 and to make Iowa's occupational safety and health regulations current and consistent with federal regulations.

Pursuant to Iowa Code subsection 88.5(1)"a," Iowa must adopt the federal standards.

Notice of Intended Action for this amendment was published in the July 1, 2009, Iowa Administrative Bulletin as **ARC 7927B**. A public hearing was held on July 21, 2009, at 1:30 p.m. No member of the public commented on the Notice of Intended Action. No changes have been made to the amendment published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 88.5.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

Amend rule **875—10.20(88)** by inserting the following at the end thereof:  
68 Fed. Reg. 32638 (June 2, 2003)

[Filed 8/11/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8104B**

## **NATURAL RESOURCE COMMISSION[571]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455A.5(6) and 483A.10, the Natural Resource Commission hereby amends Chapter 15, "General License Regulations," Iowa Administrative Code.

Iowa Code section 483A.10 authorizes the Commission to adopt rules governing issuance of licenses. As part of these rules, the Commission is authorized to assess an administrative fee, which shall be forwarded to the Department. This fee shall be used to offset costs incurred in administering the licensing program. See Iowa Code section 455A.5(6).

This adopted amendment revises the administrative fee charged to customers for most privileges sold through the Electronic Licensing System of Iowa (ELSI) from 50 cents to \$1.50 and includes an administrative fee of \$3.65 for boat registrations and renewals. The Department has executed a new contract with its existing vendor which includes the transition to a new system (ELSI 2). ELSI 2 will incorporate new technology and will be a Web-based system. ELSI 2 will offer a number of improvements to the current system that benefit license sellers and buyers as well as the Department; for example, state-of-the-art equipment allowing for a more user-friendly sales process, speedier transactions, and improved communication with license agents, including electronic newsletters, updates and messaging. Along with the new technology and the benefits that ELSI 2 will bring, the cost of implementing the program will increase as well. For example, the fee that the Department pays to its contractor for most privileges sold will increase from 74 cents to \$1.28 per privilege. Also, the Department will pay a contractor fee of \$3.65 for boat registration, renewal, transfer, and duplicate transactions. The adopted revision will help to offset these costs as well as other administrative costs.

The adopted amendment revises language in a previous amendment to Chapter 15 adopted by the Commission on May 14, 2009, and published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7852B**. The previous amendment became effective on July 22, 2009.

Notice of Intended Action for this amendment was published in the July 1, 2009, Iowa Administrative Bulletin as **ARC 7923B**. A public hearing was held on July 21, 2009. There were no attendees at the public hearing and no comments were received during the public comment period. There have been no changes made to the amendment published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapters 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

This amendment will become effective October 14, 2009.

The following amendment is adopted.

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

Amend rule 571—15.4(483A) as follows:

**571—15.4(483A) Administration fee.** An administration fee of ~~50 cents~~ \$1.50 per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey hunting licenses, free annual hunting and fishing licenses, free lifetime fishing licenses, ~~and free group home fishing licenses, and boat registrations, renewals, transfers, and duplicates.~~ An administrative fee of \$3.65 will be collected from the purchaser at the time of boat registration, renewal, transfer, and duplicate purchases.

[Filed 8/18/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.

**ARC 8105B**

**NATURAL RESOURCE COMMISSION[571]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 481B.3, the Natural Resource Commission hereby adopts amendments to Chapter 77, "Endangered and Threatened Plant and Animal Species," Iowa Administrative Code.

The rules in Chapter 77 list plant and animal species whose continued existence within Iowa has been found to be endangered, threatened, or of special concern. The proposed amendments upgrade the status of the bald eagle and peregrine falcon from endangered to special concern species and correct a typographical error in the common name of the Forster's tern. It is proposed that the bald eagle be listed as special concern rather than being removed from the list because of the potential effects from lead poisoning. Additional monitoring will be conducted to ensure that the bald eagle and peregrine falcon continue to increase or remain stable before they will be removed from the special concern list.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7856B**. A public hearing was held on July 16, 2009. No one attended the public hearing. One written comment was received and it agreed with the proposed amendments for the bald eagle and peregrine falcon but encouraged the Department to continue monitoring programs for the bald eagle because of the potential for lead poisoning.

There have been no changes to the adopted amendments from those published as Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 481B.

These amendments shall become effective October 14, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule **77.2(1)**, listing for "Birds," as follows:

Birds

Red-shouldered Hawk	Buteo lineatus
Northern Harrier	Circus cyaneus
<del>Peregrine Falcon</del>	<del>Falco peregrinus</del>
Piping Plover	Charadrius melodus
Common Barn Owl	Tyto alba
Least Tern	Sterna antillarum
<del>Bald Eagle</del>	<del>Haliaeetus leucocephalus</del>
King Rail	Rallus elegans
Short-eared Owl	Asio flammeus

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

ITEM 2. Amend subrule **77.2(3)**, listing for “Birds,” as follows:

## Birds

~~Forester's~~ Forster's Tern

*Sterna forsteri*

Black Tern

*Chlidonias niger*

Peregrine Falcon

*Falco peregrinus*

Bald Eagle

*Haliaeetus leucocephalus*

[Filed 8/18/09, effective 10/14/09]

[Published 9/9/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/9/09.