



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]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

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, paragraph, subparagraph, or numbered paragraph).

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

| | |
|--------------------------|----------------------|
| 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) |
| 441 IAC 79.1(1)“a”(1)“1” | (Numbered paragraph) |

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

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

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

Schedule for Rule Making 2019

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

PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u> | <u>ISSUE DATE</u> |
|---------------------|-----------------------------|-------------------|
| 9 | Friday, October 4, 2019 | October 23, 2019 |
| 10 | Friday, October 18, 2019 | November 6, 2019 |
| 11 | Wednesday, October 30, 2019 | November 20, 2019 |

PLEASE NOTE:

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

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

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 8, 2019, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

CPA examinations, 3.6(1) Filed **ARC 4657C** 9/11/19

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Child abuse and dependent adult abuse mandatory reporter training, 10.6(3), 25.4(2)

Notice **ARC 4661C** 9/25/19

Expanded functions; fees, 10.3, 15.8(1), 20.4 to 20.7, ch 23, 25.10(2)"f" Filed **ARC 4676C** 9/25/19

ECONOMIC DEVELOPMENT AUTHORITY[261]

Renewable chemical production tax credit program—definition of "building block

chemical," 81.2 Notice **ARC 4669C** 9/25/19

Community attraction and tourism (CAT) program marketing assistance; enhance Iowa

board authority and term of appointments, 211.3(3), 214.2(2), 214.3(1) Notice **ARC 4670C** 9/25/19

HUMAN SERVICES DEPARTMENT[441]

Appeals and hearings, amendments to ch 7 Notice **ARC 4674C** 9/25/19

Timely and adequate notice, adopt ch 16; amend chs 14, 40, 41, 46, 74 to 76, 79, 82, 83, 86,

90, 91, 93, 95, 106, 109, 153, 170, 187 Notice **ARC 4675C** 9/25/19

Medical prior authorizations—uniform process for managed care and fee-for-service

payment and delivery systems, amendments to ch 73 Notice **ARC 4673C** 9/25/19

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Agency procedure and organization, adopt chs 1, 2, 4; amend chs 3, 10, 36, 39, 41, 55, 58,

76 Notice **ARC 4660C** 9/25/19

Residential and motor vehicle services contracts, amend ch 103; rescind ch 104 Filed **ARC 4677C** 9/25/19

IOWA FINANCE AUTHORITY[265]

Low-income housing tax credits—qualified allocation plans, 12.1, 12.2 Notice **ARC 4665C** 9/25/19

Home and community-based services revolving loan program, amendments to ch 21

Notice **ARC 4666C** 9/25/19

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MEDICINE BOARD[653]

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Standards of practice—medical cannabidiol, 13.15(1) Filed **ARC 4658C** 9/11/19

Supervision of a conditional prescribing psychologist; collaboration with a prescribing

psychologist; grounds for discipline, 19.10 to 19.12 Notice **ARC 4663C** 9/25/19

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Expedited licensing of spouses of active duty military personnel, amendments to ch 20

Notice **ARC 4654C** 9/11/19

Funeral directors, funeral and cremation establishments—disinterment permits, 100.9(6)

Amended Notice **ARC 4656C** 9/11/19

Optometrists—prescription of controlled substances, 181.3(2)"c," 182.4(3), 183.2(31)

Notice **ARC 4668C** 9/25/19

Physician assistant duties—definitions of "administer," "dispense," "order," and "prescribe,"

326.1 Notice **ARC 4664C** 9/25/19

Physician assistants—child abuse and dependent adult abuse mandatory reporter training,

326.9(4) Notice **ARC 4662C** 9/25/19

PUBLIC HEALTH DEPARTMENT[641]

Family planning services funding prioritization, restrictions and reporting, ch 75 Notice **ARC 4672C** 9/25/19

Medical residency training state matching grants program, 108.3(5), 108.5 Notice **ARC 4671C** 9/25/19

PUBLIC SAFETY DEPARTMENT[661]

Vehicle impoundment, ch 6 Notice **ARC 4667C** 9/25/19
 Closed circuit surveillance systems, 141.1, 141.6 Notice **ARC 4650C** 9/11/19
 State fire marshal administration, ch 200, 210.5(2) Notice **ARC 4652C** 9/11/19
 Public safety survivor benefits fund, ch 292 Notice **ARC 4651C** 9/11/19

REVENUE DEPARTMENT[701]

Electronic filing of W-2 and 1099 forms—tax withheld, filing deadline, 46.3(3) Filed **ARC 4678C** 9/25/19
 Resale and processing exemptions—commercial enterprises, 225.8 Filed **ARC 4679C** 9/25/19

TRANSPORTATION DEPARTMENT[761]

Confidential records, 4.4(3), 4.9 Filed **ARC 4659C** 9/11/19

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 Claims and benefits—failure to report, overpayment, 24.6(7)“f,” 25.8(1) Notice **ARC 4648C** 9/11/19
 Collecting and recovering overpayment balances, 25.7(6), 25.8(1) Notice **ARC 4647C** 9/11/19

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Waylon Brown
 109 South Summer Street
 St. Ansgar, Iowa 50472

Representative Steven Holt
 1430 Third Avenue South
 Denison, Iowa 51442

Senator Mark Costello
 37265 Rains Avenue
 Imogene, Iowa 51645

Representative Megan Jones
 4470 Highway 71
 Sioux Rapids, Iowa 50585

Senator Robert Hogg
 P.O. Box 1361
 Cedar Rapids, Iowa 52406

Representative Joe Mitchell
 Mount Pleasant, Iowa

Senator Pam Jochum
 2368 Jackson Street
 Dubuque, Iowa 52001

Representative Amy Nielsen
 168 Lockmoor Circle
 North Liberty, Iowa 52317

Senator Zach Whiting
 P.O. Box 385
 Spirit Lake, Iowa 51360

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

INSURANCE DIVISION[191]

| | | |
|---|---|-----------------------------------|
| Agency procedure and organization, adopt chs 1, 2, 4; amend chs 3, 10, 36, 39, 41, 55, 58, 76 IAB 9/25/19 ARC 4660C | Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa | October 21, 2019 10 to 11 a.m. |
|---|---|-----------------------------------|

IOWA FINANCE AUTHORITY[265]

| | | |
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| Low-income housing tax credits—qualified allocation plans, 12.1, 12.2 IAB 9/25/19 ARC 4665C | Authority Offices, Suite 200 1963 Bell Ave. Des Moines, Iowa | October 15, 2019 10 to 11 a.m. |
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MEDICINE BOARD[653]

| | | |
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| Standards of practice—medical cannabidiol, 13.15(1) IAB 9/11/19 ARC 4653C | Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa | October 1, 2019 9 to 10 a.m. |
| Supervision of a conditional prescribing psychologist; collaboration with a prescribing psychologist; grounds for discipline, 19.10 to 19.12 IAB 9/25/19 ARC 4663C | Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa | October 15, 2019 9 to 10 a.m. |

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| | | |
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| Physician assistant duties—definitions of “administer,” “dispense,” “order,” and “prescribe,” 326.1 IAB 9/25/19 ARC 4664C | Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa | October 15, 2019 8 to 8:30 a.m. |
| Physician assistants—child abuse and dependent adult abuse mandatory reporter training, 326.9(4) IAB 9/25/19 ARC 4662C | Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa | October 15, 2019 8:30 to 9 a.m. |
| Expedited licensing of spouses of active duty military personnel, amendments to ch 20 IAB 9/11/19 ARC 4654C | Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa | October 1, 2019 9:30 to 10 a.m. |
| Funeral directors, funeral and cremation establishments—disinterment permits, 100.9(6) IAB 9/11/19 ARC 4656C | Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa | October 1, 2019 9 to 9:30 a.m. |
| Optometrists—prescription of controlled substances, 181.3(2)“c,” 182.4(3), 183.2(31) IAB 9/25/19 ARC 4668C | Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa | October 15, 2019 10 to 11 a.m. |

The following list will be updated as changes occur.

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

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

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

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Flood Mitigation Assistance Grant Program
August 26, 2019

FEMA has announced the Unified Hazard Mitigation Assistance (HMA) grant program for FY 2019, which includes Flood Mitigation Assistance (FMA). The HMA grant program will provide funds to states, territories, Indian tribal governments, and communities for hazard mitigation planning and mitigation projects prior to a disaster event. Funding amounts are based on Congressional appropriation.

Projects submitted for consideration must be consistent with the goals and objectives identified in Iowa's State Hazard Mitigation Plan and local mitigation plan for the jurisdiction in which the activity is located. The FMA grant provides an excellent opportunity for communities to initiate mitigation projects that provide protection against natural hazards. Eligible mitigation project activities include (but are not limited to):

- Mitigation Planning consistent with 44 CFR Part 201 (only for flood hazard)
- Property Acquisition and Structural Demolition and Relocation (for NFIP insured properties)
- Structural Elevation (for NFIP insured properties)
- Dry Flood Proofing (for NFIP insured properties)
- Minor Localized Flood Reduction Projects (should benefit NFIP insured properties)
- Non-structural Retrofitting of Existing Buildings and Facilities (for NFIP insured properties)
- Mitigation Reconstruction (for NFIP insured properties)

The HMA FY 2015 Hazard Mitigation Assistance program guidance provides critical information about eligibility, the National Evaluation Process, and other key aspects of each program. FEMA has changed program guidance. The guidance can be found at: www.fema.gov/hazard-mitigation-assistance.

Applicants with proposed projects located in a FEMA-identified Special Flood Hazard Area (SFHA) are eligible for funding only if the jurisdiction in which the project is located is participating in the National Flood Insurance Program (NFIP) and not withdrawn or suspended.

Funding & Cost Share

This is a cost share grant program which means that awarded grants will be funded as follows:

- Federal (FEMA) share of total eligible costs – 75% maximum
- Local share of total eligible costs – 25%

FEMA has established the application deadline for States to submit their application by **January 31, 2020**. In order to meet FEMA's deadline, Iowa Homeland Security and Emergency Management (HSEMD) must receive local sub-applications by **December 31, 2019**.

For additional information or questions, feel free to contact a lead State Mitigation Project Officer:

Terry Brown – Acquisition/Relocation Projects: 515-725-9371
te.brown@iowa.gov

Mat Noble – Planning Projects: 515-725-9404
mathew.noble@iowa.gov

Jonathan Pogones – Acquisition/Relocation Projects: 515-725-9384
jonathan.pogones@iowa.gov

Dan Schmitz – Infrastructure Projects: 515-725-9369
dan.schmitz@iowa.gov

Carol Tomb – Infrastructure Projects: 515-725-9305
carol.tomb@iowa.gov

We ask that the County Emergency Management Coordinators, Councils of Government, and Planning Commissions forward this information to the communities in their service area to achieve the widest distribution possible.

Aimee Bartlett
State Hazard Mitigation Officer
Iowa Homeland Security and Emergency Management Department

Pre-Disaster Mitigation Assistance Grant Program
August 26, 2019

FEMA has announced the Unified Hazard Mitigation Assistance (HMA) grant program for FY 2019, which includes Pre-Disaster Mitigation (PDM). The HMA grant program will provide funds to states, territories, Indian tribal governments, and communities for hazard mitigation planning and mitigation projects prior to a disaster event. Funding amounts are based on Congressional appropriation.

Projects submitted for consideration must be consistent with the goals and objectives identified in Iowa's State Hazard Mitigation Plan and local mitigation plan for the jurisdiction in which the activity is located. The PDM grant provides an excellent opportunity for communities to initiate mitigation projects that provide protection against natural hazards. Eligible mitigation project activities include (but are not limited to):

- Construction of tornado safe rooms (Multi-functional community or school safe room projects are highly encouraged)
- Acquisition, structural relocation or elevation of buildings located in a special flood hazard area
- Structural and non-structural retrofitting of existing public buildings, facilities, or utilities to protect against wind, ice, or flood hazards
- Minor structural hazard control or protection projects such as storm water management (e.g., culverts, floodgates, retention basins)
- Localized flood control projects, such as floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system
- Development of multi-jurisdictional hazard mitigation plans and plan updates

The HMA FY 2015 Hazard Mitigation Assistance program guidance provides critical information about eligibility, the National Evaluation Process, and other key aspects of each program. The guidance can be found at: www.fema.gov/hazard-mitigation-assistance.

Applicants with proposed projects located in a FEMA-identified Special Flood Hazard Area (SFHA) are eligible for funding only if the jurisdiction in which the project is located is participating in the National Flood Insurance Program (NFIP). There is no NFIP participation requirement for projects located outside of the SFHA.

Funding & Cost Share

This is a cost share grant program which means that awarded grants will be funded as follows:

- Federal (FEMA) share of total eligible costs – 75% maximum
- Local share of total eligible costs – 25%

FEMA has established the application deadline for States to submit their application by **January 31, 2020**. In order to meet FEMA's deadline, Iowa Homeland Security and Emergency Management (HSEMD) must receive local sub-applications by **December 31, 2019**. HSEMD is required to review, provide comments on, and to rank each local application that it submits to FEMA.

For additional information or questions, feel free to contact a lead State Mitigation Project Officer:

Terry Brown – Acquisition/Relocation Projects: 515-725-9371
te.brown@iowa.gov

Mat Noble – Planning Projects: 515-725-9404
mathew.noble@iowa.gov

Jonathan Pogones – Acquisition/Relocation Projects: 515-725-9384
jonathan.pogones@iowa.gov

Dan Schmitz – Infrastructure Projects: 515-725-9369
dan.schmitz@iowa.gov

Carol Tomb – Infrastructure Projects: 515-725-9305
carol.tomb@iowa.gov

We ask that the County Emergency Management Coordinators, Councils of Government, and Planning Commissions forward this information to the communities in their service area to achieve the widest distribution possible.

Aimee Bartlett
State Hazard Mitigation Officer
Iowa Homeland Security and Emergency Management Department

ARC 4661C**DENTAL BOARD[650]****Notice of Intended Action****Proposing rule making related to mandatory child and dependent adult abuse identification and reporter training and providing an opportunity for public comment**

The Dental Board hereby proposes to amend Chapter 10, “General Requirements,” and Chapter 25, “Continuing Education,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 272C.2 as amended by 2019 Iowa Acts, House File 731.

Purpose and Summary

During the 2019 Legislative Session, a change was made to the Iowa Code relating to mandatory child abuse and dependent adult abuse reporter training requirements. This rule making implements this change.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 650—7.4(17A,147,153).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on October 25, 2019. Comments should be directed to:

Steve Garrison
Iowa Dental Board
400 SW Eighth Street, Suite D
Des Moines, Iowa 50309
Phone: 515.281.3248
Fax: 515.281.7969
Email: steven.garrison@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

DENTAL BOARD[650](cont'd)

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 10.6(3) as follows:

10.6(3) *Child and dependent adult abuse training.* Licensees or registrants who regularly examine, attend, counsel or treat children or adults in Iowa must obtain mandatory training in child and dependent adult abuse identification and reporting ~~within six months of initial employment and subsequently every five years~~ in accordance with ~~650—subrule 25.2(9)~~ 650—subrule 25.4(2).

ITEM 2. Rescind subrule 25.4(2) and adopt the following **new** subrule in lieu thereof:

25.4(2) Mandatory reporter training for child abuse and dependent adult abuse.

a. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats adults in Iowa shall complete an initial two-hour dependent adult abuse mandatory reporter training course offered by the department of human services within six months of employment, or prior to the expiration of a current certificate. Completion of the initial training course results in two hours of continuing education credit. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certificate. Completion of the recertification training results in one hour of continuing education credit.

b. Effective July 1, 2019, a licensee who regularly examines, attends, counsels or treats children in Iowa shall complete an initial two-hour child abuse mandatory reporter training course offered by the department of human services within six months of employment, or prior to the expiration of a current certificate. Completion of the initial training course results in two hours of continuing education credit. Thereafter, all mandatory reporters shall take a one-hour recertification training every three years, prior to the expiration of a current certificate. Completion of the recertification training results in one hour of continuing education credit.

ARC 4669C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

**Proposing rule making related to building block chemicals
and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to amend Chapter 81, "Renewable Chemical Production Tax Credit Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 15.106A and 15.321.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 15.316.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Purpose and Summary

Under the Renewable Chemical Production Tax Credit, Iowa Code section 15.316 provides that a “building block chemical” includes a prescribed list of chemicals “or such additional molecules as may be included by the authority by rule after consultation with appropriate experts from Iowa state university, including but not limited to the Iowa state university center for biorenewable chemicals.” In accordance with this Iowa Code section and the procedures set forth in rule 261—81.8(15), the Authority proposes to add five chemicals to the definition of “building block chemicals”: butanoic acid, hexanoic acid, octanoic acid, pentoic acid, and heptanoic acid. Brent Shanks at the Iowa State University Center for Biorenewable Chemicals (CBiRC) has recommended approval of all five chemicals, and the Authority concurs.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Jennifer Klein
Economic Development Authority
200 East Grand Ave.
Des Moines, Iowa 50309
Phone: 515.348.6144
Email: jennifer.klein@iowaeda.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Amend rule **261—81.2(15)**, definition of “Building block chemical,” as follows:

“*Building block chemical*” means a molecule converted from biomass feedstock as a first product or a secondarily derived product that can be further refined into a higher-value chemical, material, or consumer product. “Building block chemical” includes but is not limited to high-purity glycerol, oleic acid, lauric acid, methanoic or formic acid, arabonic acid, erythronic acid, glyceric acid, glycolic acid, lactic acid, 3-hydroxypropionate, propionic acid, malonic acid, serine, succinic acid, fumaric acid, malic acid, aspartic acid, 3-hydroxybutyrolactone, acetoin, threonine, itaconic acid, furfural, levulinic acid, glutamic acid, xyloic acid, xylaric acid, xylitol, arabitol, citric acid, aconitic acid, 5-hydroxymethylfurfural, lysine, gluconic acid, glucaric acid, sorbitol, gallic acid, ferulic acid, nonfuel butanol, nonfuel ethanol, benzene, toluene, xylene, ethylbenzene, butanoic acid, hexanoic acid, octanoic acid, pentoic acid, and heptanoic acid, or such additional molecules as may be included by the authority following the procedure in rule 261—81.8(15).

ARC 4670C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rule making related to enhance Iowa board and CAT grants and providing an opportunity for public comment

The Economic Development Authority hereby proposes to amend Chapter 211, “Community Attraction and Tourism (CAT) Programs,” and Chapter 214, “Enhance Iowa Board,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 15F and 2019 Iowa Acts, House File 305.

Purpose and Summary

2019 Iowa Acts, House File 305, amends portions of the Iowa Code that establish the Enhance Iowa Board, that establish the Board’s authority to adopt administrative rules, and that govern the allocation of Community Attraction and Tourism (CAT) funds.

House File 305 does three things. First, the legislation changes the duration of board members’ terms from two-year terms to three-year terms. Second, the legislation strikes language that requires the Authority to adopt rules with the approval of the Enhance Iowa Board and makes it clear that the Enhance Iowa Board has the power to adopt administrative rules necessary to administer the programs established in Iowa Code chapter 15F, such as CAT and River Enhancement Community Attraction and Tourism (RECAT). Third, the legislation strikes language that allocates \$100,000 of CAT funds for the purpose of marketing CAT projects. The funds previously allocated to marketing will now be available for CAT projects.

The legislation impacts rules in Chapter 211 and Chapter 214. The proposed amendments make corresponding changes to bring the rules into conformity with the statute.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Jennifer Klein
Economic Development Authority
200 East Grand Avenue
Des Moines, Iowa 50309
Phone: 515.348.6144
Email: jennifer.klein@iowaeda.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind and reserve subrule **211.3(3)**.

ITEM 2. Amend subrule 214.2(2) as follows:

214.2(2) Terms. Members of the board are appointed for staggered terms of ~~two~~ three years beginning and ending as provided in Iowa Code section 69.19. A person appointed to fill a vacancy serves only for the unexpired portion of the term. A member is eligible for reappointment.

ITEM 3. Amend subrule 214.3(1) as follows:

214.3(1) The authority, ~~subject to approval by the board,~~ shall adopt administrative rules pursuant to Iowa Code chapter 17A necessary to administer the programs established pursuant to Iowa Code chapter 15F.

ARC 4674C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to appeals and hearings
and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 17A and section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 17A and section 217.6.

Purpose and Summary

In light of the State’s transition to Medicaid managed care, and in an ongoing effort to improve Department of Human Services’ processes and accessibility to consumers, the Department has revised its appeals rules with the following goals in mind: simplification, uniformity, clarification of scope, clearly defining appeal rights, and protecting self-represented litigants. In this effort, the Department has sought to eliminate redundancies and ambiguities, streamline processes across programs where permissible under state and federal law, explicitly clarify the circumstances in which contested case hearings are granted, ensure conformity with substantive federal and state standards, and include procedural protections for self-represented litigants.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

These amendments do not include a waiver provision because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department’s general rule on exceptions at rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

HUMAN SERVICES DEPARTMENT[441](cont'd)

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind rule 441—7.1(17A) and adopt the following new rule in lieu thereof:

441—7.1(17A) Definitions.

“*Adverse benefit determination*” means any adverse action taken as to any individual’s benefits pursuant to an assistance program administered by the department or on the department’s behalf, excluding determinations related to requests for exceptions to policy.

“*Appeals section*” means the director’s designee who is charged with administering the department’s appeals.

“*Appellant*” means a person, including an authorized representative acting on the person’s behalf, seeking to appeal some action pursuant to this chapter.

“*Assistance program*” means a program administered by the department or on the department’s behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, food assistance, Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, and aftercare services.

“*Authorized representative*” means a person lawfully designated by an individual to act on the individual’s behalf or who has legal authority to act on behalf of the individual.

“*Contested case*” refers to an evidentiary hearing mandated by state or federal constitutional or statutory authority whereupon a presiding officer makes a determination pertaining to the relative rights and obligations of parties to an appeal under this chapter.

“*Department*” means the Iowa department of human services.

“*DIA*” means the Iowa department of inspections and appeals and may include presiding officers where appropriate.

“*Director*” means the director of the department or the director’s designee.

“*Enrollee*” means any applicant to or recipient of benefits or services pursuant to an assistance program.

“*Good cause*” means an intervening cause, not attributable to the negligence of a party, reasonably resulting in a delay or in attendance, for purposes of subrules 7.4(3) and 7.9(2).

“*Intentional program violation*” means deliberately making a false or misleading statement; or misrepresenting, concealing, or withholding facts; or committing any act that is a violation of the Food and Nutrition Act of 2008, food assistance program regulations, or any state law relating to the use, presentation, transfer, acquisition, receipt, possession, or trafficking of an electronic benefit transfer (EBT) card. An intentional program violation is determined through a food assistance administrative disqualification hearing. The hearing may result in a period of ineligibility for the program, a claim for overpayment of benefits, or both.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“*Managed care organization*” or “*MCO*” has the meaning assigned to it in rule 441—73.1(249A) and includes prepaid ambulatory health plans.

“*Medicaid*” means Iowa’s medical assistance program administered under Iowa Code chapter 249A.

“*Party-in-interest*” refers to the party, including enrollees, whose rights or obligations are the subject of a contested case hearing under this chapter. Parties-in-interest may or may not be the appellant.

“*Presiding officer*” means an administrative law judge charged with the administration and adjudication of the contested case hearing process for a particular appeal.

“*Self-represented*” means representing oneself without an attorney.

ITEM 2. Rescind rule 441—7.2(17A) and adopt the following new rule in lieu thereof:

441—7.2(17A) Governing law and regulations. In the absence of an applicable rule in this chapter, the DIA rules found at 481—Chapter 10 govern department appeals. Notwithstanding the foregoing and the rules contained in this chapter, to the extent that federal or state law (including regulations and rules) related to a specific program is more specific than or contradicts these rules or the applicable DIA rules, the program-specific federal or state law shall control. For example, food assistance appeals shall be conducted in accordance with 7 CFR 273.15 and 7 CFR 273.16, and medical assistance appeals shall be conducted in accordance with 42 CFR Part 431, subpart E, and Part 438, subpart F.

ITEM 3. Adopt the following new 441—Chapter 7, Division I title:

DIVISION I
GENERAL APPEALS PROCESS

ITEM 4. Rescind rule 441—7.3(17A) and adopt the following new rule in lieu thereof:

441—7.3(17A) When a contested case hearing will be granted.

7.3(1) Requirements. A person shall be granted a contested case hearing if the party-in-interest fulfills all of the following requirements:

- a. The party-in-interest is entitled to a contested case hearing;
- b. The party-in-interest has an ongoing, specific and personal interest in the outcome of the contested case hearing; and
- c. The party-in-interest meets all of the other requirements contained in these rules.

7.3(2) Contractual rights not subject to contested case hearing. Unless otherwise provided by law, when an appellant seeks a contested case hearing of an issue predicated upon or governed by the terms of a contract between appellant and another party, including the department, a contested case hearing shall not be provided.

7.3(3) Change in law. A contested case hearing shall not be granted when the sole issue raised is a federal or state law requiring an automatic change adversely affecting some or all beneficiaries to an assistance program.

7.3(4) Competitive procurement bid appeals. Competitive procurement bid appeals shall be adjudicated pursuant to Division II of this chapter.

ITEM 5. Rescind rule 441—7.4(17A) and adopt the following new rule in lieu thereof:

441—7.4(17A) Initiating an appeal.

7.4(1) Exhaustion of remedies. An appellant shall only be granted a contested case hearing if the appellant has exhausted all other appeal remedies available to the party-in-interest.

7.4(2) Medicaid managed care enrollees exhaustion of remedies.

- a. A Medicaid managed care enrollee shall be granted a contested case hearing only if the enrollee has either received a decision from a managed care organization in the time and manner required by rule 441—73.12(249A) or has been deemed to have exhausted the managed care organization appeals under paragraph 7.4(2)“b.”

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. If a Medicaid enrollee's managed care organization fails to provide a decision in the time and manner required by rule 441—73.12(249A), the enrollee shall be deemed to have exhausted the managed care organization's appeals process and may initiate a contested case hearing.

7.4(3) Time to appeal. For a contested case hearing to be granted, the following timelines must be met:

a. Food assistance, Medicaid eligibility, healthy and well kids in Iowa (HAWK-I), fee-for-service Medicaid coverage, family planning program and autism support program. For appeals pertaining to food assistance, Medicaid eligibility, healthy and well kids in Iowa (HAWK-I), fee-for-service Medicaid coverage, the family planning program or the autism support program, the appellant must appeal on or before the ninetieth day following the date of notice of an adverse benefit determination.

b. Managed care organization medical coverage. For appeals pertaining to medical services coverage under Medicaid managed care, the appellant must appeal on or before the one hundred twentieth day following the date of exhaustion, actual or deemed, of the managed care organization appeal process outlined in rule 441—73.12(249A).

c. Tax offsets. Except for counties appealing an offset under 441—Chapter 14, for appeals of state or federal tax offsets, the appellant must appeal on or before the fifteenth day following the date of notice of the action. For counties appealing a debtor offset under 441—Chapter 14, the county must appeal on or before the thirtieth day following the date of notice of the offset.

d. Iowa individual disaster assistance program. For appeals pertaining to the Iowa individual disaster assistance program, the appellant must appeal on or before the fifteenth day following the date of the department's reconsideration decision, pursuant to 441—subrule 58.7(1).

e. Iowa disaster case management program. For appeals pertaining to the Iowa disaster case management program, the appellant must appeal on or before the fifteenth day following the date of the department's reconsideration decision, pursuant to 441—subrule 58.7(1).

f. Dependent adult abuse. For appeals regarding dependent adult abuse, the appellant must appeal within six months of the date of notice of the action as provided in Iowa Code section 235B.10.

g. Child abuse. For appeals regarding child abuse, the person alleged responsible for the abuse must appeal on or before the ninetieth day following the date of notice of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the appeal on or before the tenth day following the date of notice of the right to intervene.

h. Sex offender risk assessment. For appeals regarding a sex offender risk assessment, the appellant must appeal in writing on or before the fourteenth day following the date of notice.

i. Assistance program overpayments. For appeals pertaining to the family investment program, refugee cash assistance, PROMISE JOBS, child care assistance, medical assistance, healthy and well kids in Iowa (HAWK-I), family planning program or food assistance overpayments, the party-in-interest's right to appeal the existence, computation and amount of the overissuance or overpayment begins when the department sends the first notice informing the party-in-interest of the overissuance or overpayment.

j. All other appeals. For all other appeals, and unless federal or state law provides otherwise elsewhere, the appellant must appeal on or before the thirtieth day following the date of notice of the action being appealed. If such an appeal is made more than 30 days, but less than 90 days, of the date of notice, the director or director's designee may, at the director's or designee's sole discretion, allow a contested case hearing if the delay was for good cause, substantiated by the appellant.

ITEM 6. Rescind rule 441—7.5(17A) and adopt the following **new** rule in lieu thereof:

441—7.5(17A) How to request an appeal.

7.5(1) Ways to request a hearing. An appellant may request a contested case hearing:

- a.* Via the department's website,
- b.* By telephone, except as specified in subrule 7.5(4),
- c.* By mail,
- d.* In person, except as specified in subrule 7.5(4), or
- e.* Through other commonly available electronic means (such as email or facsimile).

HUMAN SERVICES DEPARTMENT[441](cont'd)

7.5(2) *Hearing request.* The request for a contested case hearing must be sufficiently detailed so that the department can reasonably understand the action being appealed. The department may request additional information to determine the scope of the appeal.

7.5(3) *Filing date.* The date of filing for appeal requests sent by regular mail shall be the date postmarked on the envelope sent to the department or, when a postmarked envelope is not available, on the date the appeal is stamped received by the agency. The date of filing for appeal requests sent electronically shall be determined by the date on which the electronic submission was completed.

7.5(4) *Appeals must be filed in writing.* Appeal requests pertaining to foster care, adoption, state supplementary assistance, the autism support program, the Iowa individual disaster assistance program, the Iowa disaster case management program, sex offender risk assessment, record check evaluation, child care registered or nonregistered homes, child abuse, dependent adult abuse or child support must be made in writing.

7.5(5) *Department's responsibilities.* Unless the appeal is voluntarily withdrawn, the department worker or agent responsible for representing the department at the hearing shall:

a. Within one working day of receipt of an appeal request, forward Form 470-0487 or 470-0487(S), Appeal and Request for Hearing; the written appeal; the postmarked envelope, if there is one; and a copy of the notification of the proposed adverse action to the appeals section.

b. Within ten days of the receipt of the appeal, forward a summary and supporting documentation of the worker's or agent's factual basis for the proposed action to the appeals section. When practicable, the summary may also include suggested relevant legal authorities.

c. Copies of all materials sent to the appeals section or the presiding officer to be considered in reaching a decision on the appeal are to be provided to the appellant at the same time as the materials are sent to the appeals section or the presiding officer.

ITEM 7. Rescind rule 441—7.6(17A) and adopt the following new rule in lieu thereof:

441—7.6(17A) Prehearing procedures.

7.6(1) *Acknowledgment of appeal.* When the appeals section receives a request for appeal, it shall send acknowledgment of the receipt of the appeal to the parties to the appeal. For appeals regarding child abuse, all subjects other than the person alleged responsible (party-in-interest) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

7.6(2) *Acceptance or denial of appeal.* The appeals section will determine with reasonable promptness whether the party-in-interest is entitled to a contested case hearing under rule 441—7.3(17A). If a request is accepted, the appeals section will certify the appeal to DIA and designate the issues on appeal pursuant to subrule 7.6(3). If a request for a contested case hearing is denied, the appeals section will provide written notice of and the reasons for the denial. On or before the thirtieth day following the denial, the individual requesting the appeal may provide additional information related to the individual's asserted right to a contested case hearing and request reconsideration of the denial.

7.6(3) *Designation of issues for appeal.*

a. Initial designation. After determining that the party-in-interest is entitled to a contested case hearing, the appeals section will designate the issues to be decided at the contested case hearing. The issues identified may include all issues raised by the appellant and may also include additional issues identified by the appeals section. The issues designated shall be certified to DIA and be identified in the notice of hearing issued pursuant to subrule 7.6(5).

b. Additional designation of issues. If any party believes additional issues should be designated, on or before the tenth day following the date of the notice of hearing, the party shall identify those additional issues. The presiding officer shall determine whether all issues have properly been preserved. If the hearing is within ten days of the date of the notice of hearing, the party shall identify any additional issues at the hearing.

7.6(4) *Group hearings regarding medical assistance.* The appeals section may respond to a series of related, individual requests for hearings regarding medical assistance by consolidating individual hearings into a single group hearing where the sole issue is based on state or federal law or policy. An appellant scheduled for a group hearing may withdraw and request an individual hearing.

HUMAN SERVICES DEPARTMENT[441](cont'd)

7.6(5) Notice of hearing.

a. Issuance of hearing notice. Except as provided in paragraph 7.6(5) “b,” DIA shall send notice to the parties of the appeal at least ten calendar days in advance of the hearing setting forth the date, time, method, and place of the hearing; that evidence may be presented orally or documented to establish pertinent facts; that the parties may bring and question witnesses and refute testimony; and that the parties may be represented by others, including an attorney, at the parties’ own cost and as subject to state and federal law. Notice shall be mailed by first-class mail, postage prepaid, and addressed to the appellant at the appellant’s last-known address.

b. Intentional program violation hearing notices. DIA shall send notices of hearing regarding alleged intentional program violations at least 30 days in advance of the hearing date. The notices under this paragraph shall otherwise comply with the requirements of paragraph 7.6(5) “a.”

7.6(6) Appellant’s right to department’s case file. Prior to and during the contested case hearing, the department must provide enrollees or their authorized representative with the opportunity to examine the content of the appellant’s case file, if any, and all documents and records to be used by the department at the hearing.

ITEM 8. Rescind rule 441—7.7(17A) and adopt the following **new** rule in lieu thereof:

441—7.7(17A) Timelines for contested case hearings.

7.7(1) Medical assistance. In cases involving the determination of medical assistance, the contested case hearing shall be held within a time frame such that the final administrative action is timely pursuant to 42 CFR 431.244(f).

7.7(2) Community spouse resource allowance. In cases involving the determination of the community spouse resource allowance, the hearing shall be held within 30 days of the date of the appeal request.

7.7(3) Sex offender risk assessment. In cases involving an appeal of a sex offender risk assessment, the hearing or administrative review shall be held within 30 days of the date of the appeal request.

ITEM 9. Rescind rule 441—7.8(17A) and adopt the following **new** rule in lieu thereof:

441—7.8(17A) Contested case hearing procedures.

7.8(1) Method. Contested case hearings may be conducted via telephone or videoconference. Upon request of a party to the appeal or order of the presiding officer, the contested case hearing shall be conducted in person.

7.8(2) Evidence.

a. The parties to a contested case hearing shall be permitted to:

- (1) Bring witnesses,
- (2) Submit competent evidence to establish all pertinent facts and circumstances,
- (3) Present arguments without undue interference,
- (4) Question or refute any testimony or evidence, including through cross-examination, and
- (5) Respond to evidence and arguments on all issues.

b. Evidence shall be received or excluded as provided in Iowa Code section 17A.14.

7.8(3) Right to counsel. Parties to an appeal shall be permitted to be represented by counsel at the parties’ own expense.

7.8(4) Self-represented appellants. The presiding officer shall, at the officer’s discretion, provide reasonable assistance to self-represented appellants. The presiding officer must, however, ensure that such assistance does not impact the independence and fairness of the contested case hearing process.

7.8(5) Closed to public. Contested case hearings are closed to the public, and unless otherwise provided by state or federal law, only the parties, their representatives, permissible intervenors, and witnesses may be present for a contested case hearing in the absence of mutual agreement of the parties.

7.8(6) Administration of appeals. Except as otherwise provided in this chapter or other applicable federal or state law, discretion in the conduct and administration of appeals is vested in the contested case hearing presiding officer.

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ITEM 10. Rescind rule 441—7.9(17A) and adopt the following **new** rule in lieu thereof:

441—7.9(17A) Miscellaneous rules governing contested case hearings.

7.9(1) Ex parte communication. Ex parte communications between the presiding officer and parties, witnesses, or representatives involved in an appeal before the presiding officer shall be prohibited, except for uncontested scheduling or procedural matters. In the event such prohibited communication occurs, a presiding officer may disqualify himself, disclose the communication to all parties and representatives, permit other parties the opportunity to respond, issue sanctions or take such other remedial action.

7.9(2) Default. If a party fails to appear at a scheduled hearing or prehearing conference without good cause as determined by the presiding officer, the party's appeals may be denied and dismissed or may be heard and ruled upon, consistent with Iowa Code section 17A.12. Defaulting parties may file a timely motion to vacate, which shall be granted if the presiding officer determines good cause has been shown.

7.9(3) Withdrawal. An appellant may submit a withdrawal of a fair hearing request at any time prior to hearing through any of the methods identified in subrule 7.5(1), except for programs listed in subrule 7.5(4). Unless otherwise provided, a withdrawal shall be with prejudice.

7.9(4) Medical assessment. For Medicaid enrollees engaged in an appeal involving medical issues, the department may request, at the department's own expense, that the appellant submit to an appropriate medical assessment. The presiding officer shall order such assessment upon sufficient showing of necessity.

7.9(5) Interpreters. The department shall provide translation and interpretation services to appellants not fluent in English. Appellants are entitled to have an interpreter present during appeal hearings. In all cases when an appellant is illiterate or semiliterate, the presiding officer shall advise the appellant of their rights to the satisfaction of the appellant's understanding.

ITEM 11. Rescind rule 441—7.10(17A) and adopt the following **new** rule in lieu thereof:

441—7.10(17A) Proposed decision.

7.10(1) Contents. The presiding officer shall issue a written proposed decision to all parties clearly identifying the issues on appeal, holding, findings of fact, conclusions of law, and order. The findings of fact shall cite and be based exclusively on the record as defined by Iowa Code section 17A.12(6). The conclusions of law shall be limited to the contested issues of fact, policy or law and shall identify the specific provisions of law that support the ultimate conclusion.

7.10(2) Access to record. After receiving the proposed decision, appellants shall be given reasonable access to the record at a convenient place and time.

ITEM 12. Rescind rule 441—7.11(17A) and adopt the following **new** rule in lieu thereof:

441—7.11(17A) Director's review.

7.11(1) Time. Parties, including the department, may appeal the proposed decision to the director.

a. A request for director's review shall be in writing and postmarked or received within ten calendar days of the date on which the proposed decision was issued, except as provided for under paragraph 7.11(1)"*b.*" A request for director's review may be accompanied by a brief written summary of the arguments in favor of director's review.

b. A managed care organization appealing a proposed decision reversing an adverse benefit determination shall request director's review within 72 hours from the date it received notice of the proposed decision.

7.11(2) Grant or denial of review. The department has full discretion to grant or deny a request for review. In addition, the director may initiate review of a proposed decision on the director's own motion at any time on or before the tenth day following the issuance of the proposed decision.

When the department grants a request for director's review, the appeals section shall notify the parties to the appeal of the review request and enclose a copy of the request. All other parties shall have ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

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7.11(3) *Cross-appeal.* When a party requests director's review in accordance with subrule 7.11(1), the remaining parties shall have ten calendar days from that date to submit cross-requests for director's review. The party originally seeking director's review shall have ten calendar days from the date of the cross-request for director's review to submit further written arguments or objections for consideration upon review.

7.11(4) *Limited record.* Director's review shall be limited to the issues and record before the contested case hearing presiding officer.

7.11(5) *Oral arguments.* Upon specific request, the director may, at the director's discretion, permit parties to present oral arguments with the parties' requests for director's review.

ITEM 13. Rescind rule 441—7.12(17A) and adopt the following **new** rule in lieu thereof:

441—7.12(17A) Final decisions.

7.12(1) *No appeal or denial of director review.* If there is no timely appeal from or review of the proposed decision, the presiding officer's proposed decision becomes the final decision of the agency.

7.12(2) *Timelines.*

a. The department or director will issue a final decision within the timelines prescribed by federal or state law. For all appeals for which there is no federal or state timeliness standard, the department or director will issue a final decision on or before the ninetieth day from the date the department receives an appeal request.

b. Except as otherwise provided by state or federal law, the time frames for a final decision provided under this rule may be tolled when:

- (1) The appellant requests a delay;
- (2) The appellant fails to take a required action; or
- (3) There is an administrative or other emergency beyond the department's control.

c. DIA shall document in the record the reasons for any delay and the requesting party.

7.12(3) *Written notice of final decision.* The parties to the appeal shall be provided written notice of the department's final decision. The department shall also notify the appellant of the appellant's right to seek judicial review, where applicable.

ITEM 14. Rescind rule 441—7.13(17A) and adopt the following **new** rule in lieu thereof:

441—7.13(17A) Expedited review.

7.13(1) *Expedited review criteria.* Appellants to a medical assistance appeal may, at any time, file with the department a request for expedited review of the appeal. Expedited review shall be granted when the department determines, or a provider acting on behalf or in support of an appellant indicates, that taking the time for a standard resolution could seriously jeopardize the party-in-interest's life, physical or mental health, or ability to attain, maintain, or regain maximum function.

7.13(2) *Managed care expedited proceedings.*

a. If the appellant is granted an expedited review pursuant to subrule 7.13(2), all subsequent proceedings shall also be expedited without an additional request if the appeal request indicates that the managed care organization appeal was expedited and provides the basis for expedited relief.

b. When review is expedited pursuant to paragraph 7.13(2) "a," the presiding officer shall issue a proposed decision as expeditiously as the enrollee's health condition requires, but no later than three working days after the department receives from the managed care organization the case file and information for any appeal of a denial of a service that, as indicated by the managed care organization:

- (1) Meets the criteria for expedited resolution but was not resolved within the time frame for expedited resolution; or
- (2) Was resolved within the time frame for expedited resolution but reached a decision wholly or partially adverse to the enrollee.

7.13(3) *Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review expedited proceedings.* For expedited appeals related to Medicaid eligibility, nursing facility transfers or discharges, or preadmission and annual resident review requirements, the presiding

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officer shall issue a proposed decision as expeditiously as possible, but no later than seven working days after the department receives a request for expedited fair hearing.

7.13(4) *Medicaid-covered benefits or services expedited proceedings.* For expedited appeals related to Medicaid-covered benefits or services, the presiding officer shall issue a proposed decision as expeditiously as possible, but no later than provided in paragraph 7.13(2) “b.”

7.13(5) *Final decision for expedited proceeding.* The department shall issue its final decision in accordance with this rule, except as provided by subrule 7.12(2).

7.13(6) *Notification if expedited relief is granted or denied.* The department shall notify the appellant as expeditiously as possible whether the request for expedited relief is granted or denied. Such notice must be provided orally or through electronic means to the extent consistent with federal and state law. If oral notice is provided, the department shall follow up with written notice, which may be through electronic means to the extent consistent with federal and state law.

ITEM 15. Rescind rule 441—7.14(17A) and adopt the following **new** rule in lieu thereof:

441—7.14(17A) Effect.

7.14(1) If the contested case hearing presiding officer’s proposed decision is favorable to an enrollee in a Medicaid appeal, the department must promptly make corrective payments retroactive to the date an incorrect action was taken, and, if appropriate, provide for admission or readmission of an individual to a facility. If the presiding officer reverses a decision of a managed care organization to deny, limit, or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and as expeditiously as the enrollee’s health condition requires, but no later than 72 hours from the date the managed care organization receives notice reversing the determination.

7.14(2) Unless there is contravening federal or state law, all final decisions shall be put into effect within seven days of the issuance of the final decision.

ITEM 16. Rescind rule 441—7.15(17A) and adopt the following **new** rule in lieu thereof:

441—7.15(17A) Calculating time. In computing any time period specified in this chapter, the period:

1. Excludes the day of the event that triggers the period;
2. Includes every day of the time period (including Saturdays, Sundays, and holidays on which the department is closed); and
3. Includes the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

ITEM 17. Rescind rule 441—7.16(17A) and adopt the following **new** rule in lieu thereof:

441—7.16(17A) Authorized representatives.

7.16(1) *Regulations.* The provisions of this rule only apply to the extent the standards expressed in this rule are not in conflict with other state or federal law. Legally recognized delegations of authority, such as guardianships, applicable designations of power of attorney, or similar, shall be sufficient for a delegate to serve as authorized representative under this chapter.

7.16(2) *Designation of authority.* A person who is not designated under subrule 7.16(1) but who otherwise seeks to act as an authorized representative for an individual in an appeal under this chapter shall provide a written, signed designation of authority to the department with the request for appeal. The designation must provide the scope of the representation, applicable waivers for the release of confidential information, and any temporal or other limitations on the scope of representation. An authorized representative of a party-in-interest only represents the party-in-interest and has no independent right to appeal by virtue of the authorized representative’s representation.

7.16(3) *Written designation.* For persons seeking to act as authorized representative of a party-in-interest in a Medicaid managed care appeal, the authorized representative’s written designation of authority pursuant to subrule 7.16(2) shall be Form 470-5526, Authorized Representative for Managed Care Appeals.

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7.16(4) *Appearance by attorney.* Legal counsel appearing on behalf of any person in a proceeding under this chapter shall enter an appropriate written appearance identifying the legal counsel.

ITEM 18. Rescind rule 441—7.17(17A) and adopt the following **new** rule in lieu thereof:

441—7.17(17A) Continuation and reinstatement of benefits.

7.17(1) *Programs for which no federal or state law applies.* For all assistance programs for which there is no contravening federal or state law, benefits or services shall not be suspended, reduced, restricted, or discontinued, nor shall a license, registration, certification, approval, or accreditation be revoked or other adverse action taken pending a final decision when:

- a. An appeal is filed before the effective date of the intended action; or
- b. The appellant requests a hearing within ten days of receipt of a notice to suspend, reduce, restrict, or discontinue benefits or services.

7.17(2) *Sole issue is state or federal law or policy.* Benefits or services continued pursuant to subrule 7.17(1) may be suspended, reduced, restricted, or discontinued if the presiding officer determines at the contested case hearing that the sole issue is one of state or federal law or policy and the department has notified the enrollee in writing that services are to be suspended, reduced, restricted, or discontinued pending the proposed decision.

7.17(3) *Recoup cost of services or benefits.* The department or managed care organization may recoup the cost of benefits or services provided pursuant to this chapter if the adverse action appealed from is affirmed, consistent with state and federal law.

ITEM 19. Rescind rule 441—7.18(17A) and adopt the following **new** rule in lieu thereof:

441—7.18(17A) Emergency adjudicative proceedings.

7.18(1) *Necessary emergency action.* When and to the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with state and federal law, a contested case hearing presiding officer may issue a written order to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. In determining the necessity of such an action, the presiding officer shall consider factors including, but not limited to, the following:

- a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;
- b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;
- c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated is necessary to avoid the immediate danger.

7.18(2) *Issuance of order.* An emergency adjudicative order shall contain, or shall be expeditiously followed by, a written analysis, including findings of fact, conclusions of law, and policy reasons to justify the order. Such order shall be immediately delivered to the persons required to comply with the order.

7.18(3) *Completion of proceedings.* Upon issuance of an order under this rule, the department shall proceed as quickly as reasonably practicable to complete any proceedings that would be required if the matter did not involve an immediate danger. An order issued under this rule shall include notice of the date on which proceedings under this chapter are to be completed. After issuance of an order under this rule, continuance of further proceedings under this chapter shall only be granted in compelling circumstances upon application in writing. Before issuing an emergency adjudicative order, the presiding officer shall consider factors including, but not limited to, the following:

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- a. Whether there has been sufficient investigation and evidentiary support to ensure the order is proceeding based on reliable information;
- b. Whether the specific circumstances giving rise to the potential order have been specifically identified and determined to be continuing;
- c. Whether the person who is required to comply with the emergency adjudicative order may continue to engage in other activities without risk of immediate danger to the public health, safety, or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety, or welfare; and
- e. Whether the specific action contemplated is necessary to avoid the immediate danger.

ITEM 20. Rescind rules **441—7.19(17A)** to **441—7.21(17A)**.

ITEM 21. Rescind rules **441—7.23(17A)** and **441—7.24(17A)**.

ITEM 22. Amend rule 441—7.41(17A) as follows:

441—7.41(17A) Scope, bidder and applicability. The rules in Division II apply to appeals based on the department's competitive procurement bid process. A bidder is an entity that submits a proposal in response to a solicitation issued through the department of human services' competitive procurement process.

ITEM 23. Amend subrule 7.43(6) as follows:

7.43(6) Method of hearing. The department of inspections and appeals shall determine whether the appeal hearing is to be conducted in person, by videoconference or by teleconference call. The parties to the appeal may participate from multiple sites for videoconference or teleconference hearings. Any appellant is entitled to an in-person hearing if the appellant requests one. All parties shall be granted the same rights during a teleconference hearing as specified in rule ~~441—7.13(17A)~~ 441—7.8(17A).

ITEM 24. Amend rule 441—7.46(17A) as follows:

441—7.46(17A) Request for review of the proposed decision. A request for review of the proposed decision shall follow the provisions outlined in ~~subrules 7.16(5) to 7.16(8)~~ rule 441—7.11(17A).

ITEM 25. Amend subrule 7.47(2) as follows:

7.47(2) Presiding officer. Appeal hearings shall be conducted by an administrative law judge appointed by the department of inspections and appeals ~~pursuant to rule 441—7.3(17A)~~.

ITEM 26. Amend subrule 7.47(3) as follows:

7.47(3) Rights of appellants during hearings. All rights afforded appellants at rule ~~441—7.13(17A)~~ 441—7.8(17A) shall apply.

ITEM 27. Amend subrule 7.48(1) as follows:

7.48(1) The appeal record shall consist of all items specified in ~~subrule 7.16(4)~~ Iowa Code section 17A.16.

ITEM 28. Amend rule 441—7.50(17A) as follows:

441—7.50(17A) Ex parte communications. The rules regarding ex parte communications ~~listed at 441—7.18(17A)~~ specified in subrule 7.9(1) and Iowa Code section 17A.17 apply.

ITEM 29. Amend rule 441—7.51(17A) as follows:

441—7.51(17A) Right of judicial review. The rules regarding right of judicial review ~~listed at 441—7.20(17A)~~ specified in subrule 7.12(3) and Iowa Code section 17A.19 apply.

ARC 4675C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action****Proposing rule making related to timely and adequate notice and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 14, “Offset of County Debts Owed Department”; to adopt new Chapter 16, “Notices”; and to amend Chapter 40, “Application for Aid,” Chapter 41, “Granting Assistance,” Chapter 46, “Overpayment Recovery,” Chapter 74, “Iowa Health and Wellness Plan,” Chapter 75, “Conditions of Eligibility,” Chapter 76, “Enrollment and Reenrollment,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Chapter 82, “Intermediate Care Facilities for Persons with an Intellectual Disability,” Chapter 83, “Medicaid Waiver Services,” Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Chapter 90, “Targeted Case Management,” Chapter 91, “Medicare Drug Subsidy,” Chapter 93, “PROMISE JOBS Program,” Chapter 95, “Collections,” Chapter 106, “Certification Standards for Children’s Residential Facilities,” Chapter 109, “Child Care Centers,” Chapter 153, “Funding for Local Services,” Chapter 170, “Child Care Services,” and Chapter 187, “Aftercare Services Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6.

Purpose and Summary

These amendments propose to implement a new Chapter 16, “Notices,” to centralize administrative rules regarding timely and adequate notices. In addition, these amendments correct cross references found in administrative rules regarding timely and adequate notices. Based on changes in Chapter 7 (see **ARC 4674C**, IAB 9/25/19), cross references to that chapter are also being corrected.

Whenever the Department proposes to approve or deny an application for assistance or services, the Department must provide adequate notice. Whenever the Department proposes to terminate or reduce assistance or services, the Department must provide timely and adequate notice. Rules regarding timely and adequate notices are currently in Chapter 7, “Appeals and Hearings.” As notices relate to all parts of the Department and are not specific to appeals, the rules regarding timely and adequate notices are being moved from Chapter 7 into Chapter 16, which solely relates to notices.

An individual’s right to due process is not impacted by these changes. The Department is still required to provide timely and adequate notice to applicants and recipients. The rules are simply being moved from one chapter into another.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

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Waivers

These rules do not include waiver provisions because they confer benefits on those affected and are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Nancy Freudenberg
Iowa Department of Human Services
Hoover State Office Building, Fifth Floor
1305 East Walnut Street
Des Moines, Iowa 50319-0114
Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 441—14.5(217,234), introductory paragraph, as follows:

441—14.5(217,234) Implementing the final decision. When the final decision issued pursuant to rule 441—7.16(17A) ~~441—7.12(17A)~~ upholds the department's action or modifies the amount of offset, the division of fiscal management shall certify to the department of administrative services that the requirements for offset under Iowa Code section 8A.504 have been met. When the final decision reverses the department's action, the division of fiscal management shall notify the department of administrative services to release the offset.

ITEM 2. Adopt the following **new** 441—Chapter 16:

CHAPTER 16
NOTICES

PREAMBLE

This chapter applies to any notice of decision or notice of action issued by or on behalf of the department.

441—16.1(17A) Definitions.

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“*Adequate notice*” means any notice of decision or notice of action issued in compliance with subrule 16.3(2).

“*Adverse benefit determination*” means any adverse action taken in regard to any individual’s benefits pursuant to an assistance program administered by the department or on the department’s behalf, excluding determinations related to requests for exceptions to policy.

“*Assistance program*” means a program administered by the department or on the department’s behalf through which qualifying individuals receive benefits or services. Assistance programs include, but are not necessarily limited to, food assistance, Medicaid, the family investment program, refugee cash assistance, child care assistance, emergency assistance, the family planning program, the family self-sufficiency grant, PROMISE JOBS, state supplementary assistance, the healthy and well kids in Iowa (HAWK-I) program, foster care, adoption, and aftercare services.

“*Department*” means the Iowa department of human services.

“*Enrollee*” means any applicant for, or recipient of, benefits or services pursuant to an assistance program.

“*Timely*” means that the notice is sent at least ten calendar days before the date the adverse benefit determination would become effective. The timely notice period shall begin on the day after the notice is sent.

441—16.2(17A) Governing laws and regulations. Notwithstanding the rules contained in this chapter, to the extent that state or federal law (including regulations and rules) related to a specific program is more specific than or contradicts these rules, the program-specific state or federal law shall control.

441—16.3(17A) Notices.

16.3(1) *Timely notice.* For individuals applying for, or receiving, benefits pursuant to an assistance program, the department will provide timely, written notice of the right to appeal any adverse benefit determinations affecting the individual’s benefits or eligibility, when required to do so under state or federal law.

The department will also provide timely, written notice of pending actions for a state or federal tax or debtor offset.

Timely notice must also be adequate as provided in subrule 16.3(2).

16.3(2) *Adequate notice.* To the extent standards provided elsewhere in state or federal law are inapplicable, adequate notice shall include:

- a. A description of the action taken;
- b. The effective date of the action;
- c. The specific reasons supporting the action, stated in clear language likely to be understood by the average program applicant or enrollee;
- d. References to applicable provisions of law supporting the action;
- e. An explanation of the right to appeal; and
- f. The circumstances under which assistance is continued when an appeal is filed.

16.3(3) *Dispensing with timely notice.* Timely notice may be dispensed with, but adequate notice shall be sent no later than the date benefits would have been issued, when:

- a. There is factual information confirming the death of the enrollee or of the family investment program payee and there is no relative available to serve as a new payee.
- b. The enrollee provides a clear written, signed statement that the enrollee no longer wishes to receive assistance, or gives information which requires termination or reduction of assistance, and the enrollee has indicated, in writing, that the enrollee understands that the consequence of supplying the information is termination or reduction of assistance.
- c. The enrollee has been admitted or committed to an institution that does not qualify for payment under an assistance program.
- d. The enrollee has been placed in skilled nursing care, intermediate care, or long-term hospitalization.

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e. The whereabouts of the enrollee are unknown and mail directed to the enrollee has been returned by the post office indicating no known forwarding address. When the whereabouts of the enrollee become known during the payment period covered by the returned warrant, the warrant shall be made available to the enrollee.

f. The department establishes that the enrollee has been accepted for assistance in another state.

g. Cash assistance or food assistance is changed because a child is removed from the home as a result of a judicial determination or is voluntarily placed in foster care.

h. A change in the level of medical care is prescribed by the enrollee's physician.

i. A special allowance or service granted for a specific period is terminated and the enrollee has been informed in writing at the time of initiation that the allowance or service shall terminate at the end of the specified period.

j. The notice involves an adverse determination made with regard to the preadmission screening requirements.

k. The department terminates or reduces benefits or makes changes based on a completed Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS), Review/Recertification Eligibility Document, as described at 441—subrule 40.27(3) or rule 441—75.52(249A).

l. The department terminates benefits for failure to return a completed report form, as described in paragraph 16.3(3)“*k.*”

m. The department approves or denies an application for assistance.

n. The department implements a mass change based on law or rule changes that affect a group of enrollees.

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

ITEM 3. Amend paragraph **40.27(5)“b”** as follows:

b. When cancellation of assistance occurs later because issuance of a timely notice, as required by 441—7.7(17A) rule 441—16.3(17A), requires that the action be delayed until the first day of the second calendar month, any overpayment received in the first calendar month shall be recouped.

ITEM 4. Amend subparagraph **40.27(5)“c”(2)** as follows:

(2) Recoupment shall be made for any overpayment, with one exception. When a change in income is timely reported by a recipient and timely acted upon by the department, but the timely notice, as required by 441—7.7(17A) rule 441—16.3(17A), requires the action be delayed until the second calendar month following the month of change, and eligibility continues, recoupment shall not be made.

ITEM 5. Amend subrule 41.24(8) as follows:

41.24(8) *The limited Limited benefit plan (LBP).* When a participant responsible for signing and meeting the terms of a family investment agreement as described at rule 441—93.4(239B) chooses not to sign or fulfill the terms of the agreement, the FIP assistance unit or the individual participant shall enter into a limited benefit plan. A limited benefit plan is considered imposed as of the date that a timely and adequate notice is issued to the participant as defined at 441—subrule 7.7(1) rule 441—16.3(17A). Once the limited benefit plan is imposed, FIP eligibility no longer exists as of the first of the month after the month in which timely and adequate notice is given to the participant. Upon the issuance of the notice to impose a limited benefit plan, the person who chose the limited benefit plan can reconsider and end the limited benefit plan, but only as described at paragraphs 41.24(8)“*d*” and “*e.*”

a. to *g.* No change.

ITEM 6. Amend subparagraph **41.27(9)“c”(2)** as follows:

(2) Nonrecurring lump-sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 41.26(4), and 41.26(7), and paragraphs 41.27(8)“*b*,” and 41.27(8)“*c*,” shall be treated in accordance with this rule. Nonrecurring lump-sum income shall be considered as income in the month received and counted in computing eligibility and the amount of the grant, unless the income is exempt. Nonrecurring lump-sum unearned income is defined as a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance or

HUMAN SERVICES DEPARTMENT[441](cont'd)

workers' compensation. When countable income, exclusive of the family investment program grant but including countable lump-sum income, exceeds the needs of the eligible group, the case shall be canceled or the application rejected. In addition, the eligible group shall be ineligible for the number of full months derived by dividing the income by the standard of need for the eligible group. Any income remaining after this calculation shall be applied as income to the first month following the period of ineligibility and disregarded as income thereafter. The period of ineligibility shall begin with the month the lump sum is received.

When a nonrecurring lump sum is timely reported as required by 441—paragraph 40.27(4) “f,” recoupment shall not be made for the month of receipt. When a nonrecurring lump sum is timely reported, but the timely notice as required by ~~rule 441—7.7(17A)~~ 441—subrule 16.3(1) requires that the action be delayed until the second calendar month following the month of change, recoupment shall not be made for the first calendar month following the month of change. When a nonrecurring lump sum is not timely reported, recoupment shall be made beginning with the month of receipt.

The period of ineligibility shall be shortened when the schedule of living costs as defined in 41.28(2) increases.

The period of ineligibility shall be shortened by the amount that is no longer available to the eligible group due to a loss or a theft or because the person controlling the lump sum no longer resides with the eligible group.

The period of ineligibility shall also be shortened when there is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 441—Chapters 78, 81, 82 and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over \$25 per incident; cost of replacement of exempt resources as defined in subrule 41.26(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified. A dependent is an individual who is claimed or could be claimed by another individual as a dependent for federal income tax purposes.

When countable income, including the lump-sum income, is less than the needs of the eligible group, the lump sum shall be counted as income for the month received. For purposes of applying the lump-sum provision, the eligible group is defined as all eligible persons and any other individual whose lump-sum income is counted in determining the period of ineligibility. During the period of ineligibility, individuals not in the eligible group when the lump-sum income was received may be eligible for the family investment program as a separate eligible group. Income of this eligible group plus income, excluding the lump-sum income already considered, of the parent or other legally responsible person in the home shall be considered as available in determining eligibility and the amount of the grant.

ITEM 7. Amend rule 441—46.23(239B) as follows:

441—46.23(239B) Notification and appeals. All clients shall be notified by the department of inspections and appeals, as described at ~~441—subrule 7.5(6)~~, 441—paragraph 7.4(3) “i,” when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The department shall provide additional information regarding the computation of the overpayment upon the client's request. The client may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with ~~441—subrule 7.5(6)~~. 441—paragraph 7.4(3) “i.”

ITEM 8. Amend paragraph **74.6(3)“a”** as follows:

a. Timely notice of adverse action is required as specified in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(1); or

ITEM 9. Amend paragraph **75.21(12)“b”** as follows:

b. The department shall provide timely and adequate notice as defined in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) to inform the household of a decision to discontinue payment of the health insurance premium because:

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(1) and (2) No change.

ITEM 10. Amend subrule 75.22(9) as follows:

75.22(9) Notices.

a. An adequate notice as defined in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(2) shall be provided under the following circumstances:

(1) to (5) No change.

b. A timely and adequate notice as defined in ~~441—subrule 7.7(1)~~ rule 441—16.3(17A) shall be provided to the recipient informing the recipient of a decision to discontinue payment of the health insurance premium when the recipient no longer meets the eligibility requirements of the program or fails to cooperate in providing information to establish eligibility.

ITEM 11. Amend subrule 75.52(5) as follows:

75.52(5) Effective date. After assistance has been approved, eligibility for continuing assistance shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month, subject to timely notice requirements at rule ~~441—7.6(217)~~ 441—16.3(17A) for any adverse actions.

a. When the change creates ineligibility, eligibility under the current coverage group shall be canceled and an automatic redetermination of eligibility shall be completed in accordance with rule ~~441—76.11(249A)~~.

b. Rescinded IAB 10/4/00, effective 10/1/00.

c. When an individual included in the eligible group becomes ineligible, that individual's Medicaid shall be canceled effective the first of the next month unless the action must be delayed due to timely notice requirements at rule ~~441—7.6(217)~~ 441—16.3(17A).

ITEM 12. Amend subrule 76.16(1) as follows:

76.16(1) After assistance has been approved, except as provided in subrule 76.13(1), action based on a change reported during a month shall be effective the first day of the next calendar month unless timely notice of adverse action is required as specified in ~~441—subrule 7.7(1)~~ 441—subrule 16.3(1).

ITEM 13. Amend paragraph **79.2(7)“a”** as follows:

a. Any order of sanction shall be in writing and include the name of the person subject to sanction, identify the ground for the sanction and its effective date, and be sent to the person's last-known address. If the department sanctions a provider, the order of sanction shall also include the national provider identification number of the provider and be sent to the provider's last address on file within the medical assistance program. Proof of mailing to such address shall be conclusive evidence of proper service of the sanction upon the provider. ~~The department of inspections and appeals is not required to comply with the additional notification provisions of 441—paragraph 7.10(7)“c” for appeals certified for hearing under this chapter.~~

ITEM 14. Amend subrule 79.8(9) as follows:

79.8(9) The Iowa Medicaid enterprise shall issue a notice of decision to the recipient upon a denial of request for prior approval pursuant to ~~441—Chapter 7~~ 441—Chapter 16. The Iowa Medicaid enterprise shall mail the notice of decision to the recipient within five working days of the date the prior approval form is returned to the provider.

ITEM 15. Amend subrule 82.7(4) as follows:

82.7(4) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with ~~441—Chapter 7~~ and rule 441—16.3(17A).

ITEM 16. Amend rule ~~441—83.9(249A)~~ as follows:

441—83.9(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with ~~441—Chapter 7~~, rule 441—16.3(17A) and rule ~~441—130.5(234)~~. The applicant or recipient is entitled to have a review of the level of care determination by the IME medical services unit by sending a letter requesting a review to the IME medical services unit. If dissatisfied with that decision, the applicant or recipient may file an appeal with the department.

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ITEM 17. Amend rule 441—83.29(249A) as follows:

441—83.29(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 18. Amend rule 441—83.49(249A) as follows:

441—83.49(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 19. Amend rule 441—83.69(249A) as follows:

441—83.69(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 20. Amend rule 441—83.89(249A) as follows:

441—83.89(249A) Appeal rights. Notice of adverse ~~actions~~ action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 21. Amend rule 441—83.109(249A), introductory paragraph, as follows:

441—83.109(249A) Appeal rights. Notice of adverse ~~actions~~ action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 22. Amend rule 441—83.129(249A) as follows:

441—83.129(249A) Appeal rights. Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7, rule 441—16.3(17A) and rule 441—130.5(234).

ITEM 23. Amend rule 441—86.11(514I) as follows:

441—86.11(514I) Notice requirements. The applicant shall be provided an adequate written notice of the decision regarding the applicant's eligibility for the HAWK-I program. The enrollee shall be notified in writing of any decision that adversely affects the enrollee's eligibility or the amount of benefits. The notice shall be timely and adequate as provided in 441—~~subrule 7.7(1)~~ rule 441—16.3(17A).

ITEM 24. Amend subrule 90.4(2) as follows:

90.4(2) Application decision. The provider shall inform the applicant or the applicant's legally authorized representative of any decision to approve, deny, or delay the service in accordance with notification requirements at 441—~~subrule 7.7(1)~~ rule 441—16.3(17A).

ITEM 25. Amend subrule 90.6(2) as follows:

90.6(2) The provider shall notify the member or the member's legally authorized representative in writing of the termination of targeted case management, in accordance with 441—~~subrule 7.7(1)~~ 441—subrule 16.3(1).

ITEM 26. Amend subrule 91.4(2) as follows:

91.4(2) The department shall give a recipient timely and adequate written notice as provided in 441—~~subrule 7.7(1)~~ rule 441—16.3(17A) when any decision or action is taken that adversely affects subsidy eligibility or the level of subsidy.

ITEM 27. Amend subrule 91.4(3) as follows:

91.4(3) In the circumstances described in 441—~~subrule 7.7(2)~~ 441—subrule 16.3(3), the department may dispense with timely notice but shall send adequate notice no later than the effective date of action.

ITEM 28. Amend paragraph **93.10(1)“b”** as follows:

b. Notice of decision. PROMISE JOBS shall send written notice to each participant in accordance with 441—~~Chapter 7~~ 441—Chapter 16 when services are approved, rejected, renewed, changed,

HUMAN SERVICES DEPARTMENT[441](cont'd)

canceled, or terminated for failure to cooperate or participate. PROMISE JOBS services are approved when the participant is assigned to begin participation in an activity as written in the FIA.

ITEM 29. Amend subrule 93.12(2) as follows:

93.12(2) The department of inspections and appeals shall notify the participant or the provider when it is determined that an overpayment exists, as described at ~~441—subrule 7.5(6)~~. 441—paragraph 7.4(3) “i.”

a. Notification shall include the amount, date, and reason for the overpayment. Upon the participant’s request, the local office shall provide additional information regarding the computation of the overpayment.

b. The participant may appeal the computation of the overpayment and any action to recover the overpayment through benefit reduction in accordance with ~~441—subrule 7.5(6)~~. 441—paragraph 7.4(3) “i.” If a participant or provider files an appeal request, the PROMISE JOBS unit shall notify the DIA within three working days of receipt of the appeal request.

ITEM 30. Amend subrule 95.13(3) as follows:

95.13(3) *Initiation of appeal.* If the department denies some or all support payments that are claimed based on the date of collection, the obligee may initiate an administrative appeal.

a. To initiate an administrative appeal, the obligee shall, within 30 days of the date that a written decision as required by subrule 95.13(2) is issued, make a written request to the child support recovery unit indicating an intent to appeal.

~~*b.* The time limit for initiating an administrative appeal shall be governed by 441—subrule 7.5(4). The time limit provided in 441—subrule 7.5(4) shall start with the date that a written decision as required by subrule 95.13(2) is issued.~~

e. b. If no written decision has been issued after 30 days, the obligee may appeal the failure to issue a written decision. The appeal may be initiated at any time after 30 days and before a written decision is issued.

ITEM 31. Amend subrule 106.5(7) as follows:

106.5(7) Right to appeal suspension or revocation. The holder of the certificate of approval has the right to appeal a suspension or revocation of the certificate of approval, but initiation of an appeal does not alter the suspension or revocation. Notices of adverse actions and the right to appeal shall be given to applicants and certificate of approval holders in accordance with 441—Chapter 7 and rule 441—16.3(17A).

ITEM 32. Amend paragraph **109.2(6)“a”** as follows:

a. Notice of adverse actions for a denial, revocation, or suspension and the right to appeal the licensing decision shall be given to applicants and licensees in accordance with 441—Chapter 7 and rule 441—16.3(17A).

ITEM 33. Amend paragraph **153.57(2)“b”** as follows:

b. The department shall notify the member and the CPC when a member is to be disenrolled. The department shall give the member at least ten days’ notice of disenrollment pursuant to rule ~~441—7.7(17A)~~ 441—subrule 16.3(1). The department shall give a member receiving any residential service 30 days’ notice of disenrollment from the program consistent with department of inspections and appeals’ rule ~~481—57.36(135C)~~ 481—57.14(135C).

ITEM 34. Amend subrule 153.58(1) as follows:

153.58(1) Decisions regarding denial or termination of state payment program eligibility, including disenrollment, may be appealed to the department pursuant to 441—Chapter 7. Continuation of assistance will be granted pursuant to rule ~~441—7.9(17A)~~ 441—7.17(17A).

ITEM 35. Amend subrule 170.9(1) as follows:

170.9(1) *Notification and appeals.* All clients or providers shall be notified as described at subrule 170.9(6), when it is determined that an overpayment exists. Notification shall include the amount, date and reason for the overpayment. The department shall provide additional information regarding the

HUMAN SERVICES DEPARTMENT[441](cont'd)

computation of the overpayment upon the client's or provider's request. The client or provider may appeal the computation of the overpayment and any action to recover the overpayment in accordance with ~~441—subrule 7.5(9)~~. 441—paragraph 7.4(3)“i.”

ITEM 36. Amend subparagraph **187.3(6)“c”(9)** as follows:

(9) Recoupment shall not be made when a youth timely reports a change in income and the change is timely acted upon, but the timely notice policy in rule ~~441—7.7(17A)~~ 441—16.3(17A) requires that the action be delayed until the second calendar month following the month of change.

ARC 4673C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Proposing rule making related to medical prior authorizations under Medicaid and providing an opportunity for public comment

The Human Services Department hereby proposes to amend Chapter 73, “Managed Care,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapter 249A and 2019 Iowa Acts, House File 766, section 63.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 249A and 2019 Iowa Acts, House File 766, section 63.

Purpose and Summary

2019 Iowa Acts, House File 766, section 63, requires the Department to adopt rules to require that both managed care and fee-for-service payment and delivery systems utilize a uniform process, including but not limited to uniform forms, information requirements, and time frames, to request medical prior authorizations under the Medicaid program.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Nancy Freudenberg
 Department of Human Services
 Hoover State Office Building, Fifth Floor
 1305 East Walnut Street
 Des Moines, Iowa 50319-0114
 Email: appeals@dhs.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** paragraph **73.2(4)“o”**:

o. Require managed care organizations and the fee-for-service Medicaid program to utilize a uniform prior authorization process. The process will include forms, information requirements, and time frames.

ITEM 2. Amend **441—Chapter 73**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 249A.4, ~~and~~ 2015 Iowa Acts, Senate File 505, section 12, and 2019 Iowa Acts, House File 766, section 63.

ARC 4660C

INSURANCE DIVISION[191]

Notice of Intended Action

Proposing rule making related to agency procedure and organization and providing an opportunity for public comment

The Insurance Division hereby proposes to rescind Chapter 1, “Organization of Division,” and adopt a new Chapter 1, “Administration”; to rescind Chapter 2, “Declaratory Orders,” and adopt a new Chapter 2, “Public Records and Fair Information Practices”; to amend Chapter 3, “Contested Cases”; to rescind Chapter 4, “Agency Procedure for Rule Making and Waiver of Rules,” and adopt a new Chapter 4, “Agency Procedure for Rule Making, Waiver of Rules, and Declaratory Orders”; and to amend Chapter 10, “Insurance Producer Licenses and Limited Licenses,” Chapter 36, “Individual Accident and Health—Minimum Standards and Rate Hearings,” Chapter 39, “Long-Term Care Insurance,” Chapter 41, “Limited Service Organizations,” Chapter 55, “Licensing of Public Adjusters,” Chapter 58, “Third-Party Administrators,” and Chapter 76, “External Review,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3, 17A.7, 17A.9, 17A.9A, 22.11, 502.601 and 502.605 and chapter 505.

INSURANCE DIVISION[191](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 22, 502 and 505.

Purpose and Summary

The proposed rescission of existing Chapters 1, 2, and 4 and adoption of new Chapters 1, 2, and 4 update the Division's rules to add and clarify statutory requirements as well as streamline the chapters to eliminate rules that are duplicative of statute.

The proposed amendments to Chapters 3, 10, 36, 39, 41, 55, 58, and 76 update the address, the website, and several out-of-date email addresses for the Division.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

These rules do not include a provision for the waiver of a rule because the Division's general waiver rules of 191—Chapter 4 apply.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Division no later than 4 p.m. on October 21, 2019. Comments should be directed to:

Tracy Swalwell
Iowa Insurance Division
Two Ruan Center
601 Locust Street, Fourth Floor
Des Moines, Iowa 50309
Phone: 515.725.1249
Fax: 515.281.3059
Email: tracy.swalwell@iid.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 21, 2019
10 to 11 a.m.

Division Offices, Fourth Floor
Two Ruan Center
601 Locust Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

INSURANCE DIVISION[191](cont'd)

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind 191—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
ADMINISTRATION

191—1.1(502,505) Definitions. For rules of the insurance division, the following definitions apply:

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

“*Division*” means the Iowa insurance division.

“*Division’s website*” means the information and related content found at iid.iowa.gov.

191—1.2(502,505) Mission. The division protects consumers through consumer education and enforcement while effectively and efficiently providing a fair, flexible, and positive regulatory environment.

191—1.3(502,505) General course and method of operations. The division is the state regulator which supervises all insurance business transacted in the state of Iowa as well as securities and other regulated industries.

191—1.4(502,505) Contact information and business hours. The division’s office and mailing address is Two Ruan, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309-3738. The general telephone number for the division is 515-281-5705 or 1-877-955-1212. The division’s facsimile number is 515-281-3059. The division’s website address is iid.iowa.gov. The division’s hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

191—1.5(502,505) Information, forms, and requests. Information, applications, and forms may be obtained from the division’s website, in person at the division’s offices, or by telephone using the division’s general telephone number. Specific instructions, forms and guidance may be provided in administrative rules or on the division’s website. Submissions and requests can be submitted through the division’s website, in person, or by telephone.

191—1.6(502,505) Organization. The division is headed by the commissioner, who is assisted by a first deputy commissioner, a second deputy commissioner, a deputy commissioner for supervision, and other deputy commissioners and assistant commissioners. The functions of the division are divided into eight bureaus.

1.6(1) Administrative bureau. The administrative bureau provides staff support to the commissioner and the division and is responsible for budget, personnel, procurement, communication, legislative, and other services.

1.6(2) Company regulation bureau. The company regulation bureau is responsible for the following:

a. Regulating domestic and foreign insurance companies licensed in Iowa, through licensure, analysis and financial and market examinations.

b. Examining the financial condition of domestic insurance companies not less than once every five years. Foreign companies are examined as deemed appropriate. The bureau ensures compliance with National Association of Insurance Commissioners accreditation mandates and with financial examination and analysis standards.

c. Serving as a general insurance information repository and resource for both insurers and consumers regarding, for example, insurance companies’ statuses, addresses, telephone numbers, certifications, and financial statements; statutory construction; life and health insurance guaranty

INSURANCE DIVISION[191](cont'd)

association fund calculations; compilation of statistics; and publication of the division's annual report to the governor required by Iowa Code section 505.12.

d. Reviewing and approving filed company transactions, including but not limited to approval of acquisitions and mergers of domestic insurers, intercompany contractual agreements and assumption reinsurance agreements.

e. Authorizing and overseeing individual and group workers' compensation self-insurance.

f. Authorizing, examining and analyzing benevolent associations and fraternal benefit societies.

g. Authorizing and reviewing multiple employer welfare arrangements.

h. Registering and verifying compliance for risk retention groups.

i. Supervising the rehabilitation and liquidation of insurance companies.

j. Auditing and monitoring premium tax remittances for admitted companies and supervising statutory deposits.

k. Reviewing and approving admission applications for foreign surplus lines insurers as well as conducting premium tax audits associated with the nonadmitted insurance industry.

l. Implementing and maintaining the division's information technology resources.

1.6(3) *Securities and regulated industries bureau.* The securities and regulated industries bureau is responsible for administering and enforcing the Iowa uniform securities Act through enforcement, licensing, and securities registration to ensure investor protection and a positive climate for capital formation. The bureau is also responsible for protecting the public by administering and enforcing rules related to motor vehicle service contracts, residential service contracts, retirement facilities, cemeteries, and preneed purchase agreements for cemetery merchandise, funeral merchandise and funeral services.

1.6(4) *Consumer advocate bureau.* The consumer advocate bureau consists of the consumer advocate and, in addition to being responsible for the duties described in Iowa Code section 505.8(6) "b," is responsible for providing outreach to consumers, assisting in creation of consumer protection laws and regulations, and reviewing complaints. In order to fulfill the prescribed duties, the commissioner has delegated investigation and enforcement duties to the market regulation, enforcement, and fraud bureaus.

1.6(5) *Market regulation bureau.* The market regulation bureau is responsible for the following:

a. Ensuring fair treatment of consumers.

b. Investigating unfair or deceptive trade practices in the business of insurance.

c. Reviewing, investigating and responding to inquiries and complaints from the public regarding insurance producers and insurers.

d. When requested by consumers, coordinating external reviews of health insurance claim decisions if insurance companies deny benefits either on the basis that the services were not medically necessary or on the basis that the services were investigational or experimental.

e. When requested by consumers, coordinating independent reviews of long-term care insurance claim decisions if insurance companies deny benefits on the basis that insureds did not meet benefit trigger requirements.

1.6(6) *Enforcement bureau.* The enforcement bureau takes administrative action against individuals and entities regulated by the division for violations of insurance, securities, and other laws under the authority of the division and provides legal counsel to the division.

1.6(7) *Fraud bureau.* The fraud bureau confronts the problem of insurance and securities fraud by prevention, investigation, and prosecution of fraudulent insurance acts in an effort to reduce the amount of premium dollars used to pay fraudulent insurance claims, as set forth in Iowa Code chapter 507E. Matters investigated by the fraud bureau may be referred to the attorney general's office or to local prosecutors for potential action or prosecution.

1.6(8) *Product and producer regulation bureau.* The product and producer regulation bureau is responsible for the following:

a. Reviewing, approving or disapproving property, casualty, life and health forms and, where provided by law, premium rates of certain types of insurance.

b. Performing actuarial analysis of life and health insurance plans funded by certain public bodies.

INSURANCE DIVISION[191](cont'd)

c. Licensing, registering, and monitoring entities and individuals under the authority of the commissioner.

d. Overseeing the senior health insurance information program (SHIIP) and senior Medicare patrol (SMP). SHIIP's mission is to advocate for, inform, educate and assist consumers on Medicare and related health insurance information issues so Iowans can make informed decisions and access resources to address their needs. SMP seeks to increase public awareness on how to prevent, detect, and report health care fraud, errors and abuse through grassroots education and community engagement. Iowa SHIIP-SMP services are local, carried out by a statewide network of certified, trained volunteer counselors located at sponsor site offices across Iowa. Iowa SHIIP-SMP volunteers provide one-to-one Medicare counseling and conduct community education on Medicare and fraud prevention. The Administration for Community Living (ACL), Office of Healthcare Information and Counseling, manages the competitively obtained Iowa SHIIP and SMP grants. ACL is a part of the U.S. Department of Health and Human Services.

191—1.7(505) Service of process. Certain individuals and entities under the jurisdiction of the commissioner are required by law to consent to having the commissioner serve as agent for the individual or entity for the purpose of receiving service of process.

1.7(1) Request for service. A party to a proceeding who requests that the commissioner accept service of process as allowed by law must submit to the division, at the address stated in rule 191—1.4(502,505), all of the following:

a. For each individual or entity to be served, one original and one copy of the documents to be served by the division.

b. A cover letter indicating the name of each individual or entity to be served by the division.

c. A check for service fees, made payable to Iowa Insurance Division, for \$50 for each individual or entity to be served, unless another amount is required by law.

1.7(2) Division actions. After the division receives the items listed in paragraph 1.7(1)“*a.*,” the division must do the following:

a. Accept the service of process on behalf of the individual or entity.

b. Forward, by certified mail, the original documents to the individual or entity to be served.

c. File a notice of acceptance electronically through the Iowa court electronic filing system.

1.7(3) Types of documents the division will serve.

a. The division will serve documents related to the initiation of a case, such as original notices, petitions, and jury demands. The division will not serve documents related to later processes in a case, including but not limited to subpoenas and garnishments, unless required to do so by law.

b. The division will serve documents related to matters in the Iowa court system. The division will not serve documents related to matters in other courts, including but not limited to the federal court system, or matters in other administrative systems, except for workers' compensation cases filed with the Iowa division of workers' compensation.

These rules are intended to implement Iowa Code sections 17A.3, 502.601, 502.605, 505.1 and 505.30.

ITEM 2. Rescind 191—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

191—2.1(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound division determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This division is committed to the policies set forth in Iowa Code chapter 22. Division staff will cooperate with members of the public in implementing the provisions of that chapter.

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191—2.2(17A,22) Definitions. The definitions in Iowa Code section 22.1 are incorporated into this chapter by this reference. In addition to the definitions in rule 191—1.1(502,505), the following definitions apply:

“*Confidential record*” means a record that is not available as a matter of right for inspection and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the division is prohibited by law from making available for inspection by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provisions of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Division*” means the insurance division of the department of commerce, created by Iowa Code section 505.1. The division is both the “government body” and the “lawful custodian” as defined in Iowa Code sections 22.1(1) and 22.1(2). The division is also the “state agency” as defined in Iowa Code chapter 17A and referenced in Iowa Code chapter 22. For purposes of this chapter, “division” includes both the commissioner of insurance and the administrator as defined in Iowa Code chapter 502.

“*File*,” “*filed*,” or “*filing*,” when used as a verb, means submitting or having submitted to the division a record or information. “*File*” or “*filing*,” when used as a noun, means a record or information.

“*Inspect*” or “*inspection*” means the same as “examine” or “examination” in Iowa Code chapter 22. The term “examination” in this chapter does not mean the same as “examination” as used in Iowa Code chapter 22.

“*Lawful custodian*,” as used in Iowa Code section 22.1(2), is the division, the division’s record officer, or an employee lawfully delegated authority by the division to act for the division in implementing Iowa Code chapter 22.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means all or part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the division.

“*Record system*” means any group of records under the control of the division from which a record may be retrieved by a personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual.

191—2.3(17A,22) General provisions.

2.3(1) Entities holding division records covered by this rule. This rule applies to records belonging to, required by, or created by the division. This rule applies to records held by third parties, including other state agencies, that do any of the following:

- a. Perform division functions on behalf of the division;
- b. Store records for the division;
- c. Perform services for the division; or
- d. Otherwise handle records that would be governed by this rule if they were in the possession of the division.

2.3(2) Existing records. A request for access shall apply only to records that exist at the time the request is made and access is provided. The division is not required to create, compile or procure a record solely for the purpose of making it available except as described in Iowa Code section 22.3A and subrule 2.4(6).

2.3(3) Public records. All of the division’s records are open records available to the public except for records that are confidential under rule 191—2.12(17A,22) or redactable under rule 191—2.11(17A,22).

2.3(4) Availability of open records. Open records of the division are available to the public for examination and copying unless otherwise provided by state or federal law, regulation or rule.

2.3(5) Internet access. The division provides public access to many public records, with no request for access necessary, on the division’s website.

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2.3(6) Office hours. Open records are available for inspection during customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

2.3(7) Data processing system. Some agency data processing systems that have common data elements can match, collate and compare personally identifiable information.

2.3(8) Scope. This chapter does not:

a. Require the division to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the division which are governed by the regulations of another agency.

d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.

e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations.

f. Make any warranty of the accuracy or completeness of a record.

191—2.4(17A,22) Requests for access to records.

2.4(1) Request for access. Requests for access to open records not available on the division's website may be made in writing or in person. A request may be made by mail, email, or online as instructed on the division's website. Requests must identify the particular records sought by name or description in order to facilitate the location of the record. Requests must include the name, address, email address if available, and telephone number of the person requesting the information. A person is not required to give a reason for requesting an open record. If the division has records in its possession that may be public records but that are copies of materials from another agency or public organization, the division may refer persons seeking inspection of those records to the originating agency or public organization.

2.4(2) Response to requests.

a. Access. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the division must comply with the request as soon as feasible. The division requests that members of the public make appointments for the in-person inspection of public records because the division needs time to locate stored records and office space is limited.

b. Delay. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4), for redaction by the division of confidential information, or for search and review of requested records. The division must promptly give written notice to the requester of the reason for any delay and an estimate of the length of that delay.

c. Deny. The division may deny access to the record by members of the public when warranted under Iowa Code chapter 22 or other applicable law or when the record's disclosure is prohibited by a court order.

2.4(3) Security of record. No person may, without permission from the division, search or remove any record from division files. Inspection and copying of division records must be supervised by the division or a designee of the division in order for the records to be protected from damage and disorganization.

2.4(4) Copying. A reasonable number of copies of an open record may be made in the division's office. If photocopy equipment is not available in the division office where an open record is kept, the division must permit the record's inspection in that office and arrange to have copies promptly made elsewhere.

2.4(5) Fees. The division may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. Under Iowa Code section 22.3, the fee for the copying service, whether

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electronic or hard copy, or mailing shall not exceed the cost of providing the service. An hourly fee may be charged for actual division expenses in the inspection, reviewing, and copying of requested records when the total staff time dedicated to fulfilling the request requires an excess of two hours. When the open records request will cause time required in excess of the allotted two hours, the division may require a requester to make an advance payment to cover all of the estimated fee.

2.4(6) Information released. If a person is provided access to less than an entire record, the division shall take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released or a copy of the record from which the information not to be released has been otherwise redacted.

191—2.5(17A,22) Access to confidential records.

2.5(1) Procedure. The following provisions are in addition to those specified in rule 191—2.4(17A,22) and are minimum requirements. A statute or another administrative rule may impose additional requirements for access to certain classes of confidential records. A confidential record may, due to its nature or the way it is compiled or stored, contain a mixture of confidential and nonconfidential information. The division shall not refuse to release the nonconfidential information simply because of the manner in which the record is compiled or stored.

a. Form of request. The division shall ensure that there is sufficient information to provide reasonable assurance that access to a confidential record may be granted. Therefore, the division may require the requester to:

- (1) Submit the request in writing.
- (2) Provide proof of identity and authority to secure access to the record.
- (3) Sign a certified statement or affidavit listing the specific reasons justifying access to the record and provide any proof necessary to establish relevant facts.

b. Response to request. The division must notify the requester of approval or denial of the request for access. The notice must include:

- (1) The name and title or position of the person responding on behalf of the division; and
- (2) A brief statement of the grounds for denial, including a citation to the applicable statute or other provision of law.

c. Request granted. When the division grants a request for access to a confidential record to a particular person, the division must notify that person and indicate any lawful restrictions imposed by the division on that person's inspection and copying of the record.

d. Reconsideration of denial. A requester whose request is denied by the division may apply to the commissioner of insurance for reconsideration of the request.

2.5(2) Release of confidential records by the division. The division may release a confidential record or a portion of it to:

- a.* The legislative services agency pursuant to Iowa Code section 2A.3.
- b.* The ombudsman pursuant to Iowa Code section 2C.9.
- c.* Other governmental officials and employees only as needed to enable them to discharge their duties.
- d.* The public information board pursuant to Iowa Code section 23.6.

2.5(3) Release of confidential records by the division.

a. The division may release a confidential record or a portion of it to a person not covered in rule 191—2.6(17A,22) if the release:

- (1) Is permitted by statute, rule or another provision of law; and
- (2) Is not inconsistent with the stated or implied purpose of the law which establishes or authorizes confidentiality.

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b. Before the division releases a record to a person not covered in rule 191—2.6(17A,22), the division may notify the subject of the record of the impending release and may give the subject a reasonable amount of time to seek an injunction.

191—2.6(17A,22) Requests for confidential treatment. The division may treat a record as a confidential record and withhold it from inspection or refuse to disclose that record to members of the public only to the extent that the division is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order.

2.6(1) Request. A person may request that all or a portion of a record be confidential. The request for confidential treatment must be submitted in writing to the division and:

- a.* Identify the information for which confidential treatment is sought.
- b.* Cite the legal basis that justifies confidential treatment.
- c.* Demonstrate that disclosure of the information would clearly not be in the public interest.
- d.* Give the reasons why any person or persons would be substantially and irreparably injured by disclosure of the information. The requester may be required to provide any proof necessary to support these reasons.
- e.* Specify the precise period of time for which the confidential treatment is requested should the request be only for a limited time period.

2.6(2) Decision. The division must notify the requester in writing of the granting or denial of the request and, if the request is denied, the reasoning for the denial.

2.6(3) Request denied. If the request for confidential treatment of a record is denied, the requester may apply to the commissioner for reconsideration of the request. However, the record shall not be withheld from public inspection for any period of time if the division determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record.

2.6(4) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the division from treating the record as a confidential record. However, if a person who has submitted business information to the division does not request that the information be withheld from public inspection under Iowa Code sections 22.7(3), 22.7(6) and 502.607(2), the division may proceed as if that person has no objection to disclosure of the information to members of the public.

191—2.7(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, the person who is the subject of a record may have a written statement of additions, dissents or objections entered into that record. The statement shall be filed with the division. The statement must be dated and signed by the person who is the subject of the record and include the person's current address and telephone number. This rule does not authorize the person who is the subject of the record to alter the original record or to expand the official record of any division proceeding.

191—2.8(17A,22) Disclosures without the consent of the subject.

2.8(1) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject.

2.8(2) Authority to release confidential records. The division may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 191—2.6(17A,22). If the division initially determines that it will release such records, the division may notify interested persons and withhold the records from inspection as provided in rules 191—2.6(17A,22) and 191—2.7(17A,22).

191—2.9(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record may consent to have a copy of the portion of that record that concerns the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed

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and the particular person or class of persons to whom the record may be disclosed. The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Appearance of counsel before the division on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the division to disclose records about that person to the person's attorney.

191—2.10(17A,22) Notice to suppliers of information. When the division requests a person to supply information about that person, the division must notify the person of the use that will be made of the information, which persons outside the division might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

191—2.11(17A,22) Personally identifiable information collected by the division. The division collects and maintains open records, some of which may contain personally identifiable information, and some of which may be shared with other state or federal agencies or organizations or vendors. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the division. Unless otherwise stated, the authority for the collection of the record is provided by Iowa Code chapter 502 or 505. Some personally identifiable information is protected by Iowa Code sections 502.607(2) "e" and 505.8(9).

2.11(1) Nature and extent. The following records may contain personally identifiable information:

a. Confidential records. Records listed as confidential records are described in rule 191—2.12(17A,22).

b. Rule-making records. Rule-making records may contain information about people who make written or oral comments about proposed rules.

c. Contested case records. Contested case records contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a contested case are contained in contested case records.

d. Licensing records. Licensing records of individuals and entities regulated by the division contain names and identifying numbers of the regulated individual or individuals designated as responsible for the regulated entity.

e. Complaint, inquiry, investigation, and examination records. Complaint, inquiry, investigation, and examination records contain names and identifying numbers of the people who submit, are the subject of, or are otherwise involved in the complaint, inquiry, investigation or examination.

f. Personnel files. The division maintains files containing information about employees of the division and applicants for positions with the division. The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

2.11(2) Redaction. To the extent that the division finds it necessary to allow inspection of records containing personally identifiable information, the division must, when allowed by law, redact the personally identifiable information prior to allowing the inspection.

2.11(3) Means of storage. Paper and various electronic means of storage are used to store records containing personally identifiable information. Some information is stored electronically by third parties on behalf of the division.

191—2.12(17A,22) Confidential records. This rule describes the types of agency information or records that are confidential. This rule is not exhaustive. The following records shall be kept confidential. Records are listed by category and include a citation to the legal basis for withholding that category from public inspection.

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2.12(1) Records which are exempt from disclosure under Iowa Code section 22.7.

2.12(2) Records which constitute attorney work product, or attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

2.12(3) Those portions of the division's staff manuals, instructions or other statements issued by the division which set forth criteria or guidelines to be used by division staff in auditing, making inspections, settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the division, pursuant to Iowa Code sections 17A.2 and 17A.3.

2.12(4) All information obtained and prepared in the course of an inquiry, complaint, or investigation, including but not limited to communications, insurer documents, data, reports, analysis, and notes, pursuant to Iowa Code section 505.8 and chapters 502, 502A, 505, 507A, 507E, 522B, 523C, and 523I.

2.12(5) Information of insurers designated as confidential by applicable law, including but not limited to information and reports that are part of an examination, pursuant to Iowa Code sections 505.17 and 507.14.

2.12(6) Information of the Iowa life and health guaranty association, pursuant to Iowa Code chapters 508C and 515B.

2.12(7) Insurance holding company systems registration and holding company examinations, pursuant to Iowa Code section 522.7.

2.12(8) Information related to the uniform securities Act that is designated nonpublic pursuant to Iowa Code section 502.607.

2.12(9) Information filed with the division related to preneed sellers and sales agents of cemetery and funeral merchandise and funeral services pursuant to Iowa Code chapter 523A.

2.12(10) Information obtained in the course of an examination of a cemetery pursuant to Iowa Code chapter 523I.

2.12(11) All records relating to prearranged funeral contracts, except upon approval by the commissioner of insurance or the attorney general, pursuant to Iowa Code section 523A.204(3).

2.12(12) Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "e."

2.12(13) Sealed bids received prior to the time set for public opening of bids, pursuant to Iowa Code section 72.3.

2.12(14) Information related to external review of health care coverage decisions, pursuant to Iowa Code chapter 514J.

2.12(15) Information related to automobile insurance cancellation, pursuant to Iowa Code chapter 515D.

2.12(16) Determination of any suspension of an insurance producer's or other licensee's pending application for licensure, pending request for renewal, or current license, when the suspension is related to failure to pay child support, foster care, or state debt, pursuant to rule 191—10.21(252J) or 191—10.23(82GA,SF2428). Notwithstanding any statutory confidentiality provision, the division may share information with the child support recovery unit or the centralized collection unit of the department of revenue, through manual or automated means, for the sole purpose of identifying registrants, applicants or licensees subject to enforcement under Iowa Code chapter 252J or 272D, respectively.

2.12(17) Information which is confidential under the law governing a person providing information to the division and pursuant to a written sharing agreement referencing that law and how it applies to allow the division to share the information.

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2.12(18) All other information or records that by law are or may be confidential. These rules are intended to implement Iowa Code section 22.11.

ITEM 3. Amend rule 191—3.4(17A), introductory paragraph, as follows:

191—3.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question. The request shall be filed with the insurance division, at the address disclosed in rule ~~191—1.2(502,505)~~ 191—1.4(502,505).

ITEM 4. Amend subrule 3.12(5) as follows:

3.12(5) Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Insurance Division at the address disclosed in ~~191—1.2(502,505)~~ 191—1.4(502,505) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

ITEM 5. Rescind 191—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING, WAIVER OF RULES,
AND DECLARATORY ORDERS

DIVISION I
AGENCY PROCEDURE FOR RULE MAKING

191—4.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules proposed or adopted by the division are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

191—4.2(17A) Definitions. The definitions in Iowa Code section 17A.2 are incorporated into this chapter by this reference. In addition to those definitions and the definitions in rule 191—1.1(502,505), the following definitions apply:

“*Commissioner*” means the commissioner of insurance or the commissioner’s designee. For the purposes of this chapter, “commissioner” includes both the commissioner of insurance and the administrator as defined in Iowa Code chapter 502.

“*Waiver*” means action by the division that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “variance” as used in Iowa Code chapter 17A is included in this definition of “waiver” for purposes of this chapter.

191—4.3(17A) Severability. If any provision of any rule adopted by the division, or if the application of any such rule to any person or circumstance, is for any reason held to be invalid, illegal or unenforceable by any court of law, the validity, legality and enforceability of the remainder of the rule and its application to other persons or circumstances shall not be affected or impaired thereby.

191—4.4(17A) Public rule-making docket. The division shall maintain on the division’s website a current public rule-making docket listing each pending rule-making proceeding and relevant rule-making

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information, including the information required by Iowa Code sections 17A.3(1) “d” and 17A.6A(2). If a rule-making docket for all agencies is maintained on the Iowa legislature’s website, the division may utilize the legislature’s docket, in whole or in part, instead of creating a duplicative separate docket.

191—4.5(17A) Rule making.

4.5(1) Notice of proposed rule making. The division must publish a Notice of Intended Action in the Iowa Administrative Bulletin prior to the adoption of a rule unless otherwise authorized by Iowa Code section 17A.4(3). The Notice of Intended Action must include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. The methods that persons and agencies may use to present their views on the proposed rule; and
- e. Any other information required by statute or rule.

4.5(2) Public participation.

a. With regard to proposed rules published under Notice of Intended Action, the division must receive and consider, from any person or agency, written comments and written requests to make an oral presentation when the comments and requests are prepared and submitted in conformance with the following:

(1) Comments and requests must clearly state the name, address and telephone number of the person or agency authoring the comment or request and the number and title of the proposed rule as given in the Notice of Intended Action.

(2) If an oral presentation is requested, the requester is encouraged to set forth the general subject of the presentation.

(3) Comments and requests must be submitted as specified in the Notice of Intended Action and received no later than the date specified in the Notice. The specified date must be no less than 20 days after publication of the Notice.

b. The receipt and acceptance for consideration of written comments and written requests must be promptly acknowledged by the division.

(1) Written comments received after the deadline may be accepted by the division although their consideration is not assured.

(2) Written requests to make an oral presentation received after the deadline will not be accepted.

c. In addition to the formal procedures contained in this rule, the division may solicit viewpoints or advice concerning proposed rules through informal conferences or consultations as the division may deem desirable.

4.5(3) Regulatory analysis. A request for the issuance of regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the division at the address in rule 191—1.4(502,505) or as instructed on the division’s website.

4.5(4) Concise statement. The division must issue a concise statement of the principal reasons for and against a rule that has been adopted if the statement is requested in accordance with this subrule.

a. The request for a concise statement must:

(1) Clearly state the name, address and telephone number of the person or agency authoring the request and the number and title of the rule which is the subject of the request.

(2) Be submitted in writing to the division at the address set forth in rule 191—1.4(502,505) or as instructed on the division’s website and be postmarked no later than 30 days after publication in the Iowa Administrative Bulletin of the rule that is the subject of the request for a concise statement.

b. The concise statement issued by the division in response to the request must include the following:

(1) The principal reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change; and

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(3) The principal reasons urged in the rule-making proceeding for and against the rule, and the division's reasons for overruling the arguments made against the rule.

c. A requested concise statement must be issued either at the time of rule adoption or within 35 days after the division receives the request.

4.5(5) *Registration for copies of Notices of Intended Action.* Any person, entity, small business, or trade or occupational association may register its name and address with the agency to receive copies of Notices of Intended Action.

a. The request must be in writing, specify whether the requester wants to receive insurance rules, securities rules, or both, and specify the number of copies of the Notice of Intended Action the requester wishes to receive.

b. The requester must reimburse the division for the actual costs incurred in providing copies.

c. The division must promptly acknowledge the receipt of the request.

4.5(6) *Records.* The division must maintain public rule-making documents and other public records related to rule making in an accessible format for public inspection.

191—4.6(17A) Differences between adopted rule and rule proposed in Notice of Intended Action. The division shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action upon which the adopted rule is based unless the differences are within the scope of the subject matter announced in the Notice of Intended Action, are in character with the issues raised in that Notice, and are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto.

191—4.7(17A) Petition for rule making.

4.7(1) Any person or agency may file a petition for rule making with the division at the address disclosed in rule 191—1.4(502,505) or as instructed on the division's website. A petition is deemed filed when it is received. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

4.7(2) The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER

Petition by (Name of Petitioner)
for the (adoption, amendment, or
repeal) of rules relating to (State
subject matter).

}

PETITION FOR
RULE MAKING

4.7(3) The petition shall provide the following information in separate numbered paragraphs:

1. The petitioner's name, address, and telephone number.
2. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to the particular portion or portions of the rule proposed to be amended or repealed.
3. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.
4. A brief summary of the petitioner's arguments in support of the action urged in the petition.
5. A brief summary of any data supporting the action urged in the petition.
6. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
7. If desired, a request to meet informally with the division to discuss the petition.

4.7(4) The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, email address if available, and telephone number

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of the petitioner and the petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.7(5) The division may deny a petition because it does not substantially conform to the required form.

4.7(6) The petitioner may submit a brief in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

4.7(7) Upon request by the petitioner in the petition, the division must schedule a brief and informal meeting between the petitioner and the division or a member of the division's staff to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition.

4.7(8) Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division must, in writing, deny the petition, and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to the petitioner.

The rules in this division are intended to implement Iowa Code section 17A.7.

191—4.8 to 4.20 Reserved.

DIVISION II
WAIVER AND VARIANCE OF RULES

191—4.21(17A) Waivers.

4.21(1) *Scope.* Division II of this chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede the rules in this division with respect to any waiver from that rule. Division II of this chapter shall not preclude the division from granting waivers in other contexts or on the basis of other standards if a statute or agency rule authorizes the division to do so and the division deems it appropriate to do so.

4.21(2) *Authority to grant waivers.* The division may grant a waiver from a rule only if the division has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The division may not waive the following categories of rules:

- a. Rules setting requirements that are created or duties that are imposed by statute.
- b. Rules that provide definitions or interpretations, set fees, clarify enforcement authority, deal with fraud or are the subject of prosecutorial discretion.
- c. Rules that merely define the meaning of a statute or other provision of law or precedent if the commissioner does not possess delegated authority to bind the courts to any extent with the commissioner's definition.

4.21(3) *Criteria for order for waiver.* In response to a petition completed pursuant to rule 191—4.22(17A), except for a petition seeking a waiver order issued pursuant to subrule 4.21(4), the division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

- a. Application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. Waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. Provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;

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d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and

e. If the rule implements Iowa Code chapter 502 or is being applied in conjunction with implementation of Iowa Code chapter 502, the waiver is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of Iowa Code chapter 502.

4.21(4) *Criteria for waiver related to approval of a manner of electronic delivery of notices of cancellation, nonrenewal or termination.* This subrule is intended to implement Iowa Code sections 17A.9A and 505B.1.

a. For purposes of Iowa Code chapter 505B and this subrule, in addition to the definitions in rule 191—4.2(17A), the following definitions shall apply:

“*Intended recipient*” means the person to whom notice is required to be delivered, including but not limited to notices listed in the definition of “notice of cancellation, nonrenewal or termination” in this paragraph and in 191—paragraphs 20.80(1)“*b*,” 30.9(1)“*b*,” 35.9(1)“*b*,” 39.33(1)“*b*,” and 40.26(1)“*b*.”

“*Notice of cancellation, nonrenewal or termination*” means:

1. Notice of an insurance company’s termination of an insurance policy at the end of a term or before the termination date;

2. Notice of an insurance company’s decision or intention not to renew a policy; and

3. For purposes of notices required by Iowa Code chapters 505B, 508, 509B, 513B, 514, 514B, 514D, 514G, 515, 515D, 518, 518A and 519, includes but is not limited to the following:

- An insurance company’s notice of cancellation, nonrenewal, suspension, exclusion, intention not to renew, failure to renew, termination, replacement, rescission, forfeiture or lapse in an annuity policy, a life insurance policy, a long-term care insurance policy, or an insurance policy other than life;

- An insurance company’s rescission or discontinuance of an accident and health insurance policy;

- An insurance company’s notice of cancellation of personal lines policies or contracts;

- A health maintenance organization’s notice to an enrollee of cancellation or rescission of membership;

- An employer’s or group policyholder’s notice to an employee or member of the termination or substantial modification of the continuation of an employer group accident or health policy; or

- A carrier’s advance notice to affected small employers, participants, and beneficiaries of its decision to discontinue offering a particular type of health insurance coverage.

b. This subrule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance in Iowa, health maintenance organizations, employers, group policyholders, or carriers and to all requirements by statute or rule related to notices of cancellation, nonrenewal or termination. This subrule shall apply when an insurance company, health maintenance organization, employer, group policyholder, or carrier seeks the commissioner’s approval of a manner for delivering by electronic means required notices of cancellation, nonrenewal or termination, as described in Iowa Code section 505B.1.

c. The commissioner, by order pursuant to this chapter, may approve a request for approval of a manner for delivering notices of cancellation, nonrenewal or termination by an electronic means if the commissioner has jurisdiction to enforce the statute or rule requiring the notice and if the requested approval is consistent with Iowa Code section 505B.1 and with this chapter.

d. In response to a petition submitted pursuant to rule 191—4.22(17A) and related statutes and rules, the commissioner may issue an order approving an insurer’s proposed manner for delivering notices of cancellation, nonrenewal or termination by an electronic means rather than mail, if the commissioner finds, based on clear and convincing evidence, all of the following:

(1) The proposed manner allows the commissioner, the insurer and the intended recipient to verify receipt by the intended recipient;

(2) The proposed manner provides for consent, by the intended recipient, to have notices or documents delivered by electronic means, in compliance with Iowa Code chapter 505B; and

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(3) The proposed manner provides that the insurance company shall maintain adequate records of notices, receipts and consents. The records shall be available for review upon request by the commissioner and the intended recipient and be shall maintained for a period of five years from the date of cancellation, nonrenewal or termination.

e. Such an order would constitute approval by the commissioner to satisfy Iowa Code chapter 505B.

f. Although any proposed manner that complies with the above requirements may be approved, the following system is provided as an example, for purposes of guidance, of an insurer's system of verifiable receipt that will be approved by the commissioner if the system includes all of the following aspects:

(1) The system provides that the intended recipients shall give written consent to the insurer of delivery of required notices of cancellation, nonrenewal and termination by electronic means, in compliance with Iowa Code section 505B.1.

(2) The system provides that when an insurer is required to provide notices of cancellation, nonrenewal and termination, the insurer shall provide to the intended recipients a link to the required notice by electronic mail.

(3) The system provides that the insurer provide intended recipients with user names and passwords to log in to the insurer's notice system website.

(4) The system provides that the link required by subparagraph 4.21(4) "f"(2) shall be to a secure website that requires the intended recipients' user names and passwords for the intended recipients to access the insurer's notice system website and the contents of the notices.

(5) The system provides that when the intended recipients log in to the insurer's notice system website, either the insurer's notice to the intended recipients or the intended recipients' online inboxes will be the first thing automatically displayed.

(6) The system provides a procedure whereby, if the intended recipients do not log in to the intended recipients' accounts within seven days after the insurer sent the link to the intended recipients by email, the insurer shall mail paper copies of the notices to the intended recipients' last-known physical addresses.

(7) The system provides for adequate maintenance of records by the insurer as required by subparagraph 4.21(4) "d"(3).

g. The commissioner may, upon proper request by an insurance company pursuant to rule 191—2.6(17A,22) or another applicable rule, maintain the confidentiality of information in any document or materials submitted in support of a request for approval under this rule:

(1) If release of the specific information would disclose trade secrets protected by law pursuant to Iowa Code section 22.7(3) and 191—subrule 2.12(12); or

(2) If the specific information otherwise must be withheld from public inspection pursuant to Iowa Code chapter 22 or rule 191—2.12(17A,22).

191—4.22(17A) Petition for waiver. A petition for a waiver must be submitted in writing to the division as follows:

4.22(1) Applications. If the petition relates to an application or license, the petition must be made in accordance with the filing requirements for the application or license in question.

4.22(2) Contested cases. If the petition relates to a pending contested case, the petition must be filed in the contested case proceeding, using the caption of the contested case. The waiver petition shall be decided within the context of the contested case unless the presiding officer, other than the commissioner, determines that the petition should be referred directly to the commissioner.

4.22(3) Other. If the petition does not relate to an application or a pending contested case, the petition must be submitted to the division at the address in rule 191—1.4(502,505) or as instructed on the division's website.

4.22(4) Content of petition. A petition for waiver must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER

In the matter of: (Name of Person Requesting Waiver or Variance)



REQUEST FOR WAIVER OF RULE (Specify number of rule for which waiver is requested)

4.22(5) The petition shall provide the following information in separate numbered paragraphs:

1. The name, address and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the criteria described in subrule 4.21(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes justify a waiver.
5. A history of any prior contacts between the division and the petitioner relating to the regulated activity, application or license affected by the proposed waiver, including a description of each affected license held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the prior five years and any waivers or waiver applications filed by the petitioner with the division within the prior five years.
6. Any information known to the petitioner regarding the division's treatment of similar cases.
7. The name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
8. The name, address and telephone number of any entity or person who would be adversely affected by the granting of a waiver.
9. The name, address and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the division with information relevant to the waiver.

4.22(6) Notice. The division must acknowledge a petition upon receipt. The division must ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the division attesting that notice has been provided.

191—4.23(17A) Waiver hearing procedures and ruling.

4.23(1) Procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute.

4.23(2) Additional information. Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

4.23(3) Division discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division, upon consideration of all relevant factors. Each petition for a waiver must be evaluated by the division based on the unique, individual circumstances set out in the petition.

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4.23(4) Ruling. An order granting or denying a waiver must be in writing and must contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

4.23(5) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver from a division rule.

4.23(6) Narrowly tailored exception. A waiver, if granted, must provide the narrowest exception possible to the provisions of a rule.

4.23(7) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the division must balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

4.23(8) Conditions. The division may place any condition on a waiver that the division finds desirable to protect the public health, safety, and welfare.

4.23(9) Time period of waiver. A waiver must not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

4.23(10) Time for ruling. The division must grant or deny a petition for a waiver as soon as practicable but, in any event, must do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the division must grant or deny the petition no later than the time at which the final decision in that contested case is issued.

4.23(11) When deemed denied. Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver.

4.23(12) Service of order. Within seven days of its issuance, any order issued under this chapter must be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

4.23(13) Cancellation of a waiver. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, modified or revoked if, after appropriate notice and hearing, the division issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order; or

d. The waiver is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

4.23(14) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

The rules in this division are intended to implement Iowa Code section 17A.9A and Executive Order Number 11 (September 14, 1999).

191—4.24 to 4.36 Reserved.

DIVISION III
DECLARATORY ORDERS

191—4.37(17A) Petition for declaratory order.

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4.37(1) Any person or agency may file a petition with the division for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the division.

4.37(2) The petition must be submitted to the division at the address provided in rule 191—1.4(502,505) or as instructed on the division's website.

4.37(3) The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

| | |
|--|--|
| BEFORE THE IOWA INSURANCE COMMISSIONER | |
| Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved). | } PETITION FOR DECLARATORY ORDER |

4.37(4) The petition for declaratory order must provide the following information in separate numbered paragraphs:

1. The petitioner's name, address, and telephone number.
2. The citation to and the exact words, passages, sentences or paragraphs of the statute, rule, or order that is the subject of the petition.
3. A clear and concise statement of all relevant facts upon which the declaratory order is requested.
4. The questions the petitioner wants answered, stated clearly and concisely.
5. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
6. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
7. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
8. Any request by the petitioner for a meeting provided for by rule 191—4.43(17A).

4.37(5) The petition for declaratory order must be dated and signed by the petitioner or the petitioner's representative.

4.37(6) If applicable, the petition must also include the name, mailing address, and telephone number of the petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

4.37(7) A petition is deemed filed when it is received by the division. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

191—4.38(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division must give notice of the petition to all persons not served by the petitioner pursuant to rule 191—4.42(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons deemed appropriate.

191—4.39(17A) Intervention. A person may file a petition for intervention at any time prior to issuance of an order and may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division.

191—4.40(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

191—4.41(17A) Inquiries. Inquiries concerning the status of a declaratory proceeding may be made to the division at the address disclosed in rule 191—1.4(502,505).

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191—4.42(17A) Service and filing of petitions and other papers.

4.42(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

4.42(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the division at the address disclosed in rule 191—1.4(502,505). All petitions, briefs, or other papers required to be served upon a party shall be filed simultaneously with the division.

4.42(3) *Method of service, time of filing, proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 191—3.12(17A).

191—4.43(17A) Consideration. Upon request by the petitioner, the division must schedule an informal meeting between the original petitioner, all intervenors, and the commissioner, or a member of the commissioner's staff, to discuss the questions raised.

191—4.44(17A) Action on petition.

4.44(1) Within the time allowed by Iowa Code section 17A.9(5), after receiving a petition for a declaratory order, the division shall take action on the petition as required by Iowa Code section 17A.9(5).

4.44(2) The date of issuance of an order is as defined in rule 191—3.2(17A).

191—4.45(17A) Refusal to issue order.

4.45(1) The division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for any of the following reasons:

- a. The petition does not substantially comply with the required form.
- b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by failure of the division to issue an order.
- c. The division does not have jurisdiction over the questions presented in the petition.
- d. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
- e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.
- i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.
- j. The petition requests the division to determine whether a statute is unconstitutional on its face.

4.45(2) A refusal by the division to issue a declaratory order must indicate the specific grounds for refusal and constitutes final agency action on the petition.

4.45(3) Refusal to issue a declaratory order pursuant to this rule does not preclude a petitioner from filing a new petition that seeks to eliminate the grounds for refusal to issue a ruling.

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191—4.46(17A) Contents of declaratory order—effective date.

4.46(1) In addition to the order itself, a declaratory order must contain the date of its issuance, the name of the petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

4.46(2) A declaratory order is effective on the date of issuance.

191—4.47(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order must be mailed or emailed by the division promptly to the original petitioner and all intervenors.

191—4.48(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. Issuance of a declaratory order constitutes final agency action on the petition.

The rules in this division are intended to implement Iowa Code section 17A.9.

ITEM 6. Amend subrule 10.18(6) as follows:

10.18(6) Business name. A business entity licensed under this rule must keep the division informed of its business name. If a business entity changes the name under which it is operating, notification from the designated responsible producer must be submitted to the division within 30 days of the name change. The notification may be sent by electronic mail to producer.licensing@iid.state.ia.us, or through the NIPR Gateway, if available, or as instructed on the division's website.

ITEM 7. Amend paragraph **36.20(3)“f”** as follows:

f. The notice shall state the following:

NOTICE OF PROPOSED PREMIUM INCREASE

Dear [INSURED]

[CARRIER] has asked the Iowa Insurance Division to approve an increase in premium rates of approximately []% with a proposed effective date of [DATE].

For your policy, the increase is anticipated to be as follows:

[CURRENT MONTHLY RATE] + [PROPOSED INCREASE] = [PROPOSED MONTHLY RATE]

Your actual premium increase may be less or greater than the proposed average premium increase due to a variety of factors that are independent of the proposed premium rate increase, including but not limited to age, geographic area, and plan design. In addition, the final rate you receive may be different than that listed above due to changes in those factors while the rate is pending approval or due to input from the Iowa Insurance Commissioner.

[RANKING AND QUANTIFICATION OF THOSE FACTORS THAT ARE RESPONSIBLE FOR THE AMOUNT OF THE RATE INCREASE PROPOSED]

A public hearing will be held at [TIME], [DATE], at [LOCATION] before the Iowa Insurance Commissioner to receive comments from [CARRIER] and the Iowa Insurance Consumer Advocate on the proposed rate increase.

You may contact the Consumer Advocate for assistance or to comment on the proposed premium rate at:

Iowa Insurance Division Consumer Advocate
 Iowa Insurance Division
 Two Ruan Center
~~330 Maple Street~~ 601 Locust Street, Fourth Floor
 Des Moines, Iowa ~~50319~~ 50309
 Telephone: (515)281-5705
 Iowa-toll free: 1-877-955-1212
 Fax: (515)281-3059

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E-mail: ~~Insuranceeca@iid.iowa.gov~~ consumer.advocate@iid.iowa.gov

All comments received will be considered public records. The Consumer Advocate will post comments received on the ~~Consumer Advocate's Internet Web site (<http://iainsuranceeca.wordpress.com/>)~~, which is also accessible through the Insurance Division's Internet Web site (www.iid.state.ia.us), Division's website at www.iid.iowa.gov, and the Consumer Advocate will present the comments at the public hearing.

ITEM 8. Amend paragraph **36.20(4)“b”** as follows:

b. The consumer advocate shall post without delay all comments received on the ~~consumer advocate's Internet website (iainsuranceeca.wordpress.com/)~~, which is also accessible through the division's Internet website (www.iid.state.ia.us).

ITEM 9. Amend subrule 39.53(3) as follows:

39.53(3) Procedures to ensure that the insured is notified in writing of the insured's right to object to the independent review entity selected by the insurer or to the licensed health care professional designated by the independent review entity to conduct the review by filing a notice of objection, along with the reasons for the objection, with the commissioner at the Iowa Insurance Division, ~~330 Maple Street, Des Moines, Iowa 50319~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309, within ten days of the receipt of a notice from the independent review entity.

ITEM 10. Amend rule 191—39.55(514G) as follows:

191—39.55(514G) Insurance division Division application and reports. The independent review entity shall provide the commissioner such data, information, and reports as the commissioner determines necessary to evaluate the independent review process established under Iowa Code chapter 514G as amended by 2008 Iowa Acts, House File 2694. An application for certification as an independent review entity must be submitted in duplicate to the Iowa Insurance Division, ~~330 Maple Street, Des Moines, Iowa 50319~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309. An application must be submitted in full to be considered. Every applicant will be notified of the certification decision. A list of certified independent review entities shall be maintained at the ~~insurance~~ division and shall be available through the division's website, ~~www.iid.state.ia.us~~.

ITEM 11. Amend paragraph **41.9(2)“g”** as follows:

g. State that the enrollee may request such hearing by forwarding one copy of the notice of cancellation, marked to request a hearing, to the Commissioner of Insurance, ~~330 E. Maple Street, Des Moines, Iowa 50319~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309.

ITEM 12. Amend subrule 55.9(4) as follows:

55.9(4) Change in name, address or state of residence.

a. Name change. If a licensed public adjuster's name is changed, the licensed public adjuster must file notification with the division within 30 days of the name change. Notification may be filed ~~via electronic mail to producer.licensing@iid.state.ia.us~~, or through the NIPR Gateway, if available, ~~or as instructed on the division's website.~~ The notification must include the licensed public adjuster's:

(1) to (3) No change.

b. Address change. If a licensed public adjuster's address is changed, including an ~~E-mail~~ email address, the licensed public adjuster must file notification with the division within 30 days of the address change. Notification may be filed ~~via electronic mail to producer.licensing@iid.state.ia.us~~, or through the NIPR Gateway, if available, ~~or as instructed on the division's website.~~ The notification must include the licensed public adjuster's:

(1) to (4) No change.

c. No change.

ITEM 13. Amend subrule 58.12(1) as follows:

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~~

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as instructed on the division's website. Failure to timely file changes is grounds for suspension of a certificate of registration and imposition of a \$100 civil penalty.

ITEM 14. Amend **191—Chapter 76, Appendix B**, section 2, paragraph 1, as follows:

1. This External Review Request Form, signed and dated, with the sections completed for your particular situation as described in Section 1. If you would like help completing your external review request for submission, contact the ~~Consumer Assistance Program~~ Market Regulation Bureau of the Iowa Insurance Division by calling 877-955-1212 515-281-6348, or by e-mail at <http://insuranceca.iowa.gov> iid.marketregulation@iid.iowa.gov.

ARC 4665C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rule making related to qualified allocation plans and providing an opportunity for public comment

The Iowa Finance Authority hereby proposes to amend Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 16.35 and Section 42 of the Internal Revenue Code.

Purpose and Summary

The updated 2020-21 9% Qualified Allocation Plan (QAP) and the updated 2020-21 4% Qualified Allocation Plan set forth the purposes of the plans, administrative information required for participation, threshold criteria, selection criteria, postreservation requirements, the appeal process, and compliance-monitoring components. The plans also establish the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the QAPs are available upon request from the Authority and are available electronically on the Authority's website at www.iowafinanceauthority.gov. It is the Authority's intent to incorporate the updated 2020-21 QAPs by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, the impact on jobs is expected to be consistent with the impact of previous years' QAPs. The Low-Income Housing Tax Credit Program has had a substantial positive impact on employment in Iowa, creating many jobs annually in the construction, finance, and property management fields, among others.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

IOWA FINANCE AUTHORITY[265](cont'd)

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Dave Vaske
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.725.4900
Email: dave.vaske@iowafinance.com

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 15, 2019
10 to 11 a.m.

Authority Offices
1963 Bell Avenue, Suite 200
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 Authority and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plans.

12.1(1) *Four percent qualified allocation plan.* The qualified allocation plan ~~entitled~~ titled Iowa Finance Authority Low-Income Housing Tax Credit Program 2020-21 4% Qualified Allocation Plan (“4% QAP”) dated ~~September 5, 2018~~ September 4, 2019, shall be the qualified allocation plan for the allocation of 4 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 4% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 4% QAP does not include any amendments or editions created subsequent to ~~September 5, 2018~~ September 4, 2019.

12.1(2) *Nine percent qualified allocation plan.* The qualified allocation plan ~~entitled~~ titled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2019~~ 2020-21 9% Qualified Allocation Plan (“9% QAP”) shall be the qualified allocation plan for the allocation of 9 percent low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.35. The 9% QAP is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The 9% QAP does not include any amendments or editions created subsequent to ~~September 5, 2018~~ September 4, 2019.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 2. Amend rule 265—12.2(16) as follows:

265—12.2(16) Location of copies of the plans.

12.2(1) 4% QAP. The 4% QAP can be reviewed and copied in its entirety on the authority's website at www.iowafinanceauthority.gov. Copies of the 4% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's website. The 4% QAP incorporates by reference IRC Section 42 and the regulations in effect as of ~~September 5, 2018~~ September 4, 2019. Additionally, the 4% QAP incorporates by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's website.

12.2(2) 9% QAP. The 9% QAP can be reviewed and copied in its entirety on the authority's website at www.iowafinanceauthority.gov. Copies of the 9% QAP, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's website. The 9% QAP incorporates by reference IRC Section 42 and the regulations in effect as of ~~September 5, 2018~~ September 4, 2019. Additionally, the 9% QAP incorporates by reference Iowa Code section 16.35. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's website.

ARC 4666C

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

Proposing rule making related to the home and community-based services revolving loan program and providing an opportunity for public comment

The Iowa Finance Authority hereby proposes to amend Chapter 21, "Home and Community-Based Services Revolving Loan Program," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 16.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 16.47.

Purpose and Summary

This proposed rule making updates statutory references and references to departments that no longer exist. This rule making also changes the requirements to demonstrate a local contributing effort in order to better align the Home and Community-Based Services Revolving Loan Program with other revolving loan programs administered by the Authority.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 265—Chapter 18.

IOWA FINANCE AUTHORITY[265](cont'd)

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Kristin Hanks-Bents
Iowa Finance Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: kristin.hanks-bents@iowafinance.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 265—21.1(16) as follows:

265—21.1(16) Purpose. Through its home and community-based services revolving loan program (program), the authority seeks to assist in the development and expansion of specific community-based services (adult day services, respite services, congregate meals, health and wellness, health screening, and nutritional assessments) that will allow ~~elder~~ persons of low income to remain in their homes. This chapter implements Iowa Code section ~~16.183 as amended by 2006 Iowa Acts, House File 2734, section 34, 16.47~~ and furthers the goals specified in Iowa Code section 231.3.

ITEM 2. Amend subrule 21.5(1) as follows:

21.5(1) Projects eligible for assistance must meet the following criteria:

a. In the case of adult day services, the project must:

(1) to (3) No change.

(4) Become and remain certified as an adult day services provider, as set forth in ~~321—Chapter 24~~ 481—Chapters 67 and 70.

b. to e. No change.

f. In the case of programming space for nutritional assessments, the program must:

(1) and (2) No change.

(3) Accept third-party reimbursement for nutritional counseling, including one or both of the following:

1. Medicaid 1915(c) waiver(s) and meet the standards set forth in human services department rules in ~~441—Chapters 77 and 78;~~

2. The Older Americans Act, 42 U.S.C. § 3001 et seq., and meet the standards set forth in ~~elder affairs department~~ the department on aging’s rules in 321—Chapter 7 17—Chapter 7.

g. to j. No change.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 3. Amend subrule 21.5(3) as follows:

21.5(3) Assistance will be provided upon the following terms and conditions:

a. to *e.* No change.

f. Each project receiving assistance ~~must~~ may demonstrate a local contributing effort, as such term is used in Iowa Code section 16.4, ~~of not less than 1 percent of the total loan amount.~~

g. No change.

ITEM 4. Amend rule 265—21.6(16) as follows:

265—21.6(16) Authority analysis of applications. Authority staff, in cooperation with the department of ~~elder affairs staff inspections and appeals or the department on aging (or both, as necessary)~~, will analyze and underwrite each potential project and will make recommendations for funding assistance to the board of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that, because of the complex nature of each transaction, and the particular set of circumstances attributable to each particular application/transaction, the terms and conditions of loans may vary from project to project. The authority will make available its general operating procedures and guidelines for this program.

ITEM 5. Amend **265—Chapter 21**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~16.5(17) and section 16.183 as amended by 2006 Iowa Acts, House File 2734, section 34~~ 16.47.

ARC 4663C

MEDICINE BOARD[653]

Notice of Intended Action

Proposing rule making related to prescribing psychologists and providing an opportunity for public comment

The Board of Medicine hereby proposes to amend Chapter 19, “Prescribing Psychologists,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code chapters 17A, 154B and 272C and section 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 17A, 124, 147, 148, 154B and 272C.

Purpose and Summary

This proposed rule making establishes new rules 653—19.10(17A,124,147,148,154B,272C) and 653—19.11(17A,124,147,148,154B,272C), which establish the standards of practice for physicians who supervise a conditional prescribing psychologist and physicians who collaborate with a prescribing psychologist, and new rule 653—19.12(17A,124,147,148,272C), which establishes grounds for discipline.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

MEDICINE BOARD[653](cont'd)

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 653—Chapter 3.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Kent Nebel
Iowa Board of Medicine
400 S.W. Eighth Street, Suite C
Des Moines, Iowa 50309
Phone: 515.281.7088
Fax: 515.242.5908
Email: kent.nebel@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 15, 2019
9 to 10 a.m.

Board Office, Suite C
400 S.W. Eighth Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** rules 653—19.10(17A,124,147,148,154B,272C) to 653—19.12(17A,124,147,148,272C):

653—19.10(17A,124,147,148,154B,272C) Standards of practice—supervision of a conditional prescribing psychologist. A supervising physician shall be a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice and who supervises a conditional prescribing psychologist. A supervising physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A supervising physician shall fully comply with the following standards of practice.

MEDICINE BOARD[653](cont'd)

19.10(1) *Supervision.* A supervising physician shall provide appropriate oversight and direction to a conditional prescribing psychologist during the period of supervised practice to achieve patient safety and optimal clinical outcomes. A supervising physician shall ensure that appropriate clinical examinations and necessary testing are performed and that all psychopharmacology services provided are appropriate for the patient's condition. Supervision may be in person or via electronic communications in accordance with these rules.

19.10(2) *Primary supervising physician.* A supervising physician shall determine whether the supervising physician has been designated as a conditional prescribing psychologist's primary supervising physician and shall fulfill the responsibilities of the primary supervising physician in accordance with these rules. A conditional prescribing psychologist may have more than one supervising physician.

19.10(3) *Maximum number of conditional prescribing psychologists.* A supervising physician shall not supervise more than two conditional prescribing psychologists at one time.

19.10(4) *Minimum period of supervision.* The primary supervising physician shall ensure that a conditional prescribing psychologist completes a minimum of two years of supervised practice prescribing psychotropic medications to patients with mental disorders in accordance with these rules in order for the conditional prescribing psychologist to be eligible to apply for a prescription certificate.

19.10(5) *Minimum number of patients.* The primary supervising physician shall ensure that a conditional prescribing psychologist has seen a minimum of 300 patients who had a diagnosed mental disorder for whom pharmacological intervention was considered as a treatment option, even if a decision was made not to prescribe a psychotropic medication to the patient. The primary supervising physician shall ensure that a conditional prescribing psychologist has treated a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

19.10(6) *Initial assessment.* Prior to supervising a conditional prescribing psychologist, each supervising physician shall assess the conditional prescribing psychologist's relevant education, training, experience, and competence.

19.10(7) *Scope of practice.* Each supervising physician shall ensure that all psychopharmacology services provided by a conditional prescribing psychologist are within the competence and scope of practice of the supervising physician and the conditional prescribing psychologist.

19.10(8) *Prescriptive authority.* Each supervising physician shall ensure that a conditional prescribing psychologist only prescribes psychotropic medications for the treatment of mental disorders.

19.10(9) *Prescriptions.* A supervising physician shall ensure that each prescription issued by a conditional prescribing psychologist identifies the prescriber as a "psychologist certified to prescribe" and includes the Iowa license number of the conditional prescribing psychologist and the name of the supervising physician.

19.10(10) *Active DEA and CSA registration.* A supervising physician shall ensure that a conditional prescribing psychologist has an active DEA registration and CSA registration at all times during the period of supervision.

19.10(11) *Patient populations.* A supervising physician shall ensure that a conditional prescribing psychologist only provides psychopharmacology services to patient populations within the conditional prescribing psychologist's education, training, experience, and competence. A supervising physician may establish limitations on the types of populations to whom a conditional prescribing psychologist may provide psychopharmacology services based on the conditional prescribing psychologist's education, training, experience, and competence.

19.10(12) *Psychotropic medications.* A supervising physician shall ensure that a conditional prescribing psychologist only prescribes psychotropic medications that are within the conditional prescribing psychologist's education, training, experience, and competence. A supervising physician may establish limitations on the types of psychotropic medications that a conditional prescribing psychologist may prescribe based on the conditional prescribing psychologist's education, training, experience, and competence.

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19.10(13) *Specialization.* A supervising physician shall ensure that a conditional prescribing psychologist has completed the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

a. Children. To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A pediatric practice,
- (2) A child and adolescent practice, or
- (3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

b. Elderly patients. To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A geriatric practice, or
- (2) A general practice with patients across the lifespan including patients who are over 65 years of age.

c. Serious medical conditions. To prescribe to patients with serious medical conditions including, but not limited to, heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities. A supervising physician shall ensure that a conditional prescribing psychologist has completed at least one year prescribing psychotropic medications to patients with serious medical conditions if the conditional prescribing psychologist intends to treat patients with serious medical conditions after the supervised practice period.

19.10(14) *Informed consent.* A supervising physician shall ensure that a conditional prescribing psychologist obtains appropriate informed consent before the conditional prescribing psychologist provides psychopharmacology services to a patient.

19.10(15) *Release of information.* A supervising physician shall ensure that a conditional prescribing psychologist obtains a release of information authorizing the conditional prescribing psychologist to share information with the supervising physician before the conditional prescribing psychologist provides psychopharmacology services to a patient.

19.10(16) *Primary care physician.* A supervising physician shall ensure that each patient has a designated primary care physician before a conditional prescribing psychologist provides psychopharmacology services to a patient. A supervising physician shall ensure that a conditional prescribing psychologist maintains a cooperative relationship with the primary care physician who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical condition, and significant changes in the patient's medical or psychological condition are discussed. A supervising physician shall ensure that a conditional prescribing psychologist engages in appropriate consultation with a patient's designated primary care physician while the conditional prescribing psychologist is providing psychopharmacology services to a patient.

19.10(17) *Chart reviews.* A supervising physician shall personally review a representative sample of the conditional prescribing psychologist's patient charts.

19.10(18) *Performance evaluations.* A supervising physician shall regularly evaluate the clinical judgment, skills and performance of a conditional prescribing psychologist to safely provide psychopharmacology services to patients and provide appropriate feedback to the conditional prescribing psychologist.

19.10(19) *Supervision plan.* Prior to supervising a conditional prescribing psychologist, a supervising physician shall ensure that a conditional prescribing psychologist has an approved written supervision plan in place. A template may be obtained from the boards of medicine and psychology. The supervision plan shall define the nature and extent of the supervisory relationship and outline specific parameters for review of the supervisory relationship. The supervision plan shall take into account the supervising physician's and conditional prescribing psychologist's relevant education, training, experience, and competence and the nature and scope of the psychopharmacology services to be provided. The supervising physician and conditional prescribing psychologist shall each maintain a

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copy of the supervision plan and provide a copy of the plan to the boards of medicine and psychology upon request. The supervision plan shall include the following:

a. Conditional prescribing psychologist's information. The name, license number, address, telephone number, and email address of the conditional prescribing psychologist.

b. Supervising physician's information. The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the supervising physician.

c. Designation of the primary supervising physician. Designation of the conditional prescribing psychologist's primary supervising physician.

d. Period of supervision. The beginning date of the supervision plan and estimated date of completion.

e. Locations and settings. A description of the locations and settings where and with whom supervision will occur.

f. Scope of practice. A description of the scope of practice of the supervising physician and the conditional prescribing psychologist.

g. Methods of communication. A description of how the supervising physician and conditional psychologist may communicate for appropriate supervision.

h. Initial assessment. A description of the steps the supervising physician has taken to assess a conditional prescribing psychologist's relevant education, training, experience, and competence prior to supervising the conditional prescribing psychologist.

i. Limitations on psychotropic medications. A description of any limitations on the types of psychotropic medications the conditional prescribing psychologist may prescribe consistent with the supervising physician's and prescribing psychologist's relevant education, training, experience, and competence.

j. Limitations on patient populations. A description of any limitations on the types of populations the conditional prescribing psychologist may treat with psychotropic medications consistent with the supervising physician's and prescribing psychologist's relevant education, training, experience, and competence.

k. Expectations and responsibilities. A description of the expectations and responsibilities of the supervisory relationship.

l. Specialization. A description of the specialized training to be completed by the conditional prescribing psychologist in order to provide psychopharmacology services to children (less than 17 years of age), elderly persons (over 65 years of age), or patients with serious medical conditions, including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities in accordance with subrule 19.3(4).

m. Chart reviews. A description of the steps the supervising physician has taken to personally review a representative sample of the conditional prescribing psychologist's patient charts.

n. Consultation between the supervising physician and the primary care physician. A requirement that the supervising physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

o. Performance evaluations. A description of the steps the supervising physician has taken to regularly evaluate the clinical judgment, skills and performance of a conditional prescribing psychologist to safely provide psychopharmacology services to patients and provide appropriate feedback to the conditional prescribing psychologist.

p. Termination of the supervision plan. A description of how the supervision plan may be terminated and the process for notifying affected patients.

q. Signatures. Signatures of the conditional prescribing psychologist and all supervising physicians.

r. Amendment to the supervision plan. A requirement that a conditional prescribing psychologist shall inform the board of psychology of any amendments to the supervision plan, including the addition of any supervising physicians, within 30 days of the change and that any amendment to a supervisory plan be subject to approval of the board of psychology.

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s. Request for extension. If the primary supervising physician determines that a conditional prescribing psychologist is unable to successfully complete the supervised practice prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist and the primary supervising physician can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time requested.

19.10(20) Certification of completion. At the conclusion of the supervised practice period, the primary supervising physician shall certify the following:

a. Supervision. That each supervising physician has provided supervision to the conditional prescribing psychologist in accordance with these rules.

b. Minimum period of supervised practice. That the conditional prescribing psychologist has successfully completed a minimum of two years of supervised practice.

c. Minimum number of patients. That the conditional prescribing psychologist has seen a minimum of 300 patients who had a diagnosed mental disorder with whom pharmacological intervention was considered as a treatment option, even if a decision was made not to prescribe a psychotropic medication to the patient, and that the conditional prescribing psychologist has treated a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

d. Specialization. That a conditional prescribing psychologist who intends to provide psychopharmacology services to children (less than 17 years of age), elderly persons (over 65 years of age), or patients with serious medical conditions, including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, has successfully completed a minimum of one year of supervised practice with the respective populations during the supervised practice period.

e. Demonstrated competence. That a conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones sufficient to obtain a prescription certificate in accordance with paragraph 19.2(3) "f."

653—19.11(17A,124,147,148,154B,272C) Standards of practice—collaboration with a prescribing psychologist. A collaborating physician shall be a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall be board-certified in family medicine, internal medicine, neurology, pediatrics, or psychiatry. A collaborating physician shall fully comply with the following standards of practice:

19.11(1) Collaboration. A collaborating physician shall provide appropriate collaboration with a prescribing psychologist to achieve patient safety and optimal clinical outcomes. A collaborating physician shall ensure that appropriate clinical examinations and necessary testing are performed and that all psychopharmacology services provided are appropriate for the patient's condition. Collaboration may be in person or via electronic communications in accordance with these rules. A prescribing psychologist may have more than one collaborating physician.

19.11(2) Maximum number of prescribing psychologists. A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time.

19.11(3) Initial assessment. Prior to serving as a collaborating physician, a physician shall assess a prescribing psychologist's relevant education, training, experience, and competence.

19.11(4) Scope of practice. A collaborating physician shall ensure that all psychopharmacology services provided by a prescribing psychologist are within the competence and scope of practice of the collaborating physician and the prescribing psychologist.

19.11(5) Prescriptive authority. A collaborating physician shall ensure that a prescribing psychologist only prescribes psychotropic medications for the treatment of mental disorders.

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19.11(6) Delegation. A collaborating physician shall ensure that a prescribing psychologist does not delegate prescriptive authority to any other person.

19.11(7) Narcotics. A collaborating physician shall ensure that a prescribing psychologist does not prescribe narcotics.

19.11(8) Active DEA and CSA registration. A collaborating physician shall ensure that a prescribing psychologist has an active DEA registration and CSA registration at all times during the period of collaboration.

19.11(9) Patient populations. A collaborating physician shall ensure that a prescribing psychologist only provides psychopharmacology services to patient populations within the prescribing psychologist's education, training, experience, and competence. A collaborating physician may establish limitations on the types of populations to whom a prescribing psychologist may provide psychopharmacology services based on the prescribing psychologist's education, training, experience, and competence.

19.11(10) Psychotropic medications. A collaborating physician shall ensure that a prescribing psychologist only prescribes psychotropic medications that are within the prescribing psychologist's education, training, experience, and competence. A collaborating physician may establish limitations on the types of psychotropic medications that a prescribing psychologist may prescribe based on the prescribing psychologist's education, training, experience, and competence.

19.11(11) Specialization. A collaborating physician shall ensure that a prescribing psychologist has completed at least one year of the required two years of supervised practice with the respective population in accordance with subrule 19.3(4) before the prescribing psychologist provides psychopharmacology services to children (less than 17 years of age), elderly persons (over 65 years of age), or patients with serious medical conditions, including but not limited to, heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities.

19.11(12) Informed consent. A collaborating physician shall ensure that a prescribing psychologist obtains appropriate informed consent before a prescribing psychologist provides psychopharmacology services to a patient.

19.11(13) Release of information. A collaborating physician shall ensure that a prescribing psychologist obtains a release of information authorizing the prescribing psychologist to share information with the collaborating physician before the prescribing psychologist provides psychopharmacology services to a patient.

19.11(14) Primary care physician. A collaborating physician shall ensure that each patient has a designated primary care physician before a prescribing psychologist provides psychopharmacology services to a patient. A collaborating physician shall ensure that a prescribing psychologist maintains a cooperative relationship with the primary care physician who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical condition, and significant changes in the patient's medical or psychological condition are discussed. A collaborating physician shall ensure that a prescribing psychologist engages in appropriate consultation with a patient's designated primary care physician while the prescribing psychologist is providing psychopharmacology services to a patient.

19.11(15) Chart reviews. A collaborating physician shall personally review a representative sample of the prescribing psychologist's patient charts.

19.11(16) Performance evaluations. A collaborating physician shall regularly evaluate the clinical judgment, skills and performance of a prescribing psychologist to safely provide psychopharmacology services to patients and provide appropriate feedback to the prescribing psychologist.

19.11(17) Collaborative practice agreement. Prior to serving as a collaborating physician for a prescribing psychologist, the collaborating physician shall ensure that the prescribing psychologist has a written collaborative practice agreement in place. A template may be obtained from the boards of medicine and psychology. The collaborative practice agreement shall define the nature and extent of the collaborative relationship and outline specific parameters for review of the collaborative relationship. The collaborative practice agreement shall take into account the collaborating physician's and prescribing psychologist's relevant education, training, experience, and competence and the nature

MEDICINE BOARD[653](cont'd)

and scope of the psychopharmacology services to be provided. The collaborating physician shall review the terms of the collaborative practice agreement with the prescribing psychologist at least once each year. The collaborating physician and prescribing psychologist shall each maintain a copy of the collaborative practice agreement and provide a copy of the agreement to the boards of medicine and psychology upon request. The collaborative practice agreement shall include the following:

a. Prescribing psychologist's information. The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.

b. Collaborating physician's information. The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.

c. Period of collaboration. The time period covered by the collaborative practice agreement.

d. Locations and settings. A description of the locations and settings where and with whom collaborative practice will occur.

e. Scope of practice. A description of the scope of practice of the collaborating physician and the prescribing psychologist.

f. Methods of communication. A description of how the collaborating physician and prescribing psychologist may communicate for appropriate collaboration.

g. Initial assessment. A description of the steps the collaborating physician has taken to assess a prescribing psychologist's relevant education, training, experience, and competence prior to collaborating with a prescribing psychologist.

h. Limitations on psychotropic medications. A description of any limitations on the types of psychotropic medications the prescribing psychologist may prescribe consistent with the collaborating physician's and prescribing psychologist's relevant education, training, experience, and competence.

i. Limitations on patient populations. A description of any limitations on the types of populations the prescribing psychologist may treat with psychotropic medications consistent with the collaborating physician's and prescribing psychologist's relevant education, training, experience, and competence.

j. Expectations and responsibilities. A description of the expectations and responsibilities of the collaborative relationship.

k. Specialization. A description of the specialized training the prescribing psychologist has completed in order to provide psychopharmacology services to children (less than 17 years of age), elderly persons (over 65 years of age), or patients with serious medical conditions, including but not limited to, heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities in accordance with subrule 19.3(4).

l. Chart reviews. A description of the steps the collaborating physician has taken to personally review a representative sample of the prescribing psychologist's patient charts.

m. Consultation between the collaborating physician and the primary care provider. A requirement that the collaborating physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

n. Performance evaluations. A description of the steps the collaborating physician has taken to regularly evaluate the clinical judgment, skills and performance of the prescribing psychologist to safely provide psychopharmacology services to patients and provide appropriate feedback to the prescribing psychologist.

o. Termination of the collaborative practice agreement. A provision describing how the collaborative practice agreement may be terminated and the process for notifying affected patients.

p. Signatures. Signatures of the collaborating physician and the prescribing psychologist.

653—19.12(17A,124,147,148,272C) Grounds for discipline. A physician who fails to comply with these rules may be subject to disciplinary action by the board of medicine.

ARC 4668C**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action****Proposing rule making related to optometrists who prescribe controlled substances and providing an opportunity for public comment**

The Board of Optometry hereby proposes to amend Chapter 181, “Continuing Education for Optometrists,” Chapter 182, “Practice of Optometrists,” and Chapter 183, “Discipline for Optometrists,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 124.551A, 147.76 and 147.162.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 124.551A and 147.162.

Purpose and Summary

These proposed amendments address the requirements for an optometrist who prescribes a controlled substance, including continuing education requirements, and add discipline that may be imposed for prescribing a controlled substance in dosage amounts that exceed what would be prescribed by a reasonably prudent licensee.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Sharon Dozier
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0075
Email: sharon.dozier@idph.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

October 15, 2019
10 to 11 a.m.

Fifth Floor Board Conference Room 526
Lucas State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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 Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **181.3(2)“c”** as follows:

c. Required continuing education hours. Licensees shall provide proof of continuing education in all of the following areas:

(1) Current certification in CPR offered in person by the American Heart Association, the American Red Cross or an equivalent organization. At least two hours per biennium is required but credit will be granted for four hours; ~~and.~~

(2) ~~Proof of current~~ Current CELMO certification. If the licensee does not have current proof of CELMO certification, then the following is required:

1. A combined total of 40 hours required from COPE Category B (Ocular Disease and Management) and COPE Category C (Related Systemic Disease) with a minimum of 14 hours in each category; and

2. Ten additional hours required from any of the COPE Categories of A (Clinical Optometry), B, C and D (Optometric Business Management). Hours obtained in Category D may not exceed 6 hours of the total continuing education hours' requirement.

(3) As a condition of license renewal, a minimum of one hour of continuing education per biennium regarding guidelines for prescribing opioids, including recommendations on limitations on dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacologic therapy options. Credit will be granted for up to two hours per biennium. These hours may count toward the continuing education hours required from COPE Category B (Ocular Disease and Management) or COPE Category C (Related Systemic Disease). The licensee shall maintain documentation of these hours, which may be subject to audit. If the continuing education did not cover the United States Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, the licensee shall read the guideline prior to license renewal. “Opioid” means any drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

ITEM 2. Adopt the following new subrule 182.4(3):

182.4(3) Prior to prescribing any controlled substance, an optometrist shall review the patient's information contained in the prescription monitoring program database, unless the patient is receiving inpatient hospice care or long-term residential facility care.

ITEM 3. Adopt the following new subrule 183.2(31):

183.2(31) Prescribing any controlled substance in dosage amounts that exceed what would be prescribed by a reasonably prudent licensee.

ARC 4664C**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action****Proposing rule making related to medical services provided by physician assistants and providing an opportunity for public comment**

The Board of Physician Assistants hereby proposes to amend Chapter 326, “Licensure of Physician Assistants,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 17A.3 and 147.76.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 148C.

Purpose and Summary

Subrule 327.1(1) of the Board’s rules discusses medical services that may be provided by a physician assistant. Subparagraph 327.1(1)“s”(2) instructs that a physician assistant may not prescribe Schedule II controlled substances which are listed as depressants in Iowa Code chapter 124. Physician assistants may, however, order Schedule II controlled substances listed as depressants in Iowa Code chapter 124 but only with the prior approval and direction of a supervising physician. The Board received a question about the distinction between ordering and prescribing with respect to subrule 327.1(1). This proposed rule making provides four definitions to clarify the distinction between ordering and prescribing Schedule II controlled substances which are listed as depressants in Iowa Code chapter 124.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Susan Reynolds
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: susan.reynolds@idph.iowa.gov

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 15, 2019
8 to 8:30 a.m.

Fifth Floor Board Conference Room 526
Lucas State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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 Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 645—326.1(148C) as follows:

645—326.1(148C) Definitions.

“Active license” means a license that is current and has not expired.

“Administer” means the direct application of a drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

“Approved program” means a program for the education of physician assistants which has been accredited by the American Medical Association's Committee on Allied Health Education and Accreditation, by its successor, the Commission on Accreditation of Allied Health Education Programs, or by its successor, the Accreditation Review Commission on Education for the Physician Assistant, or its successor.

“Board” means the board of physician assistants.

“CME” means continuing medical education.

“Department” means the department of public health.

“Direction” means authoritative policy or procedural guidance for the accomplishment of a function or activity.

“Dispense” means the delivery of a drug or device to an ultimate user or the ultimate user's agent.

“Grace period” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“Licensee” means a person licensed by the board as a physician assistant to provide medical services under the supervision of one or more physicians.

“Licensure by endorsement” means the issuance of an Iowa license to practice as a physician assistant to an applicant who is or has been licensed in another state.

“Locum tenens” means the temporary substitution of one licensed physician assistant for another.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of physician assistants who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*NCCPA*” means the National Commission on Certification of Physician Assistants.

“*Opioid*” means a drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

“*Order*” means the issuance of a written, electronic, facsimile, or oral order for a drug to be administered.

“*Physician*” means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy. A physician supervising a physician assistant practicing in a federal facility or under federal authority shall not be required to obtain licensure beyond licensure requirements mandated by the federal government for supervising physicians.

“*Physician assistant*” means a person licensed as a physician assistant by the board.

“*Prescribe*” means the issuance of a written, electronic, facsimile, or oral order for a drug to be dispensed.

“*Prescription monitoring program database*” or “*PMP database*” means the Iowa prescription monitoring program database administered by the Iowa board of pharmacy pursuant to Iowa Code chapter 124, subchapter VI, and 657—Chapter 37.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—326.19(17A,147,272C) by which an inactive license is restored to active status.

“*Reinstatement*” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

“*Remote medical site*” means a medical clinic for ambulatory patients which is away from the main practice location of a supervising physician and in which a supervising physician is present less than 50 percent of the time the site is open. “Remote medical site” will not apply to nursing homes, patient homes, hospital outpatient departments, outreach clinics, or any location at which medical care is incidentally provided (e.g., diet center, free clinic, site for athletic physicals, jail facility).

“*Supervising physician*” means a physician who supervises the medical services provided by the physician assistant and who accepts ultimate responsibility for the medical care provided by the physician/physician assistant team.

“*Supervision*” means that a supervising physician retains ultimate responsibility for patient care, although a physician need not be physically present at each activity of the physician assistant or be specifically consulted before each delegated task is performed. Supervision shall not be construed as requiring the personal presence of a supervising physician at the place where such services are rendered except insofar as the personal presence is expressly required by these rules or by Iowa Code chapter 148C.

“*Supply prescription drugs*” means to deliver to a patient or the patient’s representative a quantity of prescription drugs or devices that are properly packaged and labeled.

ARC 4662C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Proposing rule making related to child and dependent adult abuse mandatory reporter training and providing an opportunity for public comment

The Board of Physician Assistants hereby proposes to amend Chapter 326, “Licensure of Physician Assistants,” Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 232.69(3)“e,” 235B.16(5)“f,” and 272C.2.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 232.69 and 235B.16 as amended by 2019 Iowa Acts, chapter 91.

Purpose and Summary

2019 Iowa Acts, chapter 91 (House File 731), amends Iowa Code sections 232.69 and 235B.16, which govern mandatory training in child and dependent adult abuse reporting for certain professionals. This proposed rule making amends the Board’s requirements for mandatory training in child and dependent adult abuse reporting to reflect the statutory changes and requires that physician assistants who must make reports for child and dependent adult abuse comply with the requirements for training every three years as provided in the amended Iowa Code sections 232.69 and 235B.16. This proposed rule making also updates subrule 326.9(4) to remove a reference to a rescinded rule provision.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Susan Reynolds
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: susan.reynolds@idph.iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 15, 2019
8:30 to 9 a.m.

Fifth Floor Board Conference Room 526
Lucas State Office Building
Des Moines, Iowa

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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 Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 326.9(4) as follows:

326.9(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of ~~two hours of training~~ in child abuse identification and reporting as required by Iowa Code section 232.69(3) "b" in the previous five three years, or condition(s) for waiver of this requirement as identified in paragraph 326.9(4) "e."

b. A licensee who, in the course of employment responsibilities, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of ~~two hours of training~~ in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5) "b" in the previous five three years or condition(s) for waiver of this requirement as identified in paragraph 326.9(4) "e."

c. ~~A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."~~

~~Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course course(s) shall be a the curriculum approved provided by the Iowa department of public health abuse education review panel human services.~~

d. The licensee shall maintain written documentation for five three years after mandatory training as identified in paragraphs "~~a~~" 326.9(4) "~~a~~" to "~~c~~," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, ~~including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in Chapter 328.~~

f. The board may select licensees for audit of compliance with the requirements in paragraphs "~~a~~" 326.9(4) "~~a~~" to "~~e~~."

ARC 4672C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action****Proposing rule making related to family planning services
and providing an opportunity for public comment**

The Public Health Department hereby proposes to adopt new Chapter 75, “Family Planning Services Funding Prioritization, Restrictions and Reporting,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in 2019 Iowa Acts, House File 766, section 98.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 766, section 98.

Purpose and Summary

This new chapter is proposed for adoption to implement the funding prioritization, restrictions and reporting requirements outlined in 2019 Iowa Acts, House File 766, section 98, for family planning services under Title X.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s variance and waiver provisions in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Lindsey Jones
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: lindsey.jones@idph.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

PUBLIC HEALTH DEPARTMENT[641](cont'd)

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** 641—Chapter 75:

CHAPTER 75
FAMILY PLANNING SERVICES FUNDING PRIORITIZATION, RESTRICTIONS AND
REPORTING

641—75.1(88GA,ch85) Program explanation. The Iowa department of public health is a designated agency to operate the family planning program pursuant to an agreement with the federal government. Congress authorized grants to assist in the establishment and operation of family planning projects which offer a broad range of acceptable and effective family planning methods, including natural family planning, infertility services and services to adolescents. The majority of the funding available is from the Title X, family planning services grant, administered by the United States Department of Health and Human Services (DHHS).

The purpose of the program is to promote the health of persons of reproductive age and families by providing access to family planning and reproductive health promotion services.

The department, bureau of family health, will annually apply to the DHHS for grant funding under Title X of the federal Public Health Services Act, 42 U.S.C. §300 et seq. The department, bureau of family health, enters into contracts according to these rules with selected private and public agencies within the department family planning service area for the provision of family planning services. A description of the department family planning service area can be obtained from the Chief, Bureau of Family Health, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

641—75.2(88GA,ch85) Definitions.

“Department” means the Iowa department of public health.

“Nonprofit health care delivery system” means an Iowa nonprofit corporation that controls, directly or indirectly, a regional health care network consisting of hospital facilities and various ambulatory and clinic locations that provide a range of primary, secondary, and tertiary inpatient, outpatient, and physician services.

641—75.3(88GA,ch85) Distribution of grant funds. Distribution of grant funds utilizing the following prioritization shall be made in a manner that continues access to family planning services.

75.3(1) Priority. The department shall distribute all grant funds received to applicants in the following order of priority:

a. Public entities that provide family planning services including state, county, or local community health clinics; federally qualified health centers; and community action organizations.

b. Nonpublic entities that, in addition to family planning services, provide required primary health services as described in 42 U.S.C. §254b(b)(1)(A).

c. Nonpublic entities that provide family planning services but do not provide required primary health services as described in 42 U.S.C. §254b(b)(1)(A).

75.3(2) Funds restrictions—abortion.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

a. Funds shall not be distributed to any entity that performs abortions, promotes abortions, maintains or operates a facility where abortions are performed or promoted, contracts or subcontracts with an entity that performs or promotes abortions, becomes or continues to be an affiliate of any entity that performs or promotes abortions, or regularly makes referrals to an entity that performs or promotes abortions or maintains or operates a facility where abortions are performed.

b. This prohibition shall not be interpreted to include a nonpublic entity that is a distinct location of a nonprofit health care delivery system, if the distinct location provides family planning services but does not perform abortions or maintain or operate as a facility where abortions are performed.

c. For the purposes of these rules, “abortion” does not include any of the following:

(1) The treatment of a woman for a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death.

(2) The treatment of a woman for a spontaneous abortion, commonly known as miscarriage, when not all of the products of human conception are expelled.

75.3(3) *Distinct provider identification number and attestation.*

a. Each distinct location of a nonprofit health care delivery system receiving funds from the department under these rules shall be assigned a unique identification number by the department.

b. Each distinct location of a nonprofit health care delivery system receiving funds from the department under these rules shall provide to the department, on forms provided by the department, a signed attestation that abortions are not performed at the distinct location.

641—75.4(88GA,ch85) Indirect funds restrictions—abortion. Grant funds shall not be used for direct or indirect costs, including but not limited to administrative costs or expenses, overhead, employee salaries, rent, and telephone or other utility costs, related to performing or promoting abortions as specified in these rules.

641—75.5(88GA,ch85) Report requirement.

75.5(1) The department shall submit a report, by calendar year, to the governor and the general assembly annually by January 1.

75.5(2) The report shall include:

a. A list of each entity that received funds under 75.3(1)“*c*” and the amount and type of funds received.

b. A detailed explanation of how the department determined that the distribution of funds to each entity under 75.3(1)“*c*,” instead of an entity under 75.3(1)“*a*” or “*b*,” was necessary to prevent severe limitations or elimination of access to family planning services in the region of the state where the entity was located.

These rules are intended to implement 2019 Iowa Acts, chapter 85, section 98.

ARC 4671C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rule making related to medical residency training state matching grants program and providing an opportunity for public comment

The Public Health Department hereby proposes to amend Chapter 108, “Medical Residency Training State Matching Grants Program,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 135.176 as amended by 2019 Iowa Acts, House File 532.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 135.176 as amended by 2019 Iowa Acts, House File 532.

Purpose and Summary

2019 Iowa Acts, House File 532, section 1, adds to the criteria for awarding medical residency training state matching grants a preference for candidates who are residents of Iowa, attended and earned an undergraduate degree from an Iowa college or university, or attended and earned a medical degree from a medical school in Iowa. This preference is in addition to the previous preference in the residency specialty. 2019 Iowa Acts, House File 532, section 2, adds a requirement that the residency program offer the residency participants the opportunity to participate in a rural rotation to expose the residents to the rural areas of the state. The proposed amendments will incorporate these changes.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 15, 2019. Comments should be directed to:

Susan Dixon
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: susan.dixon@idph.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** subrule 108.3(5):

108.3(5) A sponsor shall offer persons to whom a primary care, including psychiatry, residency position is awarded, the opportunity to participate in a rural rotation to expose the resident to the rural areas of the state.

ITEM 2. Amend rule 641—108.5(135), catchwords, as follows:

641—108.5(135) Review Application and review process.

ITEM 3. Amend subrule 108.5(2) as follows:

108.5(2) The department shall establish a request for proposal process for sponsors eligible to receive funding. The request for proposal and review process and review criteria for preference in awarding the grants shall be described in the request for proposal, including preference in the residency specialty and preference for candidates who are residents of Iowa, attended and earned an undergraduate degree from an Iowa college or university, or attended and earned a medical degree from a medical school in Iowa. This residency specialty preference may be reflective of a subspecialty where particular demands for services have been demonstrated, of geographic areas of preference, or of other particular preferences that advance the objectives of the program.

ARC 4667C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

**Proposing rule making related to vehicle impoundment
and providing an opportunity for public comment**

The Public Safety Department hereby proposes to amend Chapter 6, “Vehicle Impoundment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 80.9(2) and 321.89.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 80.9(2) and 321.89.

Purpose and Summary

The purpose of the proposed amendments to Chapter 6 is to update the Department’s rules for vehicle impoundment in order to align them with the Iowa Supreme Court decision in *State v. Ingram* dealing with the inventory of closed containers. Additional changes were made within the chapter to provide a clearer interpretation of when a vehicle may be impounded.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Pursuant to the provision of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the

PUBLIC SAFETY DEPARTMENT[661](cont'd)

discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on October 18, 2019. Comments should be directed to:

Chandler Collins
 Department of Public Safety
 Oran Pape State Office Building
 215 East 7th Street
 Des Moines, Iowa 50319
 Phone: 515.725.6185
 Email: collins@dps.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend **661—Chapter 6** as follows:

CHAPTER 6
 VEHICLE IMPOUNDMENT

661—6.1(17A,321) Vehicle impoundment. The patrol division and other peace officer members of the department may impound any vehicle determined to be “abandoned” as defined in Iowa Code section 321.89(1)“b,” 321.89(1)“a,” provided that:

1. The officer shall first attempt to determine the owner through department of transportation records and request that the communications division advise an owner found thereby that the vehicle must be moved within a reasonable time or it will be impounded, and
2. Either the owner cannot be found or the owner fails to remove the vehicle within a reasonable time.

661—6.2(17A,321) Vehicles which may be impounded immediately.

6.2(1) No change.

6.2(2) Vehicles which are involved in an accident when immediate impoundment is necessary:

- a. To preserve evidence which will be used in an administrative or judicial proceeding; or

PUBLIC SAFETY DEPARTMENT[661](cont'd)

b. To protect the vehicle from theft or further damage when the ~~legal custodian~~ driver or owner is unavailable or incapable to give consent to such impoundment or make other arrangements for the vehicle; or

c. To prevent further accidents when the vehicle is so situated as to appear to constitute a hazard to traffic.

6.2(3) Vehicles which an officer has ~~reason to believe are~~ probable cause that the vehicle is being used to transport contraband.

6.2(4) Vehicles involved in a person's death when the medical examiner or a peace officer determines:

a. That seizure is necessary to secure evidence needed in the investigation, including but not limited to an investigation of the cause and manner of death.

b. That circumstances indicate the vehicle may be removed or tampered with before written authorization for its impoundment can be obtained, or that written authorization for impoundment has been refused or is impracticable.

c. That the vehicle is situated on a public highway in such a manner that it may constitute a hazard to traffic.

6.2(5) Vehicles under the control of a person at the time of arrest:

a. No change.

b. If the vehicle is not capable of legal operation or the vehicle is not legally parked under state or local code or ordinance; or

~~*b. c.*~~ To preserve evidence which will be used in an administrative or judicial proceeding; or

~~*e. d.*~~ To protect the vehicle from theft or further damage when the ~~legal custodian~~ driver or owner is unavailable or incapable to give consent to such impoundment or make other arrangements for the vehicle.

6.2(6) Vehicles positioned upon a public highway in such a ~~location as to indicate~~ manner that they may constitute a hazard to traffic.

661—6.3(17A,321) Vehicles which need not be impounded immediately.

6.3(1) If a vehicle is unattended, an officer shall tag it. A record is kept by the officer at the district to which the officer is assigned. After the period of time prescribed in Iowa Code section 321.89, the unattended vehicle shall be declared an abandoned vehicle.

~~**6.3(2)** If the vehicle is thought to be abandoned, the officer shall attempt to determine the owner through department of transportation records, and request that the communications division advise the owner that the vehicle must be moved within a reasonable time or it will be impounded. If the owner cannot be contacted, or if the owner does not remove the vehicle, the vehicle may be impounded.~~

661—6.4(17A,321) Impoundment procedure.

6.4(1) No change.

6.4(2) Within 24 hours of towing an impounded vehicle, the officer shall:

a. Complete an inventory of all property in the vehicle and a notation of any parts of the vehicle which appear to be missing or damaged. ~~The inventory shall include a list of the contents of each container in the vehicle. Each container shall be opened unless the contents of a particular container are evident from its exterior. If keys, a locksmith, or other means of access are not reasonably available to the officer, the officer is authorized to break locks to gain access to the vehicle and its locked compartments.~~ The inventory is a record which is intended for use in ensuring the safe return of the lawful possessor's property and resolving questions regarding the condition or contents of the vehicle.

b. No change.

This rule is intended to implement Iowa Code sections 80.9(2) "a" and 321.89.

661—6.5(17A,321) No change.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—6.6(321) No change.

These rules are intended to implement Iowa Code sections 80.9(2)“a” and 321.89 and *Florida v. Wells*, 110 Sup. Ct. 1632.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Ronald L. Hansen, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for September is 4.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

| | |
|---------------------------------|--------------|
| 74A.2 Unpaid Warrants | Maximum 6.0% |
| 74A.4 Special Assessments | Maximum 9.0% |

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective September 11, 2019, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

| | |
|----------------------------|--------------|
| 7-31 days | Minimum .20% |
| 32-89 days | Minimum .20% |
| 90-179 days | Minimum .45% |
| 180-364 days | Minimum .50% |
| One year to 397 days | Minimum .60% |
| More than 397 days | Minimum .80% |

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

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:

| | |
|--|-------|
| October 1, 2018 — October 31, 2018 | 5.00% |
| November 1, 2018 — November 30, 2018 | 5.00% |
| December 1, 2018 — December 31, 2018 | 5.25% |
| January 1, 2019 — January 31, 2019 | 5.00% |
| February 1, 2019 — February 28, 2019 | 4.75% |
| March 1, 2019 — March 31, 2019 | 4.75% |
| April 1, 2019 — April 30, 2019 | 4.75% |
| May 1, 2019 — May 31, 2019 | 4.50% |
| June 1, 2019 — June 30, 2019 | 4.50% |
| July 1, 2019 — July 31, 2019 | 4.50% |
| August 1, 2019 — August 31, 2019 | 4.00% |
| September 1, 2019 — September 30, 2019 | 4.00% |
| October 1, 2019 — October 31, 2019 | 3.75% |

ARC 4676C**DENTAL BOARD[650]****Adopted and Filed****Rule making related to expanded functions for dental assistants and dental hygienists**

The Dental Board hereby amends Chapter 10, “General Requirements,” Chapter 15, “Fees,” and Chapter 20, “Dental Assistants,” adopts new Chapter 23, “Expanded Functions,” and amends Chapter 25, “Continuing Education,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 147.76, 153.33 and 272C.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 153.15, 153.38 and 153.39.

Purpose and Summary

The primary purpose of these amendments is to update the requirements for expanded functions. The amendments move some procedures into the standard scope of practice for dental assistants and dental hygienists and also allow additional procedures to be performed by dental assistants and dental hygienists as new expanded functions. The amendments also include updated terminology to make the rules clearer.

These amendments create a new Chapter 23 for all expanded function requirements. The amendments remove the expanded function requirements currently established in Chapters 10 and 20 and relocate the content into Chapter 23. The intent is to make it easier for dental hygienists and dental assistants to locate the requirements for expanded functions by placing all of the requirements in a single chapter.

These amendments establish clearer requirements for training in expanded functions to ensure that a minimum standard of competency is met at the completion of all expanded function training courses. A review of expanded function training courses to date has shown that there is not a clear minimum training standard. These amendments will resolve this concern.

These amendments also create a process whereby expanded function dental assistants and dental hygienists may document completion of Board-approved training in Level 1 and Level 2 expanded functions.

These amendments also update the fee for a hard copy of a duplicate certificate or proof of renewal.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 8, 2019, as **ARC 4424C**.

The public comment period ended on July 1, 2019. The Board received two comments. The Dental Assisting National Board, Inc., recommended that the Board consider requiring candidates to take their third-party examination as a means to assess competency in expanded function procedures. Impact Dental Training, LLC, recommended revisions to language for consistency, asked for clarification on expectations regarding training, expressed concerns regarding implementation of the new rules and made substantive suggestions for changing or recategorizing specific expanded function procedures. In response to these comments, the Board revised language for consistency throughout the rules, clarified expectations regarding new standards, added grandfathering language and reworded some expanded function procedures.

The Board adopted the rule making with the following changes:

The Board made a number of changes following input from interested parties and written comments received. The changes updated the language to be clearer about the procedures and regulations.

DENTAL BOARD[650](cont'd)

Following feedback, the option for certification was removed, and alternative regulations were established to verify training.

Adoption of Rule Making

This rule making was adopted by the Board on August 2, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 650—Chapter 7.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on October 30, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 10.3(1) as follows:

10.3(1) "Practice of dental hygiene" as defined in Iowa Code section 153.15 ~~as amended by 2017 Iowa Acts, Senate File 479~~, means the performance of the following educational, therapeutic, preventive and diagnostic dental hygiene services. Such services, except educational services, shall be delegated by and performed under the supervision of a dentist licensed pursuant to Iowa Code chapter 153.

a. Educational. Assessing the need for, planning, implementing, and evaluating oral health education programs for individual patients and community groups; conducting workshops and in-service training sessions on dental health for nurses, school personnel, institutional staff, community groups and other agencies providing consultation and technical assistance for promotional, preventive and educational services.

b. Therapeutic. Identifying and evaluating factors which indicate the need for and performing (1) oral prophylaxis, which includes supragingival and subgingival debridement of plaque, and detection and removal of calculus with instruments or any other devices; (2) periodontal scaling and root planing; (3) removing and polishing hardened excess restorative material; (4) administering local anesthesia with the proper permit; (5) administering nitrous oxide inhalation analgesia in accordance with 650—subrules 29.6(4) and 29.6(5); (6) applying or administering medicaments prescribed by a dentist, including chemotherapeutic agents and medicaments or therapies for the treatment of periodontal disease and caries; (7) removal of adhesives.

c. Preventive. Applying pit and fissure sealants and other medications or methods for caries and periodontal disease control; organizing and administering fluoride rinse or sealant programs.

d. Diagnostic. Reviewing medical and dental health histories; performing oral inspection; indexing dental and periodontal disease; preliminary charting of existing dental restorations and teeth;

DENTAL BOARD[650](cont'd)

making occlusal registrations for mounting study casts; testing pulp vitality; testing glucose levels; analyzing dietary surveys.

e. The following services may only be delegated by a dentist to a dental hygienist: administration of local anesthesia, placement of sealants, and the removal of any plaque, stain, calculus, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish.

f. Phlebotomy.

g. Expanded function procedures in accordance with 650—Chapter 23.

ITEM 2. Rescind subrules **10.3(8)** and **10.3(9)**.

ITEM 3. Amend subrule 15.8(1) as follows:

15.8(1) Duplicates. The fee for issuance of a hard-copy duplicate license, permit or registration certificate or current renewal is \$25. Electronic copies are provided at no cost.

ITEM 4. Amend rule 650—20.4(153) as follows:

650—20.4(153) Scope of practice.

20.4(1) In all instances, a dentist assumes responsibility for determining, on the basis of diagnosis, the specific treatment patients will receive and which aspects of treatment may be delegated to qualified personnel as authorized in these rules.

20.4(2) A licensed dentist may delegate to a dental assistant those procedures for which the dental assistant has received training. This delegation shall be based on the best interests of the patient. Such services shall be delegated by and performed under the supervision of a licensed dentist and may include:

a. Placement and removal of dry socket medication;

b. Placement of periodontal dressings;

c. Testing pulp vitality;

d. Preliminary charting of existing dental restorations and teeth;

e. Glucose testing;

f. Phlebotomy; and

g. Expanded function procedures in accordance with 650—Chapter 23.

20.4(2) 20.4(3) The dentist shall exercise supervision and shall be fully responsible for all acts performed by a dental assistant. A dentist may not delegate to a dental assistant any of the following, unless allowed pursuant to 650—Chapter 23:

a. Diagnosis, examination, treatment planning, or prescription, including prescription for drugs and medicaments or authorization for restorative, prosthodontic or orthodontic appliances.

b. Surgical procedures on hard and soft tissues within the oral cavity and any other intraoral procedure that contributes to or results in an irreversible alteration to the oral anatomy.

c. Administration of local anesthesia.

d. Placement of sealants.

e. Removal of any plaque, stain, or hard natural or synthetic material except by toothbrush, floss, or rubber cup coronal polish, or removal of any calculus.

f. Dental radiography, unless the assistant is qualified pursuant to 650—Chapter 22.

g. Those procedures that require the professional judgment and skill of a dentist.

20.4(3) 20.4(4) A dental assistant may perform duties consistent with these rules under the supervision of a licensed dentist. The specific duties dental assistants may perform are based upon:

a. The education of the dental assistant.

b. The experience of the dental assistant.

DENTAL BOARD[650](cont'd)

ITEM 5. Rescind rule **650—20.5(153)**.

ITEM 6. Renumber rules **650—20.6(153)** and **650—20.7(153)** as **650—20.5(153)** and **650—20.6(153)**.

ITEM 7. Amend renumbered rules 650—20.5(153) and 650—20.6(153) as follows:

650—20.5(153) Categories of dental assistants: dental assistant trainee, registered dental assistant. There are two categories of dental assistants. Both the supervising dentist and the registered dental assistant or dental assistant trainee are responsible for maintaining documentation of training. Such documentation must be maintained in the office of practice and shall be provided to the board upon request.

20.5(1) Registered dental assistant. Registered dental assistants are individuals who have met the requirements for registration and have been issued a certificate of registration. A registered dental assistant may, under general supervision, perform dental radiography, intraoral suctioning, use of a curing light and intraoral camera, and all extraoral duties that are assigned by the dentist and are consistent with these rules. During intraoral procedures, the registered dental assistant may, under direct supervision, assist the dentist in performing duties assigned by the dentist that are consistent with these rules. The registered dental assistant may take radiographs if qualified pursuant to 650—Chapter 22.

20.5(2) Dental assistant trainee. Dental assistant trainees are all individuals who are engaging in on-the-job training to meet the requirements for registration and who are learning the necessary skills under the personal supervision of a licensed dentist. Trainees may also engage in on-the-job training in dental radiography pursuant to rule 650—22.3(136C,153).

a. No change.

b. *Trainee restart.*

(1) Reapplying for trainee status. A trainee may “start over” as a dental assistant trainee provided the trainee submits an application in compliance with subrule ~~20.7(1)~~ 20.6(1).

(2) to (4) No change.

c. No change.

650—20.6(153) Registration requirements after July 1, 2001. Effective July 2, 2001, dental assistants must meet the following requirements for registration:

20.6(1) Dental assistant trainee.

a. to c. No change.

d. Prior to the trainee status expiration date, the dental assistant trainee’s supervising dentist must ensure that the trainee has received a certificate of registration or has been issued start-over trainee status in accordance with rule ~~650—20.6(153)~~ 650—20.5(153) before performing any further dental assisting duties.

20.6(2) Registered dental assistant.

a. No change.

b. Applications for registration as a registered dental assistant must be filed on official board forms and include the following:

(1) No change.

(2) Evidence of meeting the requirements specified in ~~20.7(2)“a.”~~ 20.6(2)“a.”

(3) to (9) No change.

~~20.6(3) Rescinded IAB 9/17/03, effective 10/22/03.~~

~~20.6(4)~~ **20.6(3)** All applications must be signed and verified by the applicant as to the truth of the documents and statements contained therein.

~~20.6(5) Review of applications. The board shall follow the procedures specified in 650—11.8(147,153) in reviewing applications for registration and qualification.~~

DENTAL BOARD[650](cont'd)

ITEM 8. Adopt the following **new** rule 650—20.7(153):

650—20.7(153) Review of applications. The board shall follow the procedures specified in rule 650—11.8(147,153) in reviewing applications for registration and qualification.

ITEM 9. Adopt the following **new** 650—Chapter 23:

CHAPTER 23
EXPANDED FUNCTIONS

650—23.1(153) Definitions. As used in this chapter:

“*Accredited school*” means a dental, dental hygiene, or dental assisting education program accredited by the Commission on Dental Accreditation (CODA).

“*Clinical training*” means training which includes patient experiences.

“*Didactic training*” means educational instruction.

“*Direct supervision*” means that the dentist is present in the treatment facility, but it is not required that the dentist be physically present in the treatment room.

“*Fabrication*” means the construction or creation of an impression, occlusal registration, provisional restoration or denture, as defined in this chapter.

“*General supervision of a dental assistant*” means that a dentist has examined the patient and has delegated the services to be provided by a registered dental assistant, which are limited to all extraoral duties, dental radiography, intraoral suctioning, use of a curing light, intraoral camera, and recementation of a provisional restoration. The dentist need not be present in the facility while these services are being provided.

“*General supervision of a dental hygienist*” means that a dentist has examined the patient and has prescribed authorized services to be provided by a dental hygienist. The dentist need not be present in the facility while these services are being provided. If a dentist will not be present, the following requirements shall be met:

1. Patients or their legal guardians must be informed prior to the appointment that no dentist will be present and therefore no examination will be conducted at that appointment.
2. The hygienist must consent to the arrangement.
3. Basic emergency procedures must be established and in place, and the hygienist must be capable of implementing these procedures.
4. The treatment to be provided must be prior prescribed by a licensed dentist and must be entered in writing in the patient record.

“*Laboratory training*” means training that is hands-on, that may include simulation, and that prepares a dental hygienist or dental assistant for patient experiences. Laboratory training can be done as part of an approved course, or obtained through a supervising dentist.

“*Observational supervision,*” for expanded functions, is for training purposes only and means the dentist is physically present in the treatment room to oversee and direct all services being provided as part of clinical training.

“*Patient experiences*” are procedures that are performed on a patient, during the course of clinical training, under the observational supervision of a dentist.

“*Prosthetic*” means any provisional or permanent restoration intended to replace a tooth or teeth.

“*Provisional restoration*” means a crown or bridge placed with the intention of being replaced with a permanent crown or bridge at a later date, or a permanent crown provisionally recemented to be replaced or recemented at a later date.

650—23.2(153) Expanded function requirements and eligibility.

23.2(1) Dental hygienists or dental assistants may only perform expanded function procedures upon successful completion of a board-approved course of training and certification by the board. All expanded function procedures must be delegated by and performed under the direct supervision of a dentist licensed pursuant to Iowa Code chapter 153 unless otherwise specified in this rule. A dental

DENTAL BOARD[650](cont'd)

assistant trainee is not eligible to perform or receive training in expanded function procedures. This shall not preclude dental hygienists or dental assistants from practicing expanded function procedures for training purposes while enrolled in a board-approved course of training.

23.2(2) To be eligible to train in Level 1 expanded function procedures, dental hygienists or dental assistants must comply with one of the following:

- a. Hold an active dental hygiene license in Iowa; or
- b. Hold an active dental assistant registration, and comply with at least one of the following:
 - (1) Be a graduate of an accredited school; or
 - (2) Be currently certified by the Dental Assisting National Board (DANB); or
 - (3) Have at least one year of clinical practice as a registered dental assistant; or
 - (4) Have at least one year of clinical practice as a dental assistant in a state that does not require registration.

23.2(3) A dentist who delegates Level 1 or Level 2 expanded function procedures to dental hygienists or dental assistants under direct supervision must examine the patient to review the quality of work prior to the conclusion of the dental appointment. The following expanded function procedures are exempt from this requirement and may be performed under general supervision:

- a. Recementation of a provisional restoration.
- b. Taking occlusal registrations for purposes other than mounting study casts by Level 1 or Level 2 dental hygienists only.

650—23.3(153) Expanded function categories.

23.3(1) *Basic Level 1.* Dental hygienists or dental assistants who train in some, but not all, Level 1 expanded function procedures are deemed to be basic expanded function dental hygienists or dental assistants. Dental hygienists and dental assistants must be issued a certificate of completion for the corresponding function by a board-approved training program before performing a specific expanded function procedure. A dentist may delegate to dental hygienists or dental assistants only those Level 1 expanded function procedures for which training has been successfully completed.

23.3(2) *Certified Level 1.* Expanded function dental hygienists or dental assistants who have successfully completed training for all Level 1 expanded function procedures and have been issued a certificate of completion by a board-approved training program are deemed to be certified Level 1 dental hygienists or dental assistants.

23.3(3) *Certified Level 2.* Before beginning Level 2 training to become certified in Level 2, expanded function dental hygienists or dental assistants must have a minimum of one year of clinical practice as a certified Level 1 dental hygienist or dental assistant and pass an entrance examination administered by the Level 2 training program.

a. Dental hygienists or dental assistants who have successfully completed training in Level 2 expanded function procedures and have been issued a certificate of completion by a board-approved training program are deemed to be certified Level 2 dental hygienists or dental assistants.

b. A dentist may delegate any Level 1 or Level 2 expanded function procedures to dental hygienists or dental assistants who are certified Level 2.

650—23.4(153) Level 1 expanded function procedures for dental assistants. Level 1 expanded function procedures for dental assistants include:

- 23.4(1)** Taking occlusal registrations;
- 23.4(2)** Placement and removal of gingival retraction material;
- 23.4(3)** Fabrication, temporary cementation, and removal of provisional restorations;
- 23.4(4)** Applying cavity liners and bases; desensitizing agents; and bonding systems, to include the placement of orthodontic brackets, following the determination of location by the supervising dentist;
- 23.4(5)** Monitoring of patients receiving nitrous oxide inhalation analgesia, which may include increasing oxygen levels as needed, pursuant to the following:
 - a. A dentist shall induce a patient and establish the maintenance level;

DENTAL BOARD[650](cont'd)

- b. A dental assistant may make adjustments that decrease the nitrous oxide concentration during the administration of nitrous oxide;
- c. A dental assistant may turn off the oxygen delivery at the completion of the dental procedure;
- 23.4(6)** Taking final impressions;
- 23.4(7)** Removal of adhesives using nonmotorized hand instrumentation;
- 23.4(8)** Placement of Class 1 temporary filling materials; and
- 23.4(9)** Recementation of provisional restorations.

650—23.5(153) Level 1 expanded function procedures for dental hygienists. Level 1 expanded function procedures for dental hygienists include:

- 23.5(1)** Taking occlusal registrations;
- 23.5(2)** Placement and removal of gingival retraction material;
- 23.5(3)** Fabrication, temporary cementation, and removal of provisional restorations;
- 23.5(4)** Applying cavity liners and bases and applying bonding systems for restorative purposes, including the placement of orthodontic brackets, following the determination of location by the supervising dentist;
- 23.5(5)** Taking final impressions;
- 23.5(6)** Placement of Class 1 temporary filling materials; and
- 23.5(7)** Recementation of provisional restorations.

650—23.6(153) Level 2 expanded function procedures for dental hygienists and dental assistants.

- 23.6(1)** Level 2 expanded function procedures for dental hygienists and dental assistants include:
 - a. Placement and shaping of amalgam following preparation of a tooth by a dentist;
 - b. Placement and shaping of adhesive restorative materials following preparation of a tooth by a dentist;
 - c. Polishing of adhesive restorative material using a slow-speed handpiece;
 - d. Fitting of stainless steel crowns on primary posterior teeth, and cementation after fit verification by the dentist;
 - e. Tissue conditioning (soft reline only);
 - f. Extraoral adjustment to acrylic dentures without making any adjustments to the prosthetic teeth; and
 - g. Placement of intracoronal temporary fillings following preparation of a tooth by a dentist.
- 23.6(2)** These Level 2 expanded function procedures refer to both primary and permanent teeth except as otherwise noted.

650—23.7(153) Expanded function training.

23.7(1) *Approved expanded function training programs.* Training programs for Level 1 and Level 2 expanded function procedures must be board-approved. Training programs for Level 2 expanded function procedures shall be eligible for board approval if the training is offered through the University of Iowa College of Dentistry or another accredited school.

23.7(2) *Certificates of completion.* All board-approved training programs are authorized and required to issue certificates to dental hygienists and dental assistants who successfully complete expanded function training. A certificate shall be issued for one or more of the listed expanded function procedures completed as Basic Level 1, or a certificate shall be issued for Certified Level 1 or Certified Level 2. Dental hygienists and dental assistants shall prominently display the expanded functions certificate in each dental facility where services are provided.

23.7(3) *Training requirements.* Training may be completed in one or more of the listed expanded function procedures. Clinical training in expanded function procedures must be completed under observational supervision. Beginning January 1, 2020, Level 1 expanded function training must consist of the following:

- a. An initial assessment to determine the base entry level of all participants in the program;

DENTAL BOARD[650](cont'd)

b. Completion of a training program that meets the following minimum standards for each function:

(1) Taking occlusal registrations:

Goal: To reproduce the patient's jaw relationship accurately.

Standard: Demonstrate an accurate occlusal registration confirmed by a supervising dentist.

Minimum training requirement: One hour of didactic training, and clinical training that includes a minimum of five patient experiences under observational supervision.

(2) Placement and removal of gingival retraction material:

Goal: To expose the margins of a crown by displacing tissue from the tooth.

Standard: Perform the procedural steps to place and remove retraction material and recognize oral conditions and techniques that may compromise tissue displacement or patient health.

Minimum training requirement: Two hours of didactic training, the equivalent of one hour of laboratory training that includes a minimum of three experiences, and clinical training that includes a minimum of five patient experiences under observational supervision.

(3) Fabrication, temporary cementation and removal of provisional restorations:

Goal: To replicate the anatomy and function of the natural tooth, prior to the final restoration.

Standard: Use various methods to fabricate and temporarily cement single-unit and multiunit provisional restorations.

Minimum training requirement: Four hours of didactic training, the equivalent of four hours of laboratory training that includes a minimum of five experiences, and clinical training that includes a minimum of ten patient experiences under observational supervision.

(4) Applying cavity liners and bases; desensitizing agents; and bonding systems, to include the placement of orthodontic brackets, following the determination of location by the supervising dentist:

Goal: To apply appropriate material that protects existing tooth structure and adheres existing tooth structure to restorative materials.

Standard: Manipulate and apply appropriate material to meet clinical competency.

Minimum training requirement: Two hours of didactic training, the equivalent of one hour of laboratory training that includes a minimum of two experiences, and clinical training that includes a minimum of 5 patient experiences in each one of these areas (for a total of 15 patient experiences under observational supervision).

(5) Monitoring of patients receiving nitrous oxide inhalation analgesia, pursuant to subrule 23.4(5):

Goal: Understand the equipment, recognize the signs of patient distress or adverse reaction, and know when to call for help.

Standard: Exercise the ability to maintain patient safety while nitrous oxide is used.

Minimum training requirement: Two hours of didactic training, one hour of laboratory training in the office where the dental hygienist or dental assistant is employed, and five patient experiences under observational supervision.

(6) Taking final impressions:

Goal: Reproduce soft and hard oral tissues, digitally or with impression materials.

Standard: Complete the procedural steps to obtain a clinically acceptable final impression.

Minimum training requirement: Three hours of didactic training, and the equivalent of clinical training that includes a minimum of six patient experiences under observational supervision.

(7) Removal of adhesives using nonmotorized hand instrumentation:

Goal: Remove excess adhesives and bonding materials to eliminate soft tissue irritation.

Standard: Identify how, when and where to remove excessive bonding or adhesive material.

Minimum training requirement: One hour of didactic training, and clinical training that includes a minimum of five patient experiences under observational supervision.

(8) Placement of Class 1 temporary filling materials:

Goal: Place Class 1 temporary filling materials following preparation of a tooth by a dentist.

Standard: Identify how, when and where to place Class 1 temporary filling materials.

Minimum training requirement: One hour of didactic training, and clinical training that includes a minimum of five patient experiences under observational supervision.

DENTAL BOARD[650](cont'd)

(9) Recementation of provisional restorations:

Goal: Secure the provisional restoration to a previously prepared tooth after the provisional restoration has become loose or dislodged.

Standard: Use various methods to fabricate and temporarily cement single-unit and multiunit provisional restorations.

Minimum training requirement: If this training is completed in conjunction with training in fabrication, temporary cementation and removal of provisional crown and bridge restorations, the training requirements may be combined since the procedures are related. If this training is being completed separately, the same training requirements for fabrication, temporary cementation and removal of provisional restorations applies.

c. A postcourse written examination at the conclusion of the training program, with a minimum of ten questions per function, must be administered. Participants must obtain a score of 75 percent or higher on each examination administered.

23.7(4) Grandfathering. Any dental hygienist or dental assistant who has completed expanded function training prior to January 1, 2020, can continue to perform expanded function procedures for which training has been completed. For any expanded function procedures that are new, in whole or in part, additional training to satisfy the standard and minimum training requirement is required of the dental hygienist or dental assistant prior to performing the new expanded function procedure.

These rules are intended to implement Iowa Code chapter 153.

ITEM 10. Amend paragraph **25.10(2)“f”** as follows:

f. For dental assistants registered pursuant to rule ~~650—20.7(153)~~ 650—20.6(153), the current biennium renewal period, or portion thereof, following original issuance of the registration.

[Filed 8/22/19, effective 10/30/19]

[Published 9/25/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/25/19.

ARC 4677C

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to residential and motor vehicle services contracts

The Insurance Division hereby amends Chapter 103, “Residential Service Contracts,” and rescinds Chapter 104, “Motor Vehicle Service Contracts,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 516E.7 and 523C.10 and 2019 Iowa Acts, Senate File 619, section 18.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 516E and 523C and 2019 Iowa Acts, Senate File 619.

Purpose and Summary

These amendments augment 2019 Iowa Acts, Senate File 619, which, in part, updates provisions regarding the licensing of residential service companies and motor vehicle service companies that enter into residential service contracts and motor vehicle service contracts with consumers. This rule making is intended to provide guidance to residential service companies and motor vehicle service companies

INSURANCE DIVISION[191](cont'd)

regarding how their current license or registration status will be administered by the Division now that the new law has become effective.

The new law took effect upon enactment, according to 2019 Iowa Acts, Senate File 619, section 19. The Governor signed the law, thereby making it effective, on May 16, 2019.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 19, 2019, as **ARC 4496C**. This rule making was also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 4495C** on the same date. A public hearing was held on July 16, 2019, at 2 p.m. in the Division's offices on the fourth floor of Two Ruan Center, 601 Locust Street, Des Moines, Iowa. No one attended the public hearing. One comment was received prior to the public hearing. The comment concerned renumbered subrule 103.2(1) regarding scope and whether the subrule, as drafted, would create a dual regulatory framework for companies selling from Iowa to residents in another state. After discussion with the commenter, the Division has revised rule 191—103.2(523C) to strike the subrule (existing 103.2(2) herein) and to update the catchwords of the rule, because Iowa Code section 523C.2 as amended adequately addresses scope.

Adoption of Rule Making

This rule making was adopted by Doug Ommen, Iowa Insurance Commissioner, on September 5, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

These rules do not include a provision for the waiver of the rule because the Division's general waiver rules of 191—Chapter 4 apply.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on October 30, 2019, at which time the Adopted and Filed Emergency rule making is hereby rescinded.

The following rule-making actions are adopted:

ITEM 1. Amend **191—Chapter 103**, title, as follows:

RESIDENTIAL AND MOTOR VEHICLE SERVICE CONTRACTS

INSURANCE DIVISION[191](cont'd)

ITEM 2. Amend rule 191—103.1(523C) as follows:

191—103.1(523C) Purpose. The purpose of this chapter is to administer Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, relating to residential service contracts as defined in Iowa Code section 523C.1(9) service contracts and service companies.

ITEM 3. Amend rule 191—103.2(523C) as follows:

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

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

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

~~103.2(3)~~ The definitions in Iowa Code sections section 523C.1 and 523C.8A(3) as amended by 2019 Iowa Acts, Senate File 619, section 1, are incorporated by this reference. In addition, the following definitions shall apply to this chapter.

“*Division*” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619.

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

“*Guarantee or warranty*” means:

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

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

“*Residential customer,*” as used in the definition of “residential service contract” in Iowa Code section 523C.1 as amended by 2019 Iowa Acts, Senate File 619, section 1, means any person (whether or not the person is the owner of the residential property) who purchases a residential service contract relating to a residential property.

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

“*Service contract holder*” means the original purchaser of a service contract or the successor in interest or transferee entitled to services under the contract.

“*Structural components,*” as used in the definition of “residential service contract” in Iowa Code section 523C.1 as amended by 2019 Iowa Acts, Senate File 619, section 1, means the roof, foundation, basement, walls, ceiling or floors of a residential property.

ITEM 4. Rescind rule 191—103.3(523C) and adopt the following **new** rule in lieu thereof:

191—103.3(523C) Filings of forms, contracts and other items. If Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, or this chapter requires an item to be filed with the division, the applicable item shall be filed with the division’s securities and regulated industries bureau, regardless of whether the applicable item has already been filed elsewhere within the division.

INSURANCE DIVISION[191](cont'd)

ITEM 5. Amend rule 191—103.4(523C) as follows:

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

ITEM 6. Rescind rule 191—103.5(523C) and adopt the following **new** rule in lieu thereof:

191—103.5(523C) Financial security deposits.

103.5(1) For purposes of Iowa Code section 523C.5(2)“b” as enacted by 2019 Iowa Acts, Senate File 619, section 5, “placing in trust with the commissioner” means filing a surety bond with the commissioner or creating a financial or custodial account in a manner acceptable to the commissioner.

103.5(2) Requirements for surety bonds.

a. A surety bond filed with the commissioner as a financial security deposit pursuant to Iowa Code section 523C.5(2)“b” as enacted by 2019 Iowa Acts, Senate File 619, section 5, shall be in the form directed by the division and as available on the division's website.

b. A surety bond filed with the commissioner as a financial security deposit pursuant to Iowa Code section 523C.5(2)“b” as enacted by 2019 Iowa Acts, Senate File 619, section 5, shall cover service contracts still outstanding that predate the effective date of the surety bond and any service contracts executed during the surety bond's period of coverage except service contracts that have been rescinded or fulfilled or that are secured by another bond.

c. No suit or action shall be commenced by a surety bond claimant later than one year after the expiration date of the surety bond.

d. The surety bond shall, in the event of the service company's failure to perform under the service contract or otherwise, either reimburse or pay on behalf of the service company any covered amounts that the service company is legally obligated to pay under the service contract.

e. The surety bond is for the benefit of and subject to recovery by any Iowa service contract holder sustaining actionable injury due to the failure of the service company to perform its obligations under a service contract. A holder of a service contract issued in this state may, in the event of nonperformance of the contract by the service company, maintain an action and file a claim against the surety bond filed. The surety's liability shall extend to all service contracts issued by the service company and outstanding in this state, provided, however, that the surety's aggregate liability shall not exceed the penal sum of the bond.

f. The surety bond cannot be canceled by the surety except upon written notice of cancellation by the surety to the commissioner by certified mail, and not prior to the expiration of 60 days after receipt of the notice by the commissioner.

g. A service company shall maintain an adequate surety bond and shall continuously monitor the surety amount to assure its adequacy.

ITEM 7. Amend rule 191—103.6(523C) as follows:

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

103.6(1) No change.

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

103.6(3) and **103.6(4)** No change.

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

a. A service company shall not:

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

(2) No change.

INSURANCE DIVISION[191](cont'd)

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

(4) to (7) No change.

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

(9) Require the use of used parts in the repair of a motor vehicle covered by a motor vehicle service contract unless the service company has obtained prior written authorization by the vehicle owner or unless all of the following are true regarding any rebuilt parts:

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

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

ITEM 8. Amend rule 191—103.7(523C) as follows:

191—103.7(523C) Service company licenses.

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

~~103.7(2)~~ **103.7(1)** Service company licenses shall not be transferable. A service company which sells its business shall cancel its service company license, and the purchaser of the business shall apply for a new service license under the purchaser's name.

103.7(2) A service company licensed or registered with the division on April 1, 2019, in accordance with Iowa Code chapter 516E or 523C shall be deemed licensed with the insurance division under Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, until August 31, 2019, without any additional application or filing.

ITEM 9. Rescind and reserve rule **191—103.8(523C)**.

ITEM 10. Amend rule 191—103.9(523C) as follows:

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

103.9(1) All financial statements, including balance statements, filed pursuant to or prepared for purposes of Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, or this chapter shall be prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.

103.9(2) For purposes of Iowa Code section ~~523C.6~~ 523C.5 as enacted by 2019 Iowa Acts, Senate File 619, section 5, "net worth" means the excess of all assets over liabilities, and any required reserves shall be treated as a liability rather than as an asset.

INSURANCE DIVISION[191](cont'd)

ITEM 11. Amend rule 191—103.10(523C) as follows:

191—103.10(523C) Records.

103.10(1) All licensed service companies and independent depositories shall keep accurate accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619.

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

- a. Copies of all service contracts;
- b. The name and address of each ~~residential customer~~ service contract holder; and
- ~~c. The name and address of each independent depository; and~~
- ~~d. c.~~ The dates and amounts of all receipts and expenditures related to all service contracts.

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

103.10(4) All licensed service companies and independent depositories shall make all accounts, books, and records concerning transactions regulated under Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, available to the division for the purpose of examination.

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

ITEM 12. Amend rule 191—103.15(523C) as follows:

191—103.15(523C) Violations. Failure to comply with this chapter or with Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619, shall be deemed a violation which shall subject a person or entity to the procedures and penalties set forth in Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619.

ITEM 13. Amend **191—Chapter 103**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 523C as amended by 2019 Iowa Acts, Senate File 619.

ITEM 14. Rescind and reserve **191—Chapter 104.**

[Filed 9/5/19, effective 10/30/19]

[Published 9/25/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/25/19.

ARC 4678C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to filing electronic forms

The Revenue Department hereby amends Chapter 46, "Withholding," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 421.14, 422.16 and 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 422.16.

REVENUE DEPARTMENT[701](cont'd)

Purpose and Summary

In 2016, pursuant to **ARC 2739C**, the Department implemented new filing requirements for W-2 and 1099 forms. The adopted rules phased in the new filing requirements over two years. For tax year 2016, only withholding agents with at least 50 employees were required to electronically file W-2 forms. For tax year 2017, all withholding agents were required to electronically file W-2 and 1099 forms. To allow additional time to implement these new requirements, the Department extended the phase-in for one year, pursuant to **ARC 3429C**, in late 2017.

Based on the challenges many withholding agents experienced during the 2018 filing season, the Department is amending its rules to require that agents only need to file forms for employees from whom tax was withheld. The Department is also moving the relevant filing deadline from January 31 annually to February 15 annually. Since January 31 is a filing deadline for a variety of other forms and claims, moving this deadline should improve the Department's ability to respond to withholding agents who contact the Department for assistance.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 31, 2019, as **ARC 4561C**. The Department received public comments from three people or organizations on two issues. The first set of comments related to the burden on smaller employers that have to use a third-party vendor to submit the above-mentioned forms. In tandem with this amendment, the Department is in the process of developing an alternative method for providing the information to the Department. That process will be ready for the next filing season, and the Department will communicate additional information on that process to interested stakeholders when it is ready.

The Department also received a technical suggestion regarding subparagraph 46.3(3)“g”(1) to replace the word “employees” with “persons,” since not all recipients of 1099s and W-2Gs are employees of withholding agents. The Department agreed with this suggestion, and this Adopted and Filed rule reflects that adjustment.

Adoption of Rule Making

This rule making was adopted by the Department on September 4, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

REVENUE DEPARTMENT[701](cont'd)

Effective Date

This rule making will become effective on October 30, 2019.

The following rule-making action is adopted:

Amend paragraphs 46.3(3)“d” to “g” as follows:

d. Reports for employee.

(1) General rule. Every employer required to deduct and withhold tax from compensation of an employee must furnish to each employee with respect to the compensation paid in Iowa by such employer during the calendar year, a statement containing the following information: the name, address, and federal employer identification number of the employer; the name, address, and social security number of the employee; the total amount of compensation paid in Iowa; the total amount deducted and withheld as tax under subrule 46.1(1).

(2) Form of statement. The information required to be furnished an employee under the preceding paragraph shall be furnished on an Internal Revenue Service combined Wage and Tax Statement, Form W-2, hereinafter referred to as “combined W-2.” Any reproduction, modification or substitution for a combined W-2 by the employer must be approved by the department. Employers should keep copies of the combined W-2 for four years from the end of the year for which the combined W-2 applies.

(3) Time for furnishing statement. Each statement required by paragraph “d” to be furnished for a calendar year and each corrected statement required for any prior year shall be furnished to the employee on or before ~~January 31~~ February 15 of the year succeeding such calendar year, or if an employee’s employment is terminated before the close of a calendar year without expectation that it will resume during the same calendar year, within 30 days from the day on which the last payment of compensation is made, if requested by such employee. See paragraph 46.3(3)“e” for provisions relating to the filing of copies of the combined W-2 with the department of revenue.

(4) Corrections. An employer must furnish a corrected combined W-2 to an employee if, after the original statement has been furnished, an error is discovered in either the amount of compensation shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. Such statement shall be marked “corrected by the employer.” See paragraph 46.3(3)“e” for provisions relating to the filing of a corrected combined W-2 with the department.

(5) Undelivered combined W-2. Any employee’s copy of the combined W-2 which, after reasonable effort, cannot be delivered to an employee shall be transmitted to the department with a letter of explanation.

(6) Lost or destroyed. If the combined W-2 is lost or destroyed, the employer shall furnish a substitute copy to the employee. The copy shall be clearly marked “Reissued by Employer.”

e. Annual verified summary of payments reports.

(1) Every withholding agent required to withhold Iowa income tax under subrules 46.1(1), 46.1(2), 46.1(3), and 46.4(1) is to furnish to the department of revenue on or before ~~the last day of January~~ February 15 following the tax year an annual Verified Summary of Payments Report (VSP).

The withholding agent completing the VSP form must enter the total Iowa income tax withheld that is shown on the W-2 forms and 1099 forms for the year, the new jobs credits, supplemental jobs credits, accelerated career education credits and housing assistance credits claimed on withholding returns for the year. In addition, the withholding agent must enter on the VSP the withholding payments made for the year. If the amount of Iowa income tax withholding remitted to the department of revenue for the year is less than the withholding tax and withholding credits claimed, the withholding agent is to report the additional withholding tax due on an amended return and submit payment to the department.

If the Iowa income tax shown as withheld on the W-2s and 1099s issued for the tax year is less than the amount of withholding tax remitted to the department of revenue by the withholding agent, the agent should file an amended return with the department reflecting the excess tax paid.

(2) For Verified Summary of Payments Report forms filed with the department of revenue for the year 2000 through the year 2016, the withholding agents are not to submit W-2 forms and 1099 forms with the reports. However, the withholding agents should supply W-2 forms or 1099 forms as requested

REVENUE DEPARTMENT[701](cont'd)

by personnel of the department of revenue if the request for the forms is made within three years from the end of the year for which the W-2 forms or 1099 forms apply. Therefore, if a request is made to a withholding agent for a W-2 form or a 1099 form for the year 2013, the request is valid if the request is postmarked, faxed or made on or before December 31, 2016.

(3) Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

f. W-2 forms.

~~(1) Beginning in 2017 for tax years 2016 and 2017, withholding agents with at least 50 employees are required to electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year. Withholding agents with fewer than 50 employees may, but are not required to, electronically file W-2 forms with the department of revenue on or before the last day of January following the tax year.~~

~~(2) (1) Beginning in 2019 for~~ For tax year 2018 2019 and all subsequent tax years, all withholding agents are required to electronically file W-2 forms for employees from whom tax was withheld with the department of revenue on or before the last day of January February 15 following the tax year.

~~(3) (2)~~ The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the 2020 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

~~(4) (3)~~ Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

g. 1099 forms and W-2G forms.

~~(1) Beginning in 2017 for tax years 2016 and 2017, withholding agents with at least fifty 1099 forms and W-2G forms may file 1099 forms and W-2G forms with the department of revenue on or before the last day of January following the tax year.~~

~~(2) (1) Beginning in 2019 for~~ For tax year 2018 2019 and all subsequent tax years, all withholding agents are required to electronically file all 1099 forms and W-2G forms for persons from whom tax was withheld on or before the last day of January February 15 following the tax year.

~~(3) (2)~~ The department of revenue may, in a case involving a hardship, extend the requirement to electronically file to the 2020 tax year. No extension of time shall be granted unless the withholding agent makes a written request to the department of revenue for such action.

~~(4) (3)~~ Penalty. Failure to meet the filing requirements set out in this paragraph will subject withholding agents to the penalties under Iowa Code section 422.16(10).

[Filed 9/4/19, effective 10/30/19]

[Published 9/25/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/25/19.

ARC 4679C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to exemption for commercial enterprises

The Revenue Department hereby amends Chapter 225, "Resale and Processing Exemptions Primarily of Benefit to Retailers," Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

REVENUE DEPARTMENT[701](cont'd)

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3 as amended by 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

The Department adopts this rule making to implement an exemption from sales tax added to Iowa Code section 423.3 by 2018 Iowa Acts, Senate File 2417, section 188. Iowa Code section 423.3(104) exempts from sales tax specified digital products, prewritten computer software, and certain enumerated services sold or furnished to a commercial enterprise when used exclusively by the commercial enterprise. The exemption defines “commercial enterprise” to mean the same as it is defined in Iowa Code section 423.3(47)“d”(1) but also adds professions and occupations. Iowa Code section 423.3(104) also directs the Director of the Department to define “de minimis” and “noncommercial purposes” as used in the exemption.

This rule making provides definitions of those two terms and provides some examples to illustrate when a product is being exclusively used by a commercial enterprise. Prior to publication of the Notice of Intended Action, the Department shared the rule with interested stakeholders and received no comments or concerns.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 31, 2019, as **ARC 4562C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Department on September 4, 2019.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The impact of the exemption itself was not represented individually by the Legislative Services Agency Fiscal Note for 2018 Iowa Acts, Senate File 2417, but was incorporated into the Fiscal Note’s calculation of the additional revenue to be generated by the taxation of “digital goods” generally. Table 7 of the Fiscal Note projected additional revenue collection related to “digital goods” to be \$11.8 million for FY 2019, \$26.2 million for FY 2020, \$28.8 million for FY 2021, \$31.1 million for FY 2022, \$33.6 million for FY 2023, and \$35.6 million for FY 2024.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

REVENUE DEPARTMENT[701](cont'd)

Effective Date

This rule making will become effective on October 30, 2019.

The following rule-making action is adopted:

Adopt the following **new** rule 701—225.8(423):

701—225.8(423) Exemption for commercial enterprises.

225.8(1) Commercial enterprise as purchaser. A purchaser seeking this exemption must be a commercial enterprise as defined in Iowa Code section 423.3(104) “b”(1). For purposes of Iowa Code section 423.3(104) “b”(1), the terms “profession” and “occupation” mean the same as defined in 701—paragraph 230.18(3) “c.”

225.8(2) Exclusive use by a commercial enterprise. A commercial enterprise must be the exclusive user of the product. Use in the ordinary course of a commercial enterprise’s business constitutes exclusive use by a commercial enterprise. Uses by all other users, including entities other than commercial enterprises, do not constitute uses by a commercial enterprise.

a. Examples of exclusive uses. The following are examples of exclusive uses by a commercial enterprise in the normal course of business:

- (1) Word processing software loaded onto employees’ work computers.
- (2) Software that displays a menu on a tablet used by customers at a restaurant.
- (3) Information services used by temporary employees of a commercial enterprise in the ordinary course of business.

b. Examples of disqualifying nonexclusive uses. The following are examples of uses that are not exclusive uses by a commercial enterprise or uses in the ordinary course of business:

- (1) Software shared by a commercial enterprise with an entity that is not a commercial enterprise.
- (2) Video games that customers may purchase on a tablet that is provided at a restaurant for customers to use while waiting for service.

225.8(3) Noncommercial purposes. “Noncommercial purposes” means purposes that are outside of carrying out the business purpose of a commercial enterprise or purposes outside of the ordinary course of business of a commercial enterprise. The following are examples of uses for noncommercial purposes:

- a.* Personal and recreational use.
- b.* Holding a product for future use for a noncommercial purpose.

225.8(4) De minimis. “De minimis” means an amount of use of a product for noncommercial purposes that, when considering the product’s value and the frequency with which the use for noncommercial purposes occurs during the product’s total use time, is so small as to make accounting for that use unreasonable or impractical. Whether a use is de minimis is a fact-based determination that shall be made on a case-by-case basis.

This rule is intended to implement Iowa Code section 423.3(104).

[Filed 9/4/19, effective 10/30/19]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/25/19.

| AGENCY | RULE | DELAY |
|--------------------------------|---|---|
| Human Services Department[441] | amendments to chs 78, 79 [IAB 5/8/19, ARC 4430C] | Effective date of July 1, 2019, delayed until the adjournment of the 2020 session of the General Assembly by the Administrative Rules Review Committee at its meeting held June 11, 2019. [Pursuant to §17A.8(9)] Delay Lifted: At its meeting held September 10, 2019, the Committee lifted the delay, effective September 10, 2019. |