



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2015

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 9, 2015	October 28, 2015
10	Wednesday, October 21, 2015	November 11, 2015
11	Wednesday, November 4, 2015	November 25, 2015

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 13, 2015, 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”

Updates related to Senate File 198; attest services; license renewal; mandatory disclosures; continuing education; resource updates, amendments to chs 1, 3, 5 to 8, 10, 11, 13, 14
Filed **ARC 2152C**..... 9/30/15

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Travel, employment examinations and applicant lists, education financial assistance, procurements—clarifications and updates, amendments to chs 41, 42, 54, 56, 64, 117,
 119 Notice **ARC 2145C**..... 9/16/15
 Contract compliance, ch 121 Notice **ARC 2144C**..... 9/16/15

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EDUCATION DEPARTMENT[281]“umbrella”

Approval of postsecondary schools—interstate reciprocity agreement, registration, amendments to ch 21 Notice **ARC 2143C**..... 9/16/15

CORRECTIONS DEPARTMENT[201]

Iowa state industries, 37.2(5), 37.3, 37.4, 37.7, 37.8(1), 37.9 Notice **ARC 2161C**..... 9/30/15

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Authorized practice, expanded function procedures and education and training for dental hygienists; update of bureau name, 10.3, 10.5 Filed **ARC 2141C**..... 9/16/15

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Landfill alternatives financial assistance programs, ch 209 Notice **ARC 2140C**..... 9/16/15

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Wireless NG911 implementation and operations plan, 10.2, 10.7(2), 10.8(5), 10.9(3)
Notice **ARC 2154C**..... 9/30/15

HUMAN SERVICES DEPARTMENT[441]

Update of references, codes and diagnoses related to medical resource manuals, amendments to chs 24, 25, 78, 79, 83, 88, 90 Filed **Emergency After Notice** **ARC 2164C**..... 9/30/15
 Family investment program (FIP) hardship exemption—removal of exclusion for families with qualified children and a nonqualified alien adult member, 41.24(4), 41.30, 46.21
Notice **ARC 2147C**..... 9/16/15
 Provider participation requirements for psychologists; claim forms, 77.22, 80.2 Filed **ARC 2165C**..... 9/30/15
 Services rendered via telehealth, 78.55 Filed **ARC 2166C**..... 9/30/15
 Intellectual disability waiver services cost-savings initiative, 79.1(2), 83.66
Amended Notice **ARC 2153C**..... 9/30/15
 Threshold for combined claims for inpatient hospital readmissions, 79.1(5)“g”(5) Filed **ARC 2167C**..... 9/30/15
 Intellectual disability waiver services—supports intensity scale (SIS) assessment, 83.60, 83.61(2), 83.62(3)“c,” 83.64 Filed **ARC 2168C**..... 9/30/15
 Child care program licensure—changes in allowable exemptions, amendments to chs 109, 170 Filed **ARC 2169C**..... 9/30/15

INSPECTIONS AND APPEALS DEPARTMENT[481]

Update of CFR references related to food processing plants, egg products processing plants, and pork products prepared at retail, 31.1(19), 31.2 Notice **ARC 2171C**..... 9/30/15
 Hospitals—minimum standards for construction, 51.50 Filed **ARC 2157C**..... 9/30/15
 Health care facilities—contested cases, fines and citations, 56.3(5), 56.14 to 56.16 Filed **ARC 2158C**..... 9/30/15
 Residential care facilities—implementation of orders for medications and treatments, 57.11(7) Notice **ARC 2162C**..... 9/30/15
 Elder group homes, assisted living programs, and adult day services—informal conference, contested case hearing, 67.14 Filed **ARC 2142C**..... 9/16/15

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

- Limited licenses for motor vehicle rental companies and counter employees and for persons who sell portable electronics insurance, 10.51 to 10.60 Notice **ARC 2174C** 9/30/15
- Sales of cemetery merchandise, funeral merchandise and funeral services, amend ch 15; rescind chs 100 to 105; adopt ch 100 Notice **ARC 2173C** 9/30/15
- Regulation of securities offerings and those who engage in the securities business, amendments to ch 50 Filed **ARC 2175C** 9/30/15
- Intrastate crowdfunding exemption, 50.90 Notice **ARC 2172C** 9/30/15

IOWA PUBLIC INFORMATION BOARD[497]

- Complaint investigation and resolution process, 2.2 to 2.4 Filed **ARC 2139C** 9/16/15
- Open meetings—closed session, 8.2 Notice **ARC 2159C** 9/30/15
- Waivers or variances from administrative rules, ch 9 Filed **ARC 2138C** 9/16/15

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

- Federal occupational safety and health standards related to confined spaces in the construction industry—adoption by reference, 26.1 Filed **ARC 2136C** 9/16/15
- Elevator safety—alteration permits, 71.9(6) Notice **ARC 2163C** 9/30/15

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Hearing aid dispensers—change in professional title to “specialists,” amendments to chs 4, 5, 121 to 124 Filed **ARC 2151C** 9/16/15

PUBLIC HEALTH DEPARTMENT[641]

- Swimming pools—use for commercial purposes, underwater lighting, 15.3(1), 15.5(13) Notice **ARC 2148C** 9/16/15
- Vital records—fees, access, searches and issuance of certified copies, confidentiality, amendments to ch 95 Notice **ARC 2155C** 9/30/15
- Registration of deaths—electronic statewide vital records system, 97.5, 97.8(4) Notice **ARC 2156C** 9/30/15
- Medical residency training state matching grants program, 108.3, 108.4 Filed **ARC 2179C** 9/30/15
- Scope of practice for Iowa EMS providers—adoption by reference, 131.3(3)“b” Notice **ARC 2150C** 9/16/15
- Scope of practice for Iowa EMS providers—adoption by reference, 132.2(4)“b” Notice **ARC 2149C** 9/16/15
- Certificate of need review process for new or changed institutional health service—rescission of excluded and unused standards, rescind 203.1, 203.6, 203.7, 203.9 to 203.11 Notice **ARC 2177C** 9/30/15

PUBLIC SAFETY DEPARTMENT[661]

- Wireless communications service provider database, ch 87 Notice **ARC 2170C** 9/30/15

REGENTS BOARD[681]

- Resident classification of veterans, qualified military persons and other qualified individuals, 1.4(2)“b” Notice **ARC 2176C** 9/30/15

REVENUE DEPARTMENT[701]

- Qualification for manufacturing exemption, 15.3(3), 18.29(7), 18.58, 219.11, 219.12, 219.13(3), 230.5, 230.14 to 230.22 Notice **ARC 2178C** 9/30/15
- Multiresidential real estate assessment—dual classification, 71.1(5) Filed **ARC 2146C** 9/16/15

VOTER REGISTRATION COMMISSION[821]

- Online voter registration, 2.4, 2.8(2), 8.1, 11.6 Notice **ARC 2160C** 9/30/15

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 Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Mark Costello
37265 Rains Avenue
Imogene, Iowa 51645

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

Senator Wally Horn
101 Stoney Point Road, SW
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Oskaloosa, Iowa 52577

Larry Johnson, Jr.
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Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Travel, employment examinations and applicant lists, education financial assistance, procurements—clarifications and updates, amendments to chs 41, 42, 54, 56, 64, 117, 119 IAB 9/16/15 ARC 2145C	Room 8, A Level Hoover State Office Bldg. Des Moines, Iowa	October 6, 2015 3 to 4 p.m.
Contract compliance, ch 121 IAB 9/16/15 ARC 2144C	Room 8, A Level Hoover State Office Bldg. Des Moines, Iowa	October 6, 2015 9 to 10 a.m.

CORRECTIONS DEPARTMENT[201]

Iowa state industries, 37.2(5), 37.3, 37.4, 37.7, 37.8(1), 37.9 IAB 9/30/15 ARC 2161C	Department Conference Room 510 E. 12th St. Des Moines, Iowa	October 20, 2015 11 a.m. to 1 p.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Landfill alternatives financial assistance programs, ch 209 IAB 9/16/15 ARC 2140C	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 6, 2015 1 p.m.
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HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Wireless NG911 implementation and operations plan, 10.2, 10.7(2), 10.8(5), 10.9(3) IAB 9/30/15 ARC 2154C	Cyclone Conference Room, Suite 500 7900 Hickman Rd. Windsor Heights, Iowa	October 20, 2015 11 a.m.
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HUMAN SERVICES DEPARTMENT[441]

Intellectual disability waiver services cost-savings initiative, 79.1(2), 83.66 IAB 9/30/15 ARC 2153C (See ARC 2097C , IAB 8/5/15)	<i>Eastern Service Area</i> First Floor Board Room 600 W. 4th St. Davenport, Iowa	October 21, 2015 2 to 3 p.m.
	<i>Northern Service Area</i> Conference Room 201 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	October 21, 2015 10 to 11 a.m.
	<i>Des Moines Service Area</i> Conference Rm. 3-3A, River Place 2309 Euclid Ave. Des Moines, Iowa	October 23, 2015 9:30 to 11:30 a.m.
	<i>Western Service Area</i> Public Library 400 Willow Ave. Council Bluffs, Iowa	October 22, 2015 2 to 3 p.m.
	<i>Cedar Rapids Service Area</i> Schwab Auditorium Public Library 1404 5th St. Coralville, Iowa	October 22, 2015 12:30 to 2:30 p.m.

INSURANCE DIVISION[191]

Limited licenses for motor vehicle rental companies and counter employees and for persons who sell portable electronics insurance, 10.51 to 10.60 IAB 9/30/15 ARC 2174C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	October 20, 2015 2 p.m.
Sales of cemetery merchandise, funeral merchandise and funeral services, amend ch 15; rescind chs 100 to 105; adopt ch 100 IAB 9/30/15 ARC 2173C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	October 21, 2015 10 a.m.
Intrastate crowdfunding exemption, 50.90 IAB 9/30/15 ARC 2172C	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	October 21, 2015 9 a.m.

LABOR SERVICES DIVISION[875]

Elevator safety—alteration permits, 71.9(6) IAB 9/30/15 ARC 2163C	Capitol View Room 100 E. Grand Ave. Des Moines, Iowa	October 21, 2015 2:30 p.m. (If requested)
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PUBLIC HEALTH DEPARTMENT[641]

Vital records—fees, access, searches and issuance of certified copies, confidentiality, 95.1, 95.6, 95.7, 95.9, 95.11(1), 95.12(2) IAB 9/30/15 ARC 2155C	<i>To participate via conference call:</i> Dial 1-866-685-1580 At prompt, enter 9327091718	October 23, 2015 10 to 11 a.m.
Registration of deaths—electronic statewide vital records system, 97.5, 97.8(4) IAB 9/30/15 ARC 2156C	<i>To participate via conference call:</i> Dial 1-866-685-1580 At prompt, enter 9327091718	October 23, 2015 10 to 11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Wireless communications service provider database, ch 87 IAB 9/30/15 ARC 2170C	First Floor Conference Room 125 Oran Pape Bldg. 215 E. 7th St. Des Moines, Iowa	October 20, 2015 10 a.m.
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The following list will be updated as changes occur.

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

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

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

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ARC 2161C

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 904.804, the Department of Corrections gives Notice of Intended Action to amend Chapter 37, “Iowa State Industries,” Iowa Administrative Code.

With these amendments, Iowa State Industries proposes to update rules on routine matters such as addresses, hours of operation, and location of product catalogs. The proposed amendments also clarify that products may be sold to contractors when the products will be sold to a public entity, adopt by reference the provisions of Department of Administrative Services rules dealing with procurement of goods and services, and add a definition governing private sector employment of offenders.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 20, 2015. Such written materials should be sent to the Director of Prison Industries, 510 East 12th Street, Des Moines, Iowa 50319.

There will be a public hearing on October 20, 2015, from 11 a.m. to 1 p.m. in the Department of Corrections Conference Room, 510 East 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who intends to attend the public hearing and has special requirements should contact the Department of Corrections and advise of specific needs.

These rules do not provide for waivers in specified situations. An agencywide waiver provision is provided in 201—Chapter 7.

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

These amendments are intended to implement Iowa Code section 904.804.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 37.2(5):

37.2(5) Iowa state industries may sell products to a general contractor when the products purchased will be sold to a public entity as provided in subrules 37.2(1) to 37.2(3). The public entity shall submit a written request to Iowa state industries specifying the products and quantities to be purchased. Such sales shall be limited to contractors involved in construction, renovation, and remodeling projects. Sales to a general contractor shall be approved by the Iowa state industries board of advisors.

ITEM 2. Rescind rules 201—37.3(904) and 201—37.4(904) and adopt the following **new** rules in lieu thereof:

201—37.3(904) Catalogs. Catalogs are available online at the Iowa state industries Internet home page <http://www.iaprisonind.com>, or at the Iowa state industries showroom located at 1445 East Grand Avenue, Des Moines, Iowa 50316. Requests for mailed copies may be sent to the Iowa state industries showroom address.

201—37.4(904) Offices. The showroom and main office for Iowa state industries are located at 1445 East Grand Avenue, Des Moines, Iowa 50316; telephone (515)242-5778. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 3. Amend rule 201—37.7(904) as follows:

201—37.7(904) Procurement of goods and services. The provisions of 11—Chapter ~~405~~ 117 are hereby adopted by reference with the following amendments.

1. Strike “Department of Administrative Services” and insert in lieu thereof “Iowa State Industries” in all rules except rule ~~11—105.10(8A)~~ 11—117.11(8A), which pertains to procurement of information technology devices and services.

2. In lieu of the definitions of “Department” and “Director,” insert the following:

“Department” means the division of Iowa state industries.

“Director” means the director of the division of Iowa state industries or the director’s designee.

3. ~~Rules 11—105.6(8A), 11—105.13(8A), and 11—105.15(8A) are not adopted.~~ Rules 11—117.7(8A) and 11—117.15(8A) and subrule 117.4(3) are not adopted.

4. In lieu of the text of ~~11—subrule 105.14(1)~~ 117.14(1), insert the following: “Purchase of goods. An agency may acquire goods not otherwise available through a master agreement in accordance with the procurement threshold guidelines in ~~11—105.3(8A)~~ subrule 117.5(3).”

5. In lieu of the text of rule ~~11—105.20(8A)~~ 117.20(8A), insert the following: “Appeal process. Vendors may appeal actions by Iowa state industries under these rules as follows:

“Step 1. Appeals shall be filed in writing to the Business Manager, Iowa State Industries, 406 North High Street, Anamosa, Iowa 52205, within ~~five~~ 5 working days of notification of the action being appealed. The appeal shall state the specific grounds upon which the vendor is challenging the action. The business manager, Iowa state industries, shall notify the vendor in writing of the decision within 10 working days.

“Step 2. If the appeal is not resolved, it may be further appealed by the vendor to the Director of Iowa State Industries, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319, within ~~ten~~ 10 working days of the notification of the Step 1 appeal response. The director of Iowa state industries shall notify the vendor in writing of the decision within 15 working days.

“Step 3. An unresolved appeal to the Director of Iowa State Industries shall be referred to the Director of the Department of Corrections, Jessie Parker State Office Bldg., 510 East 12th Street, Des Moines, Iowa 50319, within ~~ten~~ 10 working days of the notification of the Step 2 appeal response. The director of the department of corrections shall notify the vendor in writing of the decision within 15 working days.”

This rule is intended to implement Iowa Code section 904.813.

ITEM 4. Amend subrule 37.8(1) as follows:

37.8(1) Rules of procedure. The seven-member prison industries advisory board is represented by five appointees of the governor, one appointee of the parole board, and one appointee of the director, department of corrections. The principal duties of the advisory board are to promulgate and adopt rules and to advise the director, Iowa state industries, regarding the management of Iowa state industries.

a. A quorum shall consist of five members.

b. When a quorum is present, a position is carried by a majority of the members of the board.

c. The board shall meet at least once per calendar quarter. The meetings will be held at the seat of government unless notification is given otherwise. Other meetings shall be held at the call of the chairperson or of any three members when necessary for the board to discharge its duties.

~~(1) The communications media shall be notified at least two weeks in advance of board meetings.~~

(1) Notice of the meetings shall be given pursuant to Iowa Code chapter 21.

(2) When it is necessary to hold an emergency meeting, the communications media shall be notified as far in advance of the meeting as time allows. The nature of the emergency shall be stated in the minutes.

d. Copies of the minutes are kept on file in the office of the director, Iowa state industries. Minutes are available from the director’s office to interested persons upon request. Organizations may request to be placed on a mailing list. Copies of administrative rules and other materials considered are made a part of the minutes by reference.

e. In cases not covered by these rules, Robert’s Rules of Order shall govern.

CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 5. Amend rule 201—37.9(904) as follows:

201—37.9(904) Private sector employment projects.

37.9(1) Definitions.

“*Advisory board*” means the prison industries advisory board.

“*Deputy director of prison industries*” means the department of corrections deputy director responsible for the day-to-day operations of prison industries including private sector individuals.

“*Director*” means the chief executive officer of the department of corrections.

“*Wage range*” means the wage paid that is commensurate to wages paid to persons in similar jobs outside the correctional institution.

“*Workforce development board*” means the state workforce development board.

“*Workforce development director*” means the chief executive officer of the department of workforce development.

37.9(2) to 37.9(9) No change.

This rule is intended to implement Iowa Code section 904.809.

ARC 2154C

**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DEPARTMENT[605]**

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Department hereby gives Notice of Intended Action to amend Chapter 10, “Enhanced 911 Telephone Systems,” Iowa Administrative Code.

These proposed amendments are intended to implement 2015 Iowa Acts, House File 651, which amends Iowa Code chapter 34A, as well as adopt the latest revision of the “Wireless NG911 Implementation and Operations Plan.” These amendments focus on the plan as well as changes to the emergency communications service surcharge distribution process.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before October 20, 2015. Such written materials should be sent to the Administrative Rules Coordinator, Department of Homeland Security and Emergency Management, 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50324; fax (515)725-3260; or e-mail at john.benson@iowa.gov.

Also, there will be a public hearing on October 20, 2015, at 11 a.m. in the Department of Homeland Security and Emergency Management Cyclone Conference Room at 7900 Hickman Road, Suite 500, Windsor Heights, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

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

These amendments are intended to implement Iowa Code chapter 34A as amended by 2015 Iowa Acts, House File 651.

The following amendments are proposed.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

ITEM 1. Amend rule **605—10.2(34A)**, definition of “Emergency call,” as follows:

“*Emergency call*” means a telephone request or text message request for service which requires immediate action to prevent loss of life, reduce bodily injury, prevent or reduce loss of property and respond to other emergency situations determined by local policy.

ITEM 2. Amend subrule 10.7(2) as follows:

10.7(2) *Adoption by reference.* The “Wireless NG911 Implementation and Operations Plan,” effective ~~July 1, 2013~~ August 30, 2015, and available from the Homeland Security and Emergency Management Department, ~~7105 NW 70th Avenue, Camp Dodge, Bldg. W-4 Johnston~~ 7900 Hickman Road, Suite 500, Windsor Heights, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference effective ~~June 18, 2014~~ December 30, 2015.

ITEM 3. Amend subrule 10.8(5) as follows:

10.8(5) Surcharge funds shall be remitted on a calendar quarter basis by the close of business on the twentieth day following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Homeland Security and Emergency Management Department, ~~7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston~~ 7900 Hickman Road, Suite 500, Windsor Heights, Iowa 50134 50324.

ITEM 4. Amend subrule 10.9(3) as follows:

10.9(3) Moneys in the fund shall be expended and distributed in the order and manner as follows:

a. An amount as appropriated by the general assembly shall be allocated to the homeland security and emergency management department for implementation, support, and maintenance of the functions of the E911 program and to employ the auditor of the state to perform an annual audit of the wireless E911 emergency communications fund.

b. The program manager shall allocate 10 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC’s letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider’s eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider’s eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph. This allocation is for the period beginning July 1, 2013, and ending June 30, 2026.

~~*b. c.*~~ The program manager shall reimburse local communications service providers on a calendar quarter basis for their expenses for transport costs between the wireless E911 selective router and the public safety answering points related to the delivery of wireless E911 service.

~~*e. d.*~~ The program manager shall reimburse local communications service providers and third-party E911 automatic location information (ALI) database providers on a calendar quarter basis for the costs of maintaining and upgrading the E911 components and functionalities between the input and output points of the wireless E911 selective router. This includes the wireless E911 selective router and the automatic location information (ALI) database.

~~*d.*~~ The program manager shall allocate 13 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC’s letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider’s eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider’s eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph. This allocation is for the period beginning July 1, 2013, and ending June 30, 2016.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

e. A minimum of \$1,000 per calendar quarter shall be allocated for each public safety answering point with the E911 service area of the department of public safety or joint E911 service board that has submitted a written request to the program manager. The written request shall be made with the Request for Wireless E911 Fund form contained in the Wireless NG911 Implementation and Operations Plan. The request is due to the program manager on May 15, or the next business day, of each year.

The amount allocated under 10.9(3) “*e*” shall be 46 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 service boards shall be \$1,000 per PSAP operated by the respective authority. Additional funds shall be allocated as follows:

(1) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the E911 service area to the total square miles in the state.

(2) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls answered at the public safety answering point in the E911 service area to the total of wireless E911 calls originating in the state.

(3) Funds allocated under 10.9(3) “*e*” shall be deposited in the E911 service fund and shall be used for communications equipment utilized by the public safety answering points for the implementation and maintenance of E911 services.

f. If moneys remain after all obligations under 10.9(3) “*a*” to “*e*,” as listed above, have been fully paid, the remainder may be accumulated as a carryover operating surplus. The program manager, in consultation with the E911 communications council, shall allocate an amount, not to exceed \$100,000 per fiscal year, for development of public awareness and educational programs for personnel responsible for the maintenance, operation, and upgrading of local E911 systems, and for the expenses of members of the E911 communications council for travel, monthly meetings, and training. Payments from this allocation shall be made in accordance with department policy and procedures. These Remaining moneys shall be used to fund future network improvements and public safety answering point improvements related to the receipt and disposition of the 911 call. These moneys may also be used for wireless service providers’ transport costs related to wireless E911 phase II services, if those costs are not otherwise recovered by the wireless service provider’s customer billing or other sources and are approved by the program manager. Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

ARC 2153C**HUMAN SERVICES DEPARTMENT[441]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby gives notice that a public hearing will be held in each of the Department’s service areas. The purpose of the public hearings is to receive oral or written comments on proposed amendments to subrule 79.1(2) and rule 441—83.66(249A) regarding a cap of monthly costs for services provided under the intellectual disability waiver. The proposed amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin as **ARC 2097C** on August 5, 2015.

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Public hearings will be held at the following locations and times:

HUMAN SERVICES DEPARTMENT[441](cont'd)

Eastern Service Area First Floor Boardroom 600 W. 4th Street Davenport	October 21, 2015 2 to 3 p.m.
Northern Service Area Pinecrest Office Building Conference Room 201 1407 Independence Avenue Waterloo	October 21, 2015 10 to 11 a.m.
Des Moines Service Area River Place, Conference Room 3-3A 2309 Euclid Avenue Des Moines	October 23, 2015 9:30 to 11:30 a.m.
Western Service Area Council Bluffs Public Library 400 Willow Avenue Council Bluffs	October 22, 2015 2 to 3 p.m.
Cedar Rapids Service Area Coralville Public Library Schwab Auditorium 1404 5th Street Coralville	October 22, 2015 12:30 to 2:30 p.m.

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

ARC 2171C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code chapters 137C and 137D and sections 10A.104 and 137F.2, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

The Department is proposing this rule making to make technical changes to Chapter 31 by updating references to the most current version of the Code of Federal Regulations (CFR) related to food processing plants, egg products processing plants, and pork products prepared at retail.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 20, 2015. Such written materials should be directed to Steven Mandernach, Department of Inspections and Appeals, Lucas State Office Building, Third Floor, 321 East 12th Street, Des Moines, Iowa 50319-0083; fax (515)281-3291; or e-mail steven.mandernach@dia.iowa.gov.

The rules are subject to waiver under the Department’s general waiver provisions contained in 481—Chapter 6.

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

These amendments are intended to implement Iowa Code chapters 10A and 137F.

The following amendments are proposed.

ITEM 1. Amend subrule 31.1(19) as follows:

31.1(19) *Trichinae control for pork products prepared at retail.* Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, ~~2013~~ 2015, publication, regarding the destruction of possible live trichinae in pork and pork products.

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

Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of “certified pork” as authorized by the Iowa department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service, shall meet the requirements of this subrule.

ITEM 2. Amend subrule 31.2(9), introductory paragraph, as follows:

31.2(9) Adoption of Code of Federal Regulations. The following parts of the Code of Federal Regulations (April 1, ~~2014~~ 2015) are adopted:

ITEM 3. Amend subrule 31.2(10) as follows:

31.2(10) Egg products processing plants. The department shall generally use the good manufacturing practices adopted in paragraph 31.2(9) “b,” unless such practices are inconsistent with standards set by the United States Department of Agriculture, Food Safety and Inspection Service, in 9 CFR Parts 590-592, January 1, ~~2013~~ 2015. If the standards are inconsistent, the standards adopted in 9 CFR Parts 590-592, January 1, ~~2013~~ 2015, apply.

ARC 2162C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, “Residential Care Facilities,” Iowa Administrative Code.

A full review and rewrite of Chapter 57 was completed by the Department in 2014. The Department determined after adoption of the new Chapter 57 that one provision was inadvertently removed from the chapter during the process. The provision required qualified personnel to implement orders for medications and treatments. The proposed amendment adds this requirement back into the chapter.

The Department does not believe that the proposed amendment poses a financial hardship on any regulated entity or individual.

The State Board of Health initially reviewed the proposed amendment at its September 9, 2015, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 20, 2015. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Third Floor, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to David.Werning@dia.iowa.gov.

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

This amendment is intended to implement Iowa Code section 135C.14.

The following amendment is proposed.

Adopt the following **new** subrule 57.11(7):

57.11(7) Orders for medications and treatments. Orders for medications and treatments shall be correctly implemented by qualified personnel. (I, II, III)

ARC 2174C

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 522A.7 and 2015 Iowa Acts, Senate File 487, section 14, the Insurance Division (the Division) hereby gives Notice of Intended Action to amend Chapter 10, “Licensing of Insurance Producers,” Iowa Administrative Code.

These amendments are proposed to implement and administer both Iowa Code chapter 522A, which regulates the limited licensing of rental companies when a motor vehicle rental company sells travel or automobile-related insurance products or coverage in connection with and incidental to the rental of vehicles, and 2015 Iowa Acts, Senate File 487, which regulates the sale of portable electronics insurance, including requirements for licensure and provisions for fees and penalties. The proposed amendments to Chapter 10 provide administrative procedures and clarify current procedures for vehicle rental companies and their counter employees and for sellers of portable electronics insurance to apply for and hold a limited license.

It is the intention of the Division that these amendments shall become effective January 1, 2016, and that business entities shall be in compliance on or before January 1, 2016.

Any interested person may make written suggestions or comments on these proposed amendments on or before 4:30 p.m. on October 20, 2015. Such written comments should be directed to Tom O’Meara, Iowa Insurance Division, Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa 50319-0065; fax (515)281-4222; e-mail tom.omeara@iid.iowa.gov.

Also, there will be a public hearing on October 20, 2015, at 2 p.m., at the offices of the Iowa Insurance Division, Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa, at which time persons may present their views about the amendments either orally or in writing. At the hearing, persons shall be asked to give their names and addresses for the record.

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

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

These rules will impose a fiscal impact on the State of less than \$100,000 in fees paid to the State every three years.

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

These amendments are intended to implement Iowa Code section 522A.7 and 2015 Iowa Acts, Senate File 487.

The following amendments are proposed.

ITEM 1. Rescind the heading for **191—Chapter 10, Division II.**

ITEM 2. Rescind rule 191—10.51(522A) and adopt the following **new** rule in lieu thereof:

191—10.51(522A,86GA,SF487) Limited licenses.

10.51(1) *Limited licenses for vehicle rental companies and counter employees.*

a. Purpose. The purpose of this subrule is to govern the qualifications of and procedures for the licensing of vehicle rental companies and counter employees and to set out the requirements, procedures and fees relating to the qualification and licensure of vehicle rental companies and counter employees.

b. Definitions. For purposes of this subrule, the definitions of Iowa Code chapter 522A and the following definitions shall apply:

INSURANCE DIVISION[191](cont'd)

“*Division*” means the commissioner of insurance and the Iowa insurance division.

“*Division Web site*” means the Web site for the division, www.iid.iowa.gov.

“*File*” means to submit information to the division. A submission is considered filed when it is received by the division.

“*Vehicle rental counter employee limited license*” means a license issued to an individual employed by a rental company authorized as a limited licensee as defined by Iowa Code section 522A.2.

“*Vehicle rental counter employee limited license application*” means the form used by an individual to apply for a counter employee license, pursuant to Iowa Code section 522A.3.

“*Vehicle rental limited license*” means a license issued to a rental company authorized as a limited licensee as defined by Iowa Code section 522A.2.

“*Vehicle rental limited license application*” means the form used by a vehicle rental company to apply for a limited license, pursuant to Iowa Code section 522A.3.

c. Requirement to hold a license.

(1) A rental company that desires to offer or sell insurance set forth in Iowa Code section 522A.3 in connection with the rental of a vehicle shall file a vehicle rental limited license application with the division and, at the discretion of the division, receive a vehicle rental limited license.

(2) A counter employee who desires to offer or sell insurance products shall file a vehicle rental counter employee limited license application with the division and, at the discretion of the division, receive a vehicle rental counter employee limited license.

d. Limited license application process for vehicle rental company.

(1) To obtain a limited license, a vehicle rental company shall file a completed vehicle rental limited license application with the division and pay a fee of \$50 for a license. The vehicle rental limited license application form is available on the division Web site.

(2) If the vehicle rental limited license application is approved, the division shall issue a vehicle rental limited license. The vehicle rental limited license term shall be from the date of approval through the third December 31 after the vehicle rental limited license is issued.

e. Limited license application process for counter employees.

(1) An individual may not obtain a vehicle rental counter employee limited license unless that individual is employed by a vehicle rental limited licensee.

(2) To obtain a vehicle rental counter employee limited license, an individual shall successfully complete an examination and submit to the division a completed vehicle rental counter employee limited license application, pursuant to Iowa Code section 522A.3. The vehicle rental counter employee limited license application form is available on the division Web site.

(3) If the application is approved, the division shall issue a vehicle rental counter employee limited license. Vehicle rental counter employee limited license applications shall be deemed approved if not disapproved by the division within 30 days of receipt by the division. The vehicle rental counter employee limited license term shall be from the date of approval through the third December 31 after the license is issued.

(4) The vehicle rental counter employee limited license shall automatically terminate:

1. When the counter employee ceases employment with a vehicle rental limited licensee; or
2. At the end of the term of the vehicle rental counter employee limited license term if the license is not renewed pursuant to this subrule.

f. Duties of vehicle rental limited licensees.

(1) Pursuant to Iowa Code section 522A.3, a vehicle rental limited licensee is responsible for the training, examination and payment of license fees for all individuals it employs for whom the licensee desires to obtain vehicle rental counter employee limited licenses.

(2) A vehicle rental limited licensee shall obtain and administer an examination for all vehicle rental counter employee limited license candidates. The content of the examination and the manner of its administration must be approved by the division.

(3) The vehicle rental limited licensee must develop a system for the security of examination content.

INSURANCE DIVISION[191](cont'd)

(4) The vehicle rental limited licensee must administer the vehicle rental counter employee limited license examination under controlled conditions, approved by the division, which ensure that each candidate completes the examination without outside assistance or interference.

(5) The vehicle rental limited licensee must notify the division of the termination of employment of any of its vehicle rental counter employee limited licensees. The vehicle rental limited licensee shall file reports of terminations semiannually on January 1 and July 1.

g. License renewal.

(1) All vehicle rental limited licenses and vehicle rental counter employee limited licenses shall be issued with an expiration date of the December 31 at the end of the license terms and must be renewed before the end of the license terms.

(2) Each year, the division shall mail to the vehicle rental limited licensee's latest electronic mail or mailing address appearing in the division's records a renewal form for use in renewing the vehicle rental limited license and all of the vehicle rental counter employee limited licenses that will expire that year.

(3) The vehicle rental limited licensee shall complete the renewal form for its license if applicable and for all of the vehicle rental counter employee limited licenses that will expire that year and shall return the completed renewal form and applicable fee to the division on or before December 31 of the renewal year or all licenses listed on the renewal form shall expire.

(4) The fee for renewal of a vehicle rental limited license is \$50, and the fee to renew each vehicle rental counter employee limited license is \$50.

h. Limitation on fees. A vehicle rental limited licensee shall not be required to pay license and renewal fees of more than \$1,000 in aggregate in any calendar year.

i. Change in name or address.

(1) Vehicle rental limited licensees shall file written notification with the division of a change in name or address within 30 days of the change. This requirement applies to any change in any locations at which the vehicle rental limited licensee is doing business.

(2) Vehicle rental limited licensees shall file written notification with the division of changes in names or addresses of vehicle rental counter employee limited licensees. If the change of name is by a court order, a copy of the order shall be included with the notification. The limited licensee shall file reports of name and address changes semiannually on January 1 and July 1.

j. Violations and penalties.

(1) A rental company or counter employee who sells insurance in violation of this rule shall be deemed to be in violation of Iowa Code chapter 522A and subject to the penalties provided in Iowa Code section 522A.3.

(2) A vehicle rental limited licensee or vehicle rental counter employee limited licensee who commits an unfair or deceptive trade practice in violation of Iowa Code chapter 507B, or in violation of administrative rules which implement that chapter, is subject to the penalties provided for in Iowa Code chapter 507B.

10.51(2) *Limited licenses for persons who sell portable electronics insurance.*

a. Purpose. The purpose of this subrule is to govern the qualifications of and procedures for the licensing of persons offering or selling any form of portable electronics insurance in this state, pursuant to 2015 Iowa Acts, Senate File 487.

b. Definitions. For purposes of this subrule, the definitions of 2015 Iowa Acts, Senate File 487, and the following definitions shall apply:

"Division" means the commissioner of insurance and the Iowa insurance division.

"Division Web site" means the Web site for the division, www.iid.iowa.gov.

"File" means to submit information to the division. A submission is considered filed when it is received by the division.

"Portable electronics insurance limited license" means a portable electronics insurance license as defined by 2015 Iowa Acts, Senate File 487, section 1.

"Portable electronics insurance limited license application" means the form used by a portable electronics vendor to apply for a portable electronics insurance limited license.

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c. Requirement to hold a portable electronics insurance limited license. A person that desires to offer or sell any form of portable electronics insurance in this state shall:

- (1) Be licensed as an insurance producer pursuant to Iowa Code chapter 522B;
- (2) Submit an application to the division and, at the discretion of the division, receive a portable electronics insurance limited license pursuant to 2015 Iowa Acts, Senate File 487, sections 2, 3 and 4, and this subrule; or
- (3) Be an endorsee in compliance with 2015 Iowa Acts, Senate File 487, sections 6 and 7, and this subrule.

d. Application process for portable electronics insurance limited license.

- (1) To obtain a portable electronics insurance limited license, a portable electronics vendor shall submit to the division a completed portable electronics insurance limited license application and the appropriate fee, as required by 2015 Iowa Acts, Senate File 487, section 3.
- (2) If the application is approved, the division shall issue a portable electronics insurance limited license. The portable electronics insurance limited license term shall be from the date of approval through the third December 31 after the portable electronics insurance limited license was issued.

e. Portable electronics insurance limited license renewal.

- (1) All portable electronics insurance limited licenses shall be issued for a license period as defined in 2015 Iowa Acts, Senate File 487, section 1, and must be renewed triennially.
- (2) Not less than 60 days before the end of the license period, the division shall mail a renewal form to the portable electronics insurance limited licensee at the last-known electronic mail or mailing address appearing in the division's records.
- (3) The portable electronics insurance limited licensee shall complete and return to the division the completed renewal form and the applicable fee, as required by 2015 Iowa Acts, Senate File 487, section 5, on or before the expiration date of the portable electronics insurance limited license, or the licensee's portable electronics insurance limited license shall expire and the authority of all endorsees to sell under the portable electronics insurance limited license also shall expire.

f. Change in name or address. A portable electronics insurance limited licensee shall file written notification with the division of a change in name or address within 30 days of the change. This requirement applies to any change in any location at which the portable electronics insurance limited licensee is doing business.

g. Violations and penalties. A portable electronics vendor or endorsee that sells insurance in violation of this rule shall be deemed to be in violation of 2015 Iowa Acts, Senate File 487, and subject to the penalties in 2015 Iowa Acts, Senate File 487, section 8.

This rule is intended to implement Iowa Code chapter 522A and 2015 Iowa Acts, Senate File 487.

ITEM 3. Rescind and reserve rules **191—10.52(522A)** to **191—10.60(522A)**.

ITEM 4. Rescind the following implementation sentence for **191—Chapter 10, Division II:**
~~Rules 191—10.51(522A) to 191—10.60(522A) are intended to implement Iowa Code Supplement chapter 522A.~~

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 523A.809 and 2015 Iowa Acts, House File 632, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 15, “Unfair Trade

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Practices”; rescind Chapter 100, “General Provisions,” and adopt new Chapter 100, “Sales of Cemetery Merchandise, Funeral Merchandise and Funeral Services”; and rescind Chapter 101, “Trust Deposits and Trust Funds,” Chapter 102, “Warehoused Merchandise,” Chapter 103, “Licensing of Preneed Sellers and Sales Agents,” Chapter 104, “Continuing Education for Sales Agents,” and Chapter 105, “Standards of Conduct, Prohibited Practices, and Disciplinary Procedures,” Iowa Administrative Code.

Iowa Code chapter 523A, among other things, prescribes the terms and conditions under which entities and individuals can be licensed to provide preneed sales of cemetery merchandise, funeral merchandise or funeral services. It also describes how payments for the preneed merchandise and services are to be held in trust, or performance is to be secured with an insurance policy or another approved alternative, and other duties and responsibilities of the entities and individuals involved. The proposed new Chapter 100 incorporates many of the requirements of existing Chapters 100 through 105 and takes into account the amendments made to Iowa Code chapter 523A by 2015 Iowa Acts, House File 632.

The Division intends that this rule making will become effective December 30, 2015.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 21, 2015. Such written materials should be directed to Rosanne Mead, Iowa Securities and Regulated Industries Bureau, Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-3059; e-mail rosanne.mead@iid.iowa.gov.

Also, there will be a public hearing on October 21, 2015, at 10 a.m. at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

The Insurance Division’s waiver provisions in 191—Chapter 4 apply to this rule making.

These amendments will impose no fiscal impact to the State.

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

These amendments are intended to implement Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632.

The following amendments are proposed.

ITEM 1. Rescind and reserve rule **191—15.6(507B)**.

ITEM 2. Amend the heading before **191—Chapter 100** as follows:

REGULATED INDUSTRIES
~~SALES OF CEMETERY MERCHANDISE, FUNERAL MERCHANDISE AND FUNERAL SERVICES~~

ITEM 3. Rescind 191—Chapter 100 and adopt the following **new** chapter in lieu thereof:

CHAPTER 100
SALES OF CEMETERY MERCHANDISE, FUNERAL MERCHANDISE
AND FUNERAL SERVICES

191—100.1(523A) Purpose. This chapter is promulgated to implement and administer Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632, which regulates the sale of cemetery merchandise, funeral merchandise, funeral services and any combination of those items.

191—100.2(523A) Definitions. The definitions in Iowa Code chapter 523A are incorporated by this reference. In addition, the following definitions shall apply to this chapter:

“*Active license*” means a license that is in effect and in good standing.

“*Commissioner*” means the Iowa insurance commissioner or staff of the Iowa insurance division as designated by the commissioner.

“*Commissioner’s Web site*” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

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“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensed person’s knowledge and to maintain and improve the safety and welfare of the public.

“*Credit*” means at least 50 minutes spent by a licensed person in actual attendance at and in completion of an approved continuing education activity.

“*Insurance*” means life insurance policies and annuity contracts, except where the context indicates otherwise.

“*License*” means an authorization to act issued by the commissioner, authorizing a person to act as preneed seller or a sales agent.

“*Licensed person*” means any person who holds a preneed seller or sales agent license pursuant to Iowa Code chapter 523A, including any person who holds an active or restricted license.

“*Merchandise or services*” means cemetery merchandise, funeral merchandise, funeral services, or a combination thereof, as defined in Iowa Code section 523A.102, unless the context clearly indicates otherwise.

“*Person*” means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; cooperative; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

“*Purchase agreement*” means an agreement to furnish merchandise or services when performance or delivery may be more than 120 days following the initial payment on the account.

“*Restricted license*” means an active license that has been placed on restricted status by the commissioner.

“*Sales log*” means a record of each sale of a purchase agreement.

191—100.3(523A) Contact and correspondence.

100.3(1) *Contact information.* All mailed complaints, inquiries and correspondence shall be sent to Securities and Regulated Industries Bureau, Iowa Insurance Division, 601 Locust, Two Ruan Center, Fourth Floor, Des Moines, Iowa 50309-3738. Telephone inquiries may be made at (877)955-1212. Electronic submissions and correspondence may be made through the commissioner’s Web site.

100.3(2) *Complaints, inquiries and correspondence.* The commissioner may receive and process any complaint made regarding merchandise or services, or regarding a sales agent or a preneed seller, that alleges certain acts or practices which may constitute one or more violations of the provisions of this chapter. Where appropriate, the commissioner may refer complaints, in whole or in part, to other agencies. Any member of the public or the industry, or any federal, state, or local official, may make and file a complaint with the commissioner. If required by the commissioner, complaints shall be made on forms prescribed by the commissioner.

100.3(3) *Forms and instructions.* Copies of all required forms and instructions are available on the commissioner’s Web site.

191—100.4 to 100.9 Reserved.

191—100.10(523A) License status. Preneed seller licenses and sales agent licenses have the following three statuses:

100.10(1) *No license.* A person has no current preneed seller or sales agent active or restricted license issued by the commissioner.

100.10(2) *Active license.* A person has had a license issued by the commissioner, it is current in renewals, and it is otherwise in good standing.

100.10(3) *Restricted license.* A person has had an active license issued by the commissioner, the license is current in renewals, but the active license has been placed on restricted status by the commissioner.

a. The commissioner may place a license in restricted status for various reasons including, but not limited to, the following:

- (1) Disciplinary action.
- (2) Failure to pay state debt, child support or student loan.

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- (3) Nondisciplinary reason if requested by the person.
- (4) Cessation of business.

b. A person whose license is restricted shall not enter into purchase agreements or sell merchandise or services, but may perform administrative duties related to sales made before the license was placed on restricted status.

c. A person whose license is restricted and who wishes to maintain a restricted status license shall meet the requirements for license renewal in rule 191—100.15(523A) by the required date. If the restricted license is not renewed, the license shall lapse at the end of its term.

191—100.11(523A) Application for license. To obtain a preneed seller license as required by Iowa Code section 523A.501 or a sales agent license as required by Iowa Code section 523A.502, a person must submit an application to the commissioner pursuant to this rule. A person shall not accept any payment or funding, including the assignment of ownership of or proceeds from insurance, related to the purchase of merchandise or services in Iowa, if the sale of the merchandise or services is subject to Iowa Code chapter 523A, unless the person holds an active license. Application forms and instructions may be obtained from the commissioner's Web site.

100.11(1) Preneed seller application. A person that desires to be licensed as a preneed seller must submit all of the following:

- a.* A completed application form.
- b.* A signed waiver and the required fee allowing the commissioner to request and obtain, pursuant to Iowa Code section 523A.501, criminal history data information for each owner and director of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, shareholder with 10 percent or more of the stock, or other person with a financial interest in the preneed seller, who has the ability to control or direct control of trust funds under Iowa Code chapter 523A, as determined by the commissioner.
- c.* A financial history, if requested by the commissioner, for each owner and director of the applicant, including, but not limited to, for each sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock.

d. Evidence of a fidelity bond or insurance or a statement that demonstrates compliance with Iowa Code section 523A.201.

e. Payment of the appropriate license fee.

100.11(2) Sales agent application. An individual who desires to be licensed as a sales agent must satisfy the following requirements:

- a.* Be at least 18 years of age.
- b.* Submit a completed application form.
- c.* Submit a signed waiver and the required fee allowing the commissioner to request and obtain criminal history data information, pursuant to Iowa Code section 523A.501.
- d.* Pay the appropriate license fee.

191—100.12(523A) Processing of application for a license.

100.12(1) Information to be reviewed for evaluation of application for a license. In order to determine whether to approve or deny an application for a license, the commissioner shall review all information that is submitted with the application, obtained through criminal history investigation pursuant to Iowa Code sections 523A.501(3) and 523A.502(4), and submitted pursuant to a commissioner's request.

a. The commissioner may require any documents reasonably necessary to verify the information contained in the application or to verify that the individual making application has the character and competency required to receive a license. The commissioner also may request fingerprints and reimbursement of costs for investigating a criminal history, pursuant to Iowa Code sections 523A.501(3) and 523A.502(4).

b. The commissioner shall conduct the criminal history data request and other investigations pursuant to Iowa Code sections 523A.501(3) and 523A.502(4). For purposes of preneed sellers'

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licenses, pursuant to Iowa Code section 523A.501(3), the commissioner's investigation of criminal history data and financial history shall be limited to persons who have the ability to control or to direct the control of trust funds under Iowa Code chapter 523A, as determined by the commissioner. The commissioner may deny the application for a license based on an applicant's conviction in any jurisdiction for a criminal offense involving dishonesty or a false statement.

100.12(2) *Incomplete application.* If the application form is not completed according to the instructions, or if all of the information in the instructions or requested by the commissioner is not provided, the commissioner shall reject the application and send a notice to the applicant identifying the problems with the license application and listing any corrective action necessary before the resubmission of an application.

191—100.13(523A) Approval and denial of license applications; issuance of license.

100.13(1) *Approval of license application.* If the commissioner approves a license application, the commissioner shall issue a license, the term of which shall be for a term beginning the day the license is issued and ending April 15.

100.13(2) *License denial.* The commissioner may deny a license application based on information received during the application process, on any ground listed in Iowa Code section 523A.503 or rules 191—100.16(523A) and 191—100.40(523A).

a. Notice of denial. When the commissioner denies an application for a preneed seller or sales agent license, the commissioner shall send a denial letter to the applicant by certified mail, return receipt requested, or in the manner of service of an original notice. The denial letter shall serve as notice of the denial and shall explain why the commissioner denied the application.

b. Appeal. An applicant that desires to contest the denial of an application may request a contested case proceeding pursuant to 191—Chapter 3 within 30 calendar days of the date the notice of denial is mailed. A failure to timely request a hearing constitutes failure to exhaust administrative remedies. License denial hearings under this chapter shall be conducted pursuant to 191—Chapter 3. License denial hearings and all documents related thereto are contested cases open to the public pursuant to Iowa Code chapters 17A and 22. While each party shall have the burden of establishing the matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

191—100.14(523A) Continuing education requirements. For each license term, each licensed sales agent shall complete a minimum of three credits of continuing education in courses acceptable to the commissioner, which may include independent study courses, pursuant to paragraph 100.14(2)“g.” Completion of the required continuing education is mandatory for the renewal of a sales agent license. “Independent study” means a subject, program or activity that a person pursues autonomously that meets the requirements of this rule and that includes a test at the conclusion of the independent study. Independent study includes but is not limited to programs conducted using television, the Internet, video, sound-recorded programs, correspondence work, and other similar media.

100.14(1) *Exemption.* The requirements of this rule do not apply to:

- a.* A licensed funeral director.
- b.* A licensed insurance producer.
- c.* A licensed sales agent who served full time in the U.S. armed forces on active duty during a substantial part of the continuing education term and who submits evidence of such service.

100.14(2) *General rules for continuing education credits.*

- a.* The topic of at least one of the three continuing education credits earned each license term must be business ethics.
- b.* Proof of completion of a continuing education course shall, at a minimum, include all of the following, in a format acceptable to the commissioner:
 - (1) The date of the course, the location of the course, the course title, the course subject, and the identity and qualifications of the presenters.
 - (2) The number of course credits.

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(3) Proof of successful completion of the course provided by the person conducting or sponsoring the course.

c. A sales agent cannot receive continuing education credit for courses taken prior to the issuance of an initial license.

d. A sales agent cannot receive continuing education credit for the same course twice in one license term.

e. A sales agent cannot carry over to the next license term more than three continuing education credits earned in excess of the sales agent's license term requirements.

f. An instructor of a course is entitled to the same credit as a student completing that course; the instructor may receive such credit once during a license term, regardless of how many times the instructor teaches the class.

g. A sales agent may receive continuing education credit for independent study courses that are part of a recognized national designation program. A sales agent may receive up to three continuing education credits for independent study courses during a license term. A sales agent shall maintain a record from the course provider that the course was completed and the examination was passed.

100.14(3) Maintenance of records of completion of continuing education requirements. A sales agent shall maintain for three years after the license term during which the course was taken the original proof of completion and descriptions and outlines of all completed continuing education courses.

100.14(4) Standards for acceptable continuing education courses. The commissioner shall find a continuing education course acceptable if it meets all of the following criteria:

a. The course constitutes an organized program of learning which contributes directly to the professional competency of the licensee.

b. The course is conducted by individuals who have specialized training concerning the subject matter of the course.

c. The person conducting or sponsoring the course provides proof of attendance to attendees.

d. The activity pertains to subject matters which integrally relate to the sale of merchandise or services and purchase agreements subject to Iowa Code chapter 523A.

(1) The following are examples of acceptable course topics:

1. Ethics.

2. Mortuary science law; public health; and technical standards, requirements and issues regarding the handling and interment of deceased human remains.

3. Insurance.

4. Iowa laws and administrative rules related to Iowa Code chapters 523A and 523I.

5. Technical information related to merchandise or services used in the death care industry.

6. Medicaid and the Iowa estate recovery law, Iowa Code section 249A.5(2) and 441—subrule 76.12(7).

7. Relevant federal laws and regulations such as the Federal Trade Commission Funeral rule (16 CFR Part 453).

(2) The following are examples of course topics that are not acceptable for continuing education credit:

1. Sales.

2. Motivation.

3. Purchaser prospecting.

4. Supportive office skills (e.g., typing, filing, computer systems).

5. Other subjects not specifically related to the death care industry.

191—100.15(523A) License renewal.

100.15(1) Procedure for renewal. The commissioner shall renew preneed sellers' licenses, pursuant to Iowa Code section 523A.501(7) as amended by 2015 Iowa Acts, House File 632, section 38, or sales agents' licenses, pursuant to Iowa Code section 523A.502(5) as amended by 2015 Iowa Acts, House File 632, section 39, for both active and restricted status licenses, if the preneed sellers or sales agents

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provide to the commissioner all of the following, which must be received by the commissioner on or before April 15 of each year:

a. Annual report. A preneed seller or sales agent shall file a complete and accurate annual report in the form and manner directed by the commissioner. The form and instructions may be obtained through the commissioner's Web site.

b. Verification of completion of continuing education. A sales agent shall have completed the continuing education required by rule 191—100.14(523A) and shall attest to completion of the continuing education and compliance with all instructions on the commissioner's Web site.

c. Renewal fee. A preneed seller or sales agent shall submit a renewal fee as set out in rule 191—100.18(523A). Failure to include the proper amount shall be cause for the renewal to be rejected.

100.15(2) *Renewal of a restricted license.* A preneed seller or sales agent whose license is in restricted status and who seeks to continue to conduct actions administering purchase agreements created before the license is placed in restricted status must comply with the renewal process of this rule.

100.15(3) *Lapse of license.* If one of the items required by subrule 100.15(1) is not provided by April 15 of each year or is incomplete or if no application for renewal is received, the preneed seller or sales agent license shall lapse. The commissioner shall notify the preneed seller or sales agent of the reason for the lapse.

100.15(4) *Commissioner's option to not permit renewal.* The commissioner may choose not to renew a license for any of the reasons listed in Iowa Code section 523A.503 or rules 191—100.16(523A) and 191—100.40(523A).

191—100.16(523A) Prohibited activities related to licensing.

100.16(1) *Fraudulent or deceptive acts in procuring a license.* An individual shall not engage in fraudulent or deceptive acts in procuring a preneed seller or sales agent license. Prohibited acts include but are not limited to the following:

- a.* False representations of a material fact, whether by conduct or by false or misleading statements.
- b.* Concealing or omitting anything that should have been disclosed or included with the application.
- c.* Filing a false identification.
- d.* Filing an untrue certification or affidavit.
- e.* Falsifying documents.

100.16(2) *Prohibited activities by persons without a preneed seller or sales agent license.*

a. A person to whom a license has not been issued by the commissioner, or a person whose license has expired or is restricted, shall not conduct any of the activities for which an active license is required pursuant to Iowa Code chapter 523A or this chapter, including the following:

- (1) Post or display the person's license;
- (2) Use a license certificate or a license number, except in communications with the commissioner;
- (3) Agree to provide any merchandise or services subject to Iowa Code chapter 523A after the date the license expired or became restricted, unless the merchandise or services are provided pursuant to an existing purchase agreement.

b. This subrule does not prohibit payments to an unlicensed person upon the person's delivery of merchandise or services after the death of a beneficiary, including the payment of the proceeds of insurance at the time of death of the insured.

191—100.17(523A) Reinstatement of a restricted license.

100.17(1) *Definition.* The term "reinstatement" as used in this rule means changing the status of a license from restricted to active.

100.17(2) *Application for reinstatement.* Any preneed seller or sales agent whose license is restricted may request reinstatement by filing an application for reinstatement with the commissioner. Instructions can be found on the commissioner's Web site. If the licensed person meets all conditions of licensure, the commissioner shall reinstate the license.

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100.17(3) Reinstatement after disciplinary action. If the restricted status of the license was the result of a disciplinary action, or was a forfeiture by the preneed seller or sales agent in connection with a disciplinary action, reinstatement must be in accordance with the terms of the applicable order or consent agreement. An application for reinstatement shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis for placing the license in restricted status no longer exists. Before determining whether to grant reinstatement, the commissioner may review a financial history report for the time period during which the license was restricted.

100.17(4) Reinstatement after preneed seller's change of ownership or cessation of business operations. If the restricted status of a preneed seller's license was the result of the preneed seller's change of ownership or cessation of business operations under rule 191—100.35(523A), an application for reinstatement shall allege facts which, if established, will be sufficient to enable the commissioner to determine that the basis for placing the license in restricted status no longer exists. Before determining whether to grant reinstatement, the commissioner may review a financial history report for the time period during which the license was restricted.

100.17(5) Reinstatement after failure to pay child support. If the restricted status of the license was the result of a suspension for failure to pay child support pursuant to paragraph 100.40(2)“j,” the application for reinstatement shall include proof from the Iowa child support recovery unit that the outstanding child support has been paid.

100.17(6) Reinstatement after failure to pay student loan debt. If the restricted status of the license was the result of a suspension for failure to pay student loan debt pursuant to paragraph 100.40(2)“k,” the application for reinstatement shall include proof from the Iowa college student aid commission that the outstanding student loan debt has been paid.

100.17(7) Reinstatement after failure to pay state debt. If the restricted status of the license was the result of a suspension for failure to pay state debt pursuant to paragraph 100.40(2)“l,” the application for reinstatement shall include proof from the centralized collection unit of the department of revenue that the outstanding state debt has been paid.

191—100.18(523A) Payment of fees.

100.18(1) Manner of payment. Fees shall be paid by electronic payment as permitted by the commissioner.

100.18(2) Nonrefundable. Fees are not refundable.

100.18(3) Specific fees. Fees are set by Iowa Code chapter 523A and by this chapter.

a. The license fee for a preneed seller applicant is \$25, plus \$15 for each criminal history request made on each individual for whom a criminal history is required by Iowa Code section 523A.501(3).

b. The license fee for a sales agent applicant is \$10, plus \$15 for each criminal history background check.

c. The fee for a license renewal is \$15 for a preneed seller and \$10 for a sales agent.

191—100.19 Reserved.

191—100.20(523A) Trust interest or income. A preneed seller may withdraw interest or income, as defined by Iowa Code section 523A.102(16), from trusts holding funds which are established pursuant to Iowa Code section 523A.201(8) and which are related to purchase agreements executed on or after July 1, 1987, in accordance with this rule.

100.20(1) Amount of trust interest or income which may be withdrawn. Trust interest and income must remain in trust and cannot be withdrawn by a preneed seller, except that a preneed seller may withdraw from a purchase agreement trust fund interest and income in an amount that:

a. May not exceed 50 percent of the total interest and income credited to the trust during the preceding calendar year, and

b. Is equal to the difference between:

(1) The amount needed to adjust the trust funds for inflation, as set by the commissioner based on the consumer price index in rule 191—100.22(523A), and

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(2) The interest and income credited during the preceding year.

100.20(2) *Allocation of trust interest or income to purchasers' accounts.* Interest and income not withdrawn from a purchase agreement trust fund shall be allocated pro rata to the purchase agreement accounts remaining in the trust at the end of the month in which the withdrawal was made.

100.20(3) *Credit for trust interest or income withdrawn.* The early withdrawal of interest or income under this rule does not affect the purchaser's right to a credit of such interest or income in the event of a nonguaranteed price agreement, cancellation of the purchase agreement, or nonperformance by the preneed seller.

100.20(4) *Time period during which trust interest or income may be withdrawn.* Interest or income withdrawals permitted by this rule shall be made up to 180 days after the calendar year in which the interest or income was earned.

100.20(5) *Application of contract law.* A purchase agreement may limit or prohibit a preneed seller's ability to withdraw income or interest. However, in the event of a conflict with the limitations set forth in this rule, the preneed seller must comply with the requirements of this rule.

191—100.21(523A) Cancellation refunds. The requirement set forth in Iowa Code section 523A.602(2) "b"(1) applies to any purchase agreement executed on or after July 1, 2001.

191—100.22(523A) Consumer price index adjustment. The inflation factor adjustment to be used for Iowa Code sections 523A.201(8) and 523A.602(2) "b"(1), for years 1987 and later, shall be the consumer price index for all urban consumers (CPI-U) issued by the U.S. Department of Labor's Bureau of Labor Statistics.

191—100.23(523A) Preneed seller's use of surety bond in lieu of trust.

100.23(1) In lieu of the trust requirements of Iowa Code section 523A.405 as amended by 2015 Iowa Acts, House File 632, section 36, a preneed seller may file with the commissioner a surety bond. The surety bond shall be in the form as directed by the commissioner and as available on the commissioner's Web site.

100.23(2) A surety bond claimant, for purposes of this rule, includes any purchaser whose purchase agreement predates the effective date of the surety bond or was executed during the surety bond's period of coverage and whose purchase agreement has not been rescinded, fulfilled, or secured by another bond, by other insurance, or by trust funds.

100.23(3) Except as provided in subrule 100.23(6), no suit or action shall be commenced by a surety bond claimant later than one year after the expiration date of the surety bond.

100.23(4) Any surety bond claimant as set forth in subrule 100.23(2) may maintain an action on the surety bond. A surety's aggregate liability shall not exceed the penal sum of the bond.

100.23(5) A surety shall not cancel a surety bond except upon written notice of cancellation given by the surety to the commissioner by certified mail. The effective date of the cancellation shall not be less than 60 days after the commissioner receives the surety's notice. The surety shall specify the reason for the cancellation.

100.23(6) The surety shall not be liable for any surety bond claim related to the preneed seller's insolvency or cessation of business unless the surety claim is made within five years of the date of insolvency or business cessation.

100.23(7) If the surety notifies the preneed seller that the surety intends to cancel a surety bond, the preneed seller, within 30 days, shall:

a. Submit to the commissioner a substitute surety bond complying with this rule; or

b. Deposit funds in an amount as required by Iowa Code chapter 523A to a trust account established by the preneed seller.

100.23(8) A preneed seller shall maintain an adequate surety bond and shall continuously monitor the surety amount to assure its adequacy. The surety bond amount shall be calculated based on the value of the purchase agreements sold and not performed or canceled and for which no trust fund or insurance is in place.

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191—100.24 Reserved.**191—100.25(523A) Funeral and cemetery merchandise warehoused by preneed sellers.**

100.25(1) Applicability. This rule applies only to storage existing on or before July 1, 2007, under purchase agreements executed between July 1, 1987, and July 1, 2007.

100.25(2) Warehousing not permitted. After July 1, 2007, warehousing shall not be used as an alternative to the trust requirements of Iowa Code chapter 523A.

100.25(3) Approval of storage facilities by commissioner. Notwithstanding subrule 100.25(2), if a preneed seller receives approval in writing from the commissioner pursuant to subrule 100.25(4), the trust requirements of Iowa Code sections 523A.201 and 523A.202 do not apply to either:

- a. Payments for outer burial containers made of either polystyrene or polypropylene; or
- b. Cemetery merchandise delivered to the purchaser or stored in a storage facility not owned or controlled by the preneed seller.

100.25(4) Storage facility application. The commissioner shall approve a preneed seller's application to have a storage facility designated as an approved storage facility for purposes of subrule 100.25(3) if the following conditions are met:

a. *Insurance coverage and financial condition.* The storage facility shall demonstrate that adequate insurance against loss and damage has been purchased and that the storage facility's financial condition is commensurate with any financial obligations assumed. Proof of the storage facility's financial condition shall include submission of audited financial statements completed in accordance with generally accepted accounting principles, which shall include the following:

- (1) A balance sheet prepared as of a date within 120 days prior to the application; and
- (2) A profit and loss statement and any changes in financial position for each of the three fiscal years preceding the date of the balance sheet or, if the storage facility has been in existence less than three years, for the period of the storage facility's existence.

b. *Records system and maintenance.* The storage facility must demonstrate that the preneed seller has a system that adequately records:

- (1) For each item in storage: an identification and a description; the ownership; name and address of the preneed seller; an order number; the order date; and the storage date.
- (2) An aggregate listing and numerical totals for the entire storage facility and for each state or province.

c. *Title, delivery, identification, payments.* The storage facility shall agree to comply with subrule 100.25(5).

d. *Storage requirements.* The preneed seller shall provide storage that adequately provides both accessibility and protection against damage.

e. *Consent to audits and inspections.* The storage facility shall provide a written consent authorizing audits, reviews and inspections by the commissioner, pursuant to paragraph 100.25(5) "e" and to provide reports requested pursuant to paragraph 100.25(6) "d."

f. *Compliance with law.* The storage facility shall be in compliance with all applicable laws regulating the applicant's activities as a warehouse keeper, manufacturer, supplier, or preneed seller of cemetery or funeral merchandise.

100.25(5) Storage facility duties.

a. *Title.* The storage facility shall provide to the preneed seller a minimum of two copies of a title certificate. The certificate of ownership should not be issued until the merchandise is stored in substantially complete condition.

b. *Delivery requirements.* The storage facility shall not accept prepayment of delivery expenses or charges. The storage facility shall provide written disclosure to the preneed seller that delivery costs will be billed at the time of delivery.

c. *Storage requirements.* The storage facility shall adequately provide accessibility to the stored merchandise and adequately protect the stored merchandise against damage.

INSURANCE DIVISION[191](cont'd)

d. Identification of merchandise. The storage facility shall allow for visual inspection and counting; have storage by type or style; identify the location of the item by a shelf and bin- or slot-type system or reasonable alternative; and keep totals for each type of merchandise item in storage.

e. Audits and examinations. The storage facility shall allow the commissioner to examine the books, papers, records, memoranda or other documents of the storage facility and stored merchandise for the purpose of verifying compliance with Iowa Code chapter 523A and this rule. Unless waived by the commissioner in writing, the transportation, meal and lodging expenses of the auditors and examiners shall be reimbursed by the storage facility.

100.25(6) Preneed seller duties related to storage facility.

a. Title. Each preneed seller shall deliver at least one copy to the purchaser and shall retain one copy in the preneed seller's records.

b. Delivery requirements. The preneed seller shall require the purchaser's signature, or the signature of the purchaser's legal representative, prior to the delivery of the cemetery or funeral merchandise.

c. Identification of merchandise. All cemetery merchandise must be appropriately marked, identified and described in a manner to distinguish it from other similar items of merchandise, unless the commissioner has given to the seller prior written waiver of this requirement upon a showing of good cause.

d. Reports. The commissioner may request reports containing information about the storage facility, including but not limited to the following:

(1) A description of the storage facility, including the name, address of the principal business office, state or province of organization, date of organization, type of entity (e.g., corporation or partnership), and location of all storage facilities;

(2) A description of the storage program; and

(3) A detailed description of all merchandise currently in storage, which shall include all of the following:

1. The date the merchandise was first placed in storage;

2. The full name of the purchaser;

3. The location of the merchandise, which shall include the location within the facility utilizing a numbering system that provides the exact location of each item;

4. The name and address of the preneed seller;

5. The total number of items, by category, in storage at the facility for preneed sellers located in this state; and

6. The total number of items, by category, in storage at the facility.

191—100.26 to 100.29 Reserved.

191—100.30(523A) Standards of conduct for preneed sellers and sales agents. Rules 191—100.30(523A) through 191—100.36(523A) are intended to establish certain minimum standards and guidelines of conduct for preneed sellers and sales agents by identifying required actions or practices. Failure to comply with these rules may be grounds for action under Iowa Code chapter 523A or rule 191—100.40(523A) or 191—100.41(523A).

191—100.31(523A) Advertisements, sales practices and disclosures.

100.31(1) Advertising.

a. A preneed seller or sales agent shall not engage in any act or practice that violates Iowa Code section 523A.702 or 523A.703, whether or not actual harm or injury occurs, including but not limited to making untrue or improbable statements in advertisements.

b. An advertisement for the solicitation or sale of a purchase agreement which is to be funded by insurance shall adequately disclose the following:

(1) The fact that insurance is to be involved or used to fund a purchase agreement, and

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(2) The nature of the relationship among the sales agent, the preneed seller, the provider of merchandise or services, and any other person.

100.31(2) *Unethical, harmful or detrimental sales practices.* A preneed seller or sales agent shall not engage in any act or practice which may be harmful or detrimental to the public, whether or not actual harm or injury occurs, while engaged in activities regulated by Iowa Code chapter 523A, or materially related to such activity, including but not limited to:

a. Encouraging cancellation of a purchase agreement if cancellation is not in the best interests of the purchaser.

b. Encouraging a change in the funding method of a purchase agreement, including a change from one insurance company to another, if the change is not in the best interest of the purchaser.

c. Failure to leave a residence when requested to do so.

d. Intimidation or physical abuse, including improper sexual contact or conduct.

e. Any other act or practice that takes unfair or unreasonable advantage of the vulnerability of a purchaser or prospective purchaser based on age, poor health, infirmity, impaired understanding, restricted mobility, or disability.

100.31(3) *Disclosures.*

a. At the time a preneed seller or a sales agent sells insurance that is not sold immediately in conjunction with a purchase agreement, the sales agent shall inform the potential purchaser of the following:

(1) The insurance may be treated as a countable asset or as a disqualifying transfer of assets for less than fair market value, for purposes of Medicaid eligibility under policies established by the department of human services, unless:

1. The amount is reasonable; and

2. There is a written contract with a preneed seller for the delivery of funeral and burial merchandise or services pursuant to which the insurance is irrevocably transferred or assigned to the preneed seller.

(2) The net death benefit of the insurance to be paid upon death may not increase and, if it does, is not guaranteed to increase at the same rate as the cost of funeral and burial expenses.

(3) The cash surrender value of the insurance.

(4) The proceeds of the insurance may be used for any purpose unless there is a purchase agreement with a preneed seller.

(5) A change in the assignment of the insurance may be made at any time, without penalty, by the owner of the insurance, unless there are contractual obligations with a preneed seller.

(6) An assignment of proceeds from the insurance does not create a purchase agreement with the preneed seller and does not obligate the preneed seller to provide any merchandise or services.

(7) If an assignment of proceeds from the insurance has been made to a nonguaranteed irrevocable burial trust fund and, after the payment of funeral and burial expenses, funds remain, notice of the remaining funds must be provided by the preneed seller to the director of the department of human services. The form of notice can be found at www.iowa-estates.com.

b. Prior to accepting an application, initial premium, or deposit for insurance which is to fund a purchase agreement, a preneed seller or sales agent must adequately disclose all of the following:

(1) The relationship of the insurance to the funding of the purchase agreement and the nature and existence of any guarantees relating to the purchase agreement.

(2) The impact on the purchase agreement of any of the following:

1. Changes in the insurance including, but not limited to, changes in the assignment, beneficiary designation or use of the proceeds;

2. Penalties to be incurred by the policyholder as a result of failure to make premium payments;

3. Penalties to be incurred or moneys to be received as a result of cancellation or surrender of the insurance.

(3) All merchandise or services to be supplied pursuant to the contract or purchase agreement and all relevant information concerning the price of the funeral services, including an indication that the purchase price is either guaranteed at the time of purchase or to be determined at the time of need.

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(4) All relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the insurance and the amount actually needed to fund the purchase agreement.

(5) Any penalties including, but not limited to, penalties for the inability of the preneed seller to deliver merchandise or services or to fulfill the purchase agreement guarantee.

(6) Any restrictions including, but not limited to, geographic restrictions.

(7) Any sales commission or other form of compensation, if any, being paid related to the insurance and the identity of the individual or entity to whom the compensation is to be paid.

c. At the time of the sale of insurance, a preneed seller shall provide a form substantially similar to the Customer Acknowledgement Form available on the commissioner's Web site. The purchaser of the insurance shall acknowledge and sign the form, and the preneed seller shall provide a copy of the signed form to the purchaser and shall retain a copy of the signed form for the preneed seller's records.

d. At the time of providing a written itemized cost estimate for the purchase of preneed merchandise or services:

(1) The sales agent shall provide to the potential purchaser a copy of the Iowa insurance division's Guide to Prearranged Funeral Plans.

(2) The sales agent shall include on the cost estimate clear statements indicating:

1. The date after which the estimate or proposal expires.

2. That prices are subject to change after the cost proposal expires.

3. That the prices provided are a nonbinding estimate and do not create a binding contract or agreement with the preneed seller.

(3) The sales agent shall provide a copy of the cost estimate to the potential purchaser and shall retain a copy of the signed cost estimate in the preneed seller's records for at least five years.

For purposes of this rule, a price list is not a cost estimate.

e. A purchase agreement that describes the purchase price as guaranteed shall disclose that, although the prices contained in the purchase agreement are not fixed, the preneed seller shall accept the funds available as payment in full for providing the merchandise or services detailed in the purchase agreement that are described as guaranteed. For items described as guaranteed, the purchaser, beneficiary and the beneficiary's estate shall not be obligated to pay additional costs if costs at the time merchandise or services are delivered or provided are greater than the funds available from the allocable portion of payments and accumulated income or growth, as long as the funding is not limited in any manner, such as the failure to make contractual or premium payments.

f. If a purchase agreement is to be funded by a trust, the purchase agreement shall disclose that 100 percent of all payments related to merchandise or services described in the purchase agreement as nonguaranteed shall be placed in trust in accordance with Iowa Code section 523A.201(2).

191—100.32 Reserved.

191—100.33(523A) Records maintenance and retention.

100.33(1) *By preneed sellers.*

a. Time for retaining records. If no other legal provision governs record retention, a preneed seller shall keep all records required to be kept by this rule either from the date of the preneed seller's last examination by the commissioner or for a minimum of five years after the date of the death of the purchaser, whichever is sooner.

b. Confidentiality. The preneed seller shall keep these records confidential and shall keep the identity of individuals in the records confidential.

c. Sales log and numbering of purchase agreements. A preneed seller shall maintain a sales log of purchase agreements, assigning numbers in sequential order to each purchase agreement sold during a calendar year.

(1) Prenumbered contracts are not required. If a contract is not prenumbered, the sales agent shall write the contract number on the purchase agreement at the time it is executed or in a document provided later to the purchaser.

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(2) The copy of the purchase agreement given to the purchaser shall include the contract number assigned to the purchase agreement.

(3) If a correction to the contract number is required, the correction shall be recorded in the sales logs, and documentation that retains evidence of the initial number used shall be maintained.

(4) Preneed sellers shall use the following numbering system, unless they receive written permission from the commissioner to use a different system.

1. The first portion of the number shall be the year the contract was written.

2. The second portion of the number shall be sequential and indicate the number of contracts executed by the preneed seller, to date, in the applicable calendar year.

3. A preneed seller with multiple locations may use a suffix to identify each location by number.

4. A preneed seller with multiple sales agents may use a numerical suffix to identify the sales agent.

5. Each part of the number shall be separated by a hyphen.

An example of the numbering system is provided on the commissioner's Web site.

d. Transaction records. A preneed seller shall document all transactions with purchasers and prospective purchasers and maintain accurate copies and records of all purchase agreements.

e. Deposit records. Preneed sellers shall maintain records of all deposits made into accounts related to purchase agreements. If purchase agreement payments made to a preneed seller and funds not related to a purchase agreement are commingled and deposited together in a single account, or if a deposit to an account involves purchase agreement payments related to more than one purchase agreement, the preneed seller shall retain a detailed summary of each deposit showing the amounts related to the different purchase agreements.

100.33(2) *By sales agents.* A sales agent shall maintain a sales log for a minimum of five years after the sale. The sales log shall include all of the information required for the sales agent's annual report. Instructions and an example are available on the commissioner's Web site.

191—100.34(523A) Changes in funding methods for or terms of purchase agreements. When a preneed seller or sales agent changes the funding method for a prepaid purchase agreement, this rule applies.

100.34(1) *Change in funding of a purchase agreement.* When a purchaser changes the funding source for a purchase agreement from a bank account or trust account to funding through insurance, or from insurance funding from one insurance company to another:

a. This type of change is deemed to be an amendment to the purchase agreement, not a cancellation of the original purchase agreement.

b. The amendment to the purchase agreement may include other minor updates to the statement of goods and services.

c. The preneed seller shall do all of the following:

(1) Obtain a written, signed and dated statement from the purchaser requesting the change in funding and acknowledging the transaction in a way that demonstrates the purchaser understood the change in funding transaction. A copy of the signed statement shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(2) Describe the change in funding in a written amendment to the purchase agreement. The amendment shall be signed and dated by the purchaser and the preneed seller. A copy of the signed amendment shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(3) If the funding change is from a bank account to an insurance account, record the amendment on the preneed seller's annual report as a reduction in cash accounts and an increase in insurance accounts.

(4) If the funding change is from a trust account to an insurance account:

1. Confirm that the policy shall have an increasing benefit, as specified in Iowa Code section 523A.401(6).

2. Record the amendment on the preneed seller's annual report as both a withdrawal from trust and an addition of insurance. Instructions are available on the commissioner's Web site.

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3. Comply with record-keeping and reporting requirements for the sale of new insurance in Iowa Code sections 523A.401 and 523A.402.

(5) If the change in funding is from one insurance company to another:

1. Document compliance with the disclosure requirements of rule 191—15.8(523A).

2. Comply with the replacement requirements of rule 191—16.24(507B).

3. Record the amendment on the preneed seller's annual report as a change in funding from one insurance company to another. Instructions are available on the commissioner's Web site.

(6) For record maintenance purposes, use the number for the original purchase agreement, not a new assigned number.

100.34(2) Cancellation of a purchase agreement. When a purchaser makes substantive changes to a purchase agreement:

a. This type of change is deemed to be a cancellation of the existing purchase agreement and requires the preneed seller to execute a new purchase agreement.

b. The preneed seller shall do all of the following:

(1) Obtain a written signed and dated statement from the purchaser which cancels the existing purchase agreement. A copy of the signed statement shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(2) Obtain a written signed and dated statement from the purchaser which demonstrates that the purchaser understood the change from one purchase agreement to the other. A copy of the signed statement shall be provided to the purchaser, and a copy shall be retained by the preneed seller.

(3) Comply with the rescission requirements of Iowa Code section 523A.602.

(4) For record maintenance purposes, assign a new number for the new purchase agreement.

(5) Record the cancellation of the initial purchase agreement on its annual report.

191—100.35(523A) Preneed seller's change of ownership and cessation of business operations.

100.35(1) Sale or transfer of purchase agreements or of business. A preneed seller shall not sell or transfer purchase agreements as part of the sale of a business or the assets of a business, unless:

a. The preneed seller has notified the commissioner of the change at least 90 days prior to the sale.

b. The person receiving assets and purchase agreements has an active preneed seller's license at the time of the transfer.

c. A certified public accountant has performed and filed with the commissioner an agreed-upon procedures (AUP) report or other audit acceptable to the commissioner, as required by Iowa Code section 523A.207.

d. The commissioner has conducted an examination of the sales and market practices of the preneed seller, if the commissioner requests.

e. The preneed seller has provided the commissioner with any other information required for the commissioner to approve the transfer.

100.35(2) Cessation of business by a preneed seller. At least 90 days prior to the cessation of business operations, if a preneed seller voluntarily or involuntarily ceases doing business, and the preneed seller's obligation to provide merchandise or services has not been assumed by another preneed seller holding an active preneed seller's license, the preneed seller shall:

a. Send a notice to the commissioner, in a manner as directed by the commissioner. Pursuant to subrule 100.10(3), the commissioner shall place the preneed seller's license on restricted status when the preneed seller ceases doing business.

b. Send written notice of the proposed cessation of business to the purchaser and beneficiary, if different than the purchaser, of each purchase agreement by certified mail, return receipt requested. The notice shall indicate the preneed seller's ability to transfer any trust funds and transfer the proceeds from any insurance to another licensed preneed seller.

c. During the 90 days prior to the cessation of business operations, the preneed seller shall work with financial institutions and insurance companies to modify the title to financial accounts and modify assignments and ownership of annuities and insurance policies as necessary or distribute trust funds to the purchaser or transfer to another licensed preneed seller.

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100.35(3) *Failure to notify the commissioner of a change of ownership, sale of a business, or cessation of business.*

a. A preneed seller's failure to notify the commissioner of a change of ownership, sale of all or part of a business, or cessation of business as set forth in this rule may be a ground for penalty under rule 191—100.40(523A) or 191—100.41(523A).

b. If trust funds are transferred without compliance with this rule or with Iowa Code sections 523A.207 and 523A.602, the commissioner may petition for the appointment of a receiver pursuant to Iowa Code section 523A.811.

100.35(4) *Annual reports.* A preneed seller holding a restricted license shall continue to file annual reports pursuant to Iowa Code section 523A.204 regarding any purchase agreement not transferred to another seller holding a current preneed seller's license through an assumption agreement or otherwise.

191—100.36 to 100.39 Reserved.

191—100.40(523A) Prohibited practices for preneed sellers and sales agents.

100.40(1) The commissioner may impose sanctions as set forth in Iowa Code section 523A.807 and rules 191—100.40(523A) and 191—100.41(523A), or place a license in restricted status, if the commissioner finds that a preneed seller, sales agent, or owner, partner, member, director, shareholder or manager of a licensed business entity has violated or failed to comply with Iowa Code chapter 523A, this chapter, or any associated rules or implementing orders, or is otherwise unable to conduct activities as a preneed seller or sales agent.

100.40(2) Grounds for discipline include but are not limited to the following acts or practices:

a. *Fraudulent or deceptive practices.* Engaging in any act or practice that violates Iowa Code section 523A.701, 523A.702 or 523A.703, whether or not actual harm or injury occurs, including but not limited to:

- (1) Falsifying business records; or
- (2) Misappropriating funds.

b. *Responsibility for sales activities of others.* A preneed seller's consent or acquiescence to violation of this chapter or Iowa Code chapter 523A by any person acting on the preneed seller's behalf.

c. *Law violations.*

(1) Violating any state or federal law applicable to the conduct of the applicant's or licensee's business including, but not limited to, the following:

1. The provisions of Iowa Code chapter 156 pertaining to the licensure of funeral directors in the state of Iowa;
2. Regulations promulgated by the Federal Trade Commission relating to merchandise or services, or funeral or cremation establishments;
3. Applicable tax or public health laws, ordinances or regulations; or
4. Laws, rules, ordinances, or regulations occurring outside of Iowa if the commissioner determines that such violation may adversely implicate the licensee's or applicant's compliance with Iowa laws, rules, orders, ordinances, or regulations.

(2) Conviction of a criminal offense, in any jurisdiction, involving dishonesty or a false statement, including but not limited to fraud, theft, misappropriation of funds, falsification of documents, deceptive acts or practices, or other related offenses. "Conviction" shall include a plea of guilty or a finding of guilt and shall include a deferred judgment.

d. *Sales prohibited by order.* The sale of merchandise or services by a preneed seller or sales agent who has been prohibited from selling services or merchandise in an order issued pursuant to Iowa Code section 523A.807(3).

e. *Returned checks or declined credit transactions.* Submitting to the commissioner an electronic payment which is returned to the commissioner by a bank without payment, or submitting a payment to the commissioner by credit card which the credit card company does not approve, or canceling or refusing amounts charged to a credit card by the commissioner.

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f. Failure to maintain records. Failure to maintain records as required by Iowa Code chapter 523A or any associated rules or orders.

g. Failure to cooperate with an examination or investigation. Failure to submit to an examination, failure to comply with a reasonable written request of an examiner, or failure to cooperate with an investigation conducted by the commissioner as required by Iowa Code sections 523A.206, 523A.803, 523A.808 and 523A.811 and any associated rules or orders.

h. Insolvency or unsound financial condition. Being or becoming insolvent or of unsound financial condition, the determination of which shall be based on but not limited to the following factors:

- (1) The licensee's or license applicant's net worth;
- (2) Whether a financial institution has closed or otherwise taken adverse action against an account held by or on behalf of the licensee or license applicant;
- (3) The licensee or license applicant has exhibited a pattern of writing bad checks or otherwise overdrawing a business or trust account as a result of insufficient funds;
- (4) Untimely payment by the licensee or license applicant of business obligations in a manner that threatens the operation of the business;
- (5) Untimely placement by the licensee of consumer funds into trust;
- (6) Failure of the licensee or license applicant to pay sales tax, unemployment tax or other tax owed in the course of business; or
- (7) Any other act, practice or omission that provides a reasonable basis to question the ability of the licensee or license applicant to comply with the requirements of Iowa Code chapter 523A and related regulations.

i. Inability to perform.

- (1) Inability to provide the merchandise or services which the licensee purports to sell, including but not limited to failing to employ or have a contractual arrangement with at least one person who is licensed to perform mortuary science services, as described in Iowa Code chapter 156, if such services are included in a purchase agreement.
- (2) Inability to reasonably provide merchandise or services due to an impairment, drug or alcohol addiction, or other act, conduct or condition. A licensee who has had a physical or mental impairment or illness during the license period may request to be placed on restricted status by the commissioner. Any such request shall be submitted on a form as specified by the commissioner and must include a signed statement of a licensed health care professional which attests to the existence of a disability or illness during the license period.

j. Suspension for failure to pay child support.

- (1) Upon receipt of a certificate of noncompliance from the child support recovery unit (CSRU), the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 30 days after the date of the notice. Notice shall be sent by regular mail to the sales agent's last-known address.
- (2) The notice shall contain the following items:
 1. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current license in 30 days;
 2. A statement that the sales agent must contact the CSRU to request a withdrawal of the certificate of noncompliance;
 3. A statement that the sales agent's application, request for renewal or current license will be suspended if the certificate of noncompliance is not withdrawn;
 4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 252J.9;
 5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and
 6. A copy of the certificate of noncompliance.
- (3) The filing of an application for hearing with the district court will stay all suspension proceedings until the commissioner is notified by the district court of the resolution of the application.

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(4) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSRU or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current license 30 days after the notice is issued.

(5) Upon receipt of a withdrawal of the certificate of noncompliance from the CSRU, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to this paragraph.

k. Suspension for failure to pay student loan.

(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the college student aid commission (CSAC) according to the procedures set forth in Iowa Code sections 261.126 and 261.127. In addition to the procedures contained in those sections, this subrule shall apply.

(2) Upon receipt of a certificate of noncompliance from the CSAC according to the procedures set forth in Iowa Code sections 261.126 and 261.127, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed sales agent may accept service personally or through authorized counsel.

(3) The notice shall contain the following items:

1. A statement that the commissioner intends to deny the sales agent's application or request for renewal or suspend the sales agent's license in 60 days;
2. A statement that the sales agent must contact the CSAC to request a withdrawal of the certificate of noncompliance;
3. A statement that the sales agent's application or request for renewal will be denied or the sales agent's license will be suspended if the certificate of noncompliance is not withdrawn or, if the current license is on suspension, a statement that the sales agent's license will be revoked;
4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 261.127;
5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and
6. A copy of the certificate of noncompliance.

(4) The effective date of revocation or suspension of a sales agent license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days after service of the notice upon the sales agent.

(5) In the event an applicant or licensed sales agent timely files a district court action pursuant to Iowa Code section 261.127, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

(6) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the CSAC or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

(7) Upon receipt of a withdrawal of the certificate of noncompliance from the CSAC, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted.

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If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with rules issued by the commissioner. All fees required for license renewal or license reinstatement must be paid by sales agents, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code section 261.126.

(8) The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent's license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

(9) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the CSAC for the sole purpose of identifying a sales agent subject to enforcement under Iowa Code chapter 261.

l. Suspension for failure to pay state debt.

(1) The commissioner shall deny the issuance or renewal of a sales agent license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this subrule shall apply.

(2) Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D, the commissioner shall issue a notice to the sales agent that the sales agent's pending application for licensure, pending request for renewal, or current sales agent license will be suspended 60 days after the date of the notice. Notice shall be sent to the sales agent's last-known address by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensed sales agent may accept service personally or through authorized counsel.

(3) The notice shall contain the following items:

1. A statement that the commissioner intends to suspend the sales agent's application, request for renewal or current sales agent license in 60 days;
2. A statement that the sales agent must contact the centralized collection unit of the department of revenue to schedule a conference or to otherwise obtain a withdrawal of the certificate of noncompliance;
3. A statement that the sales agent's application, request for renewal or current sales agent license will be denied or suspended if the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue within 60 days of the issuance of notice under this rule; or, if the current sales agent license is on suspension, a statement that the sales agent's current sales agent license will be revoked;
4. A statement that the sales agent does not have a right to a hearing before the commissioner, but that the sales agent may file an application for a hearing in district court pursuant to Iowa Code section 272D.9;
5. A statement that the filing of an application with the district court will stay the proceedings of the commissioner; and
6. A copy of the certificate of noncompliance.

(4) Sales agents shall keep the commissioner informed of all court actions and all actions taken by the centralized collection unit of the department of revenue, and sales agents shall provide to the commissioner, within seven days of filing or issuance, copies of all applications filed with the district court pursuant to all court orders entered in such actions and copies of all withdrawals of certificates of noncompliance by the centralized collection unit of the department of revenue.

(5) The effective date of revocation or suspension of a sales agent license shall be 60 days following service of the notice upon the applicant or sales agent.

(6) In the event an applicant or licensed sales agent timely files a district court action following service of a notice by the commissioner, the commissioner's suspension proceedings will be stayed until the commissioner is notified by the district court of the resolution of the application. Upon receipt of a

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court order lifting the stay, or otherwise directing the commissioner to proceed, the commissioner shall continue with the intended action described in the notice. For purposes of determining the effective date of the denial of the issuance or renewal of a sales agent license, the commissioner shall count the number of days before the action was filed and the number of days after the court disposed of the action.

(7) If the commissioner does not receive a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue or a notice from a clerk of court that an application for hearing has been filed, the commissioner shall suspend the sales agent's application, request for renewal or current sales agent license 60 days after the notice is issued.

(8) Upon receipt of a withdrawal of the certificate of noncompliance from the centralized collection unit of the department of revenue, suspension proceedings shall halt, and the named sales agent shall be notified that the proceedings have been halted. If the sales agent's license has already been suspended, the license shall be reinstated if the sales agent is otherwise in compliance with this chapter. All fees required for license renewal or license reinstatement must be paid by the sales agent, and all continuing education requirements must be met before a sales agent license will be renewed or reinstated after a license suspension or revocation pursuant to Iowa Code chapter 272D.

(9) The commissioner shall notify the sales agent in writing through regular first-class mail, or such other means as the commissioner deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a sales agent license, and shall similarly notify the sales agent when the sales agent license is reinstated following the commissioner's receipt of a withdrawal of the certificate of noncompliance.

(10) Notwithstanding any statutory confidentiality provision, the commissioner may share information with the centralized collection unit of the department of revenue for the sole purpose of identifying sales agents subject to enforcement under Iowa Code chapter 272D.

191—100.41(523A) Disciplinary procedures.

100.41(1) Investigations. The commissioner is authorized by Iowa Code sections 17A.13(1) and 523A.803 to conduct such investigations as the commissioner deems necessary to determine whether any person has violated or is about to violate Iowa Code chapter 523A. The commissioner is authorized to issue and enforce subpoenas to compel testimony and to compel the production of books and records, as more fully described in Iowa Code section 523A.803. Upon the commissioner's determination that probable cause exists to commence a disciplinary proceeding, the procedures contained in 191—Chapter 3 shall apply.

100.41(2) Legal relationship of sales agent to preneed seller. For purposes of Iowa Code section 523A.502(1), a sales agent offering preneed services on behalf of a preneed seller is deemed to have a legal relationship as an agent of the preneed seller. The determination of whether a sales agent and a preneed seller have a principal-agent relationship will be made by the commissioner based on the totality of the circumstances surrounding the business relationship.

100.41(3) Factors used to determine whether a preneed seller has agreed to provide merchandise or services.

a. Unless the lack of a mutual agreement has been appropriately documented in the preneed seller's preneed purchaser file records, a preneed seller has agreed "to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof" and received an "initial payment," for purposes of Iowa Code section 523A.102(23), if:

(1) A sales agent of the preneed seller has met in person, or had an interactive discussion by telephone or another form of electronic communication, and discussed specific items of merchandise or services and the price of the applicable merchandise or services with a potential purchaser and the potential purchaser did any of the following:

1. Transferred ownership of insurance to the preneed seller,
2. Assigned proceeds of insurance to the preneed seller, or
3. Established a financial account made payable on death to the preneed seller.

(2) A sales agent of the preneed seller has met in person, or had an interactive discussion by telephone or another electronic communication, and discussed specific items of merchandise or services

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and the applicable prices with the owner of a financial account for which the preneed seller has been named as the pay-on-death beneficiary to receive funds upon the death of the owner of the financial account.

b. Written documents retained in the preneed seller's records may rebut the presumption that a purchase agreement exists.

100.41(4) Penalties. Persons violating Iowa Code chapter 523A, this chapter, or any associated rules or implementing orders may be subject to one or more of the following penalties.

a. Pursuant to Iowa Code sections 523A.204(4) and 523A.502A, the failure of a licensee to timely file an annual report shall result in the license being placed on restricted status. The licensee is not authorized to solicit or execute or amend any purchase agreement under Iowa Code chapter 523A until the license has been reinstated.

b. If the commissioner issues or renews a license and subsequently determines that the payment method was declined or returned without payment to the commissioner, the license shall be immediately placed on restricted status until the payments are made and any fees or penalties charged by the commissioner are paid, at which time the license may be reinstated at the request of the applicant.

c. The commissioner may impose the disciplinary sanctions of Iowa Code chapter 523A, and of this chapter, alone or in combination, against a preneed seller or sales agent, or as a condition of licensure of an applicant for a preneed seller license or sales agent license or as a condition of renewal of a license. Sanctions include but are not limited to the following:

- (1) Issuing a warning letter or a letter of reprimand.
- (2) Requiring additional education or training.
- (3) Requiring certain specified procedures or methods of operation.
- (4) Ordering the payment of consumer restitution.
- (5) Placing a licensee on probationary status with or without the imposition of reasonable conditions to control or monitor conduct, such as periodic reports.
- (6) Imposing costs associated with the commissioner's investigation and enforcement activities.
- (7) Imposing any other sanction allowed by law.

d. A person with a restricted or expired license is subject to disciplinary action, injunctive action, criminal sanctions and any other available legal remedies in the event of any violation of Iowa Code chapter 523A, or any rules adopted or orders issued pursuant thereto.

These rules are intended to implement Iowa Code chapter 523A as amended by 2015 Iowa Acts, House File 632.

ITEM 4. Rescind and reserve **191—Chapter 101 to Chapter 105.**

ARC 2172C

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 502.605 and section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

Iowa Code chapter 502, among other things, prescribes the terms and conditions under which broker-dealers, investment advisers and securities offerings operate. The proposed amendment to Chapter 50 implements 2015 Iowa Acts, House File 632, to allow intrastate crowdfunding as an

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exemption under Iowa Code section 502.202 and to establish procedures for persons to conduct intrastate crowdfunding on or after January 1, 2016.

The Division intends that this rule will become effective December 30, 2015.

Any interested person may make written suggestions or comments on this proposed amendment on or before October 21, 2015. Such written materials should be directed to Rosanne Mead, Iowa Securities and Regulated Industries Bureau, Iowa Insurance Division, Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa 50319; fax (515)281-3059; e-mail rosanne.mead@iid.iowa.gov.

Also, there will be a public hearing on October 21, 2015, at 9 a.m. at the offices of the Iowa Insurance Division, Two Ruan Center, Fourth Floor, 601 Locust Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment. Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

The Insurance Division's general waiver provisions of 191—Chapter 4 apply to this rule.

This amendment will impose no fiscal impact to the State.

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

This amendment is intended to implement Iowa Code section 502.605 and section 502.202 as amended by 2015 Iowa Acts, House File 632.

The following amendment is proposed.

Adopt the following **new** rule 191—50.90(502):

191—50.90(502) Intrastate crowdfunding exemption.

50.90(1) Purpose and authority.

a. The purpose of this rule is to set out the requirements, procedures and fees relating to the registration and conduct of intrastate crowdfunding, as established by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3.

b. This rule is authorized by Iowa Code section 502.605 and Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, and is intended to implement 2015 Iowa Acts, House File 632.

50.90(2) Definitions. For purposes of this rule, the definitions in Iowa Code chapter 502 as amended by 2015 Iowa Acts, House File 632, and the following definitions shall apply unless the context requires otherwise:

“*Administrator’s Web site*” means the Web site of the Iowa insurance division, www.iid.iowa.gov.

“*Issuer*” means a person that has filed a certificate of formation with the Iowa secretary of state and is authorized to do business in Iowa and has been approved by the administrator as a crowdfunding issuer pursuant to paragraph 50.90(8)“*a.*”

“*Management*” means an issuer’s directors or executive officers or the individuals who perform such functions for the issuer.

“*Portal Web site*” means the Internet Web site through which a registered Iowa crowdfunding portal provides intrastate crowdfunding offers and sales of exempt securities in Iowa.

“*Purchaser*” means an investor or person that purchases crowdfunding securities through an Iowa crowdfunding intermediary.

50.90(3) Intermediary registration. To act as a registered intermediary as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3:

a. A broker-dealer shall comply with the registration requirements of Iowa Code section 502.401; or

b. An entity that is not a broker-dealer acting as an Iowa crowdfunding portal shall register with the administrator by filing an Iowa crowdfunding portal registration, pursuant to subrule 50.90(4), and receiving approval of the registration by the administrator.

50.90(4) Iowa crowdfunding portal registration. To request administrator approval of a registration as an Iowa crowdfunding portal as defined and required by Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, a person shall submit all of the following to the administrator:

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- a. A completed Iowa crowdfunding portal registration form, available on the administrator's Web site, including all required schedules and supplemental information.
- b. A completed Form U-4, available on the administrator's Web site, for each agent as defined in Iowa Code section 502.102(2).
- c. Any other information requested by the administrator to determine the financial responsibility, business reputation, or qualifications of the Iowa crowdfunding portal.
- d. The registration fee of \$100.

50.90(5) *Registration renewal.* Registration as an Iowa crowdfunding portal expires at the close of the calendar year. An Iowa crowdfunding portal may renew registration for the succeeding year by submitting to the administrator the appropriate renewal fee and a written request for renewal, including any material changes to the information submitted in the prior application. The administrator may request additional information as necessary.

50.90(6) *Duties of an Iowa crowdfunding portal.*

a. *Creation, maintenance and availability of portal Web site.* A registered Iowa crowdfunding portal shall create the portal Web site and shall maintain the portal Web site and make information and services available on or through the portal Web site in compliance with this rule.

b. *Background and regulatory checks.* Prior to offering securities to residents of Iowa, the Iowa crowdfunding portal shall conduct a reasonable investigation of the background and regulatory history of each issuer whose securities are offered on the portal Web site and of each of the issuer's control persons. "Control persons" for purposes of this subrule means the issuer's officers or directors; other persons having the power, directly or indirectly, to direct the management or policies of the issuer, whether by contract or otherwise; and persons holding more than 20 percent of the outstanding equity of the issuer. The Iowa crowdfunding portal shall deny an issuer access to the portal Web site if:

- (1) The issuer or any of its control persons are subject to a disqualification under Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, [new Iowa Code section 502.202(24) "b"(5)] or this rule;
- (2) The issuer has engaged in or is engaging in or the offering involves any act, practice, or course of business that will, directly or indirectly, operate as a fraud or deceit upon any person; or
- (3) The Iowa crowdfunding portal cannot adequately or effectively assess the risk of fraud by the issuer or the issuer's potential offering.

c. *Purchaser screening.* Before a security is sold through an Iowa crowdfunding portal, the Iowa crowdfunding portal shall ensure that the purchaser does all of the following:

- (1) Reviews the information provided in the offering documents.
- (2) Provides to the Iowa crowdfunding portal an acknowledgment in writing from the purchaser that the purchaser received and acknowledged the disclosure statement provided to the purchaser by the issuer pursuant to paragraph 50.90(8) "b."
- (3) Provides to the Iowa crowdfunding portal an affirmative representation that the purchaser is an Iowa resident.

d. *Information about the issuer and the offering.* The Iowa crowdfunding portal shall make available on the portal Web site information about the issuer and the offering. The information shall include all of the following:

- (1) A copy of the disclosure statement required by paragraph 50.90(8) "b."
- (2) A summary of the offering, including all of the following:
 1. A description of the entity; its form of business, principal office, history, and business plan; and its intended use of the offering proceeds, including compensation paid to any owner, executive officer, director, or manager.
 2. The identity of the executive officers, directors, and managers, including their titles and their prior experience, and the identity of all persons owning more than 20 percent of the ownership interests of any class of securities of the company.
 3. A description of the securities being offered and of any outstanding securities of the company, the amount of the offering, and the percentage ownership of the company represented by the offered securities.

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e. Portal Web site forum. The Iowa crowdfunding portal shall maintain a forum on its portal Web site. The forum shall be available to all potential purchasers as well as to the administrator. The portal Web site shall contain a disclaimer which states that access to securities offered on the portal Web site is limited to Iowa residents and that offers and sales of the securities appearing on the portal Web site are limited to persons that are Iowa residents. Potential purchasers may ask questions and receive answers concerning the terms and conditions of the offering and may obtain any additional information which the crowdfunding issuer possesses or can acquire without unreasonable effort or expense necessary to verify the accuracy or clarify the information provided on the portal Web site.

f. Enforcement of investment limits. The Iowa crowdfunding portal shall take reasonable measures to ensure that no purchaser exceeds the sales limits set forth in Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 [new Iowa Code section 502.202(24) “c” and “d”].

g. Administrator access. The Iowa crowdfunding portal shall provide the administrator purchaser-level access at all times to the portal Web site, pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3 [new Iowa Code section 502.202(24) “g”(8)].

50.90(7) Prohibited conduct for Iowa crowdfunding portals. An Iowa crowdfunding portal and individuals of the Iowa crowdfunding portal’s management:

- a.* Shall have no ownership or other financial interest in the crowdfunding issuer.
- b.* Shall not hold, manage, possess, or otherwise handle purchaser funds or securities.
- c.* Shall not compensate employees, agents or other persons not registered with the administrator for soliciting offers or sales of securities displayed or referenced on the Iowa crowdfunding portal.
- d.* Shall not hold, manage, possess or otherwise handle purchaser funds or securities.
- e.* Shall not be affiliated with or under common control with an issuer whose securities appear on the portal Web site.
- f.* Shall not hold a financial interest in any issuer offering securities on the portal Web site.
- g.* Shall not receive a financial interest in an issuer as compensation for services provided to or on behalf of an issuer.

50.90(8) Duties of a crowdfunding issuer:

a. Notice to administrator. Pursuant to Iowa Code section 502.202 as amended by 2015 Iowa Acts, House File 632, section 3, at least 30 days prior to the offer of any security in this state in reliance upon the exemption provided by this rule, the crowdfunding issuer shall file with the administrator for approval a crowdfunding exemption notice application form, available on the administrator’s Web site.

(1) The following entities may not act as issuers nor may they file a crowdfunding exemption notice application form:

1. A company that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities.
2. A company that has not yet defined its business operations, that has no business plan, that has no stated investment goal for the funds being raised, or that plans to engage in a merger or acquisition with an unspecified business entity.

(2) For a filing to be approved, the crowdfunding issuer shall demonstrate to the satisfaction of the administrator the following:

1. The crowdfunding issuer is an Iowa entity that has filed a certificate of formation with the Iowa secretary of state and is authorized to do business in Iowa;
2. The principal office of the issuer is located in Iowa;
3. At least 80 percent of the issuer’s gross revenue during its most recent fiscal year prior to the offering is derived from the operation of a business in Iowa;
4. At least 80 percent of the issuer’s assets at the end of its most recent semiannual period prior to the offering are located in Iowa; and
5. At least 80 percent of the net proceeds of this offering will be used by the issuer in connection with the operation of its business within Iowa.

INSURANCE DIVISION[191](cont'd)

b. Disclosure document. A disclosure document shall be made readily available and accessible on the portal Web site to each potential purchaser at the time the offer of securities is made to the potential purchaser. The disclosure document shall contain all of the following information:

(1) That no ready market exists for the sale of the securities acquired from the offering; that it may be difficult or impossible for a purchaser to sell or otherwise dispose of the investment; and that a purchaser may be required to hold and bear the financial risks of this investment indefinitely.

(2) That the securities have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under federal and state law.

(3) That, in making an investment decision, purchasers shall rely on their own examination of the issuer and the terms of the offering, including the merits and risks involved.

(4) That no federal or state securities commission or regulatory authority has confirmed the accuracy or determined the adequacy of the disclosure statement or any other information on the portal Web site.

(5) All information material to the offering, including, where appropriate, a discussion of significant factors that make the offering speculative or risky. Guidance on information to be included may be found by reviewing the small corporate offering registration (SCOR) information provided on the administrator's Web site. Topics to be addressed include, but are not limited to:

1. General description of the issuer's business;
2. History of the issuer's operations and organization;
3. Management of the company and principal stockholders;
4. How the proceeds from the offering will be used;
5. Target offering amounts and escrow requirements, related to subrule 50.90(11);
6. Financial information about the issuer;
7. Description of the securities being offered; and
8. Litigation and legal proceedings.

(6) Current financial statements certified by the principal executive officer to be true and complete in all material respects and in accordance with generally accepted accounting principles (GAAP). If the issuer has prepared within the prior three years audited or reviewed financial statements, those shall also be provided to purchasers.

c. Provision of sales reports. An issuer shall provide to the administrator a sales report detailing the amount of securities sold in Iowa at the close of the offering. The administrator may request additional reports at any time.

50.90(9) Compensation and fees.

a. A commission or other remuneration shall not be paid or given, directly or indirectly, for the offer or sale of the securities unless the person receiving such compensation is acting as an Iowa crowdfunding portal pursuant to subrule 50.90(3) or is an agent identified by the Iowa crowdfunding portal pursuant to paragraph 50.90(4) "b."

b. The issuer shall not provide a financial interest in the issuer as compensation for services provided to or on behalf of the issuer to a person acting as an Iowa crowdfunding portal pursuant to subrule 50.90(3) or as an agent identified by the Iowa crowdfunding portal pursuant to paragraph 50.90(4) "b."

50.90(10) Advertising and communications.

a. The crowdfunding issuer shall not advertise the specific details of the offering, except for notices which direct potential purchasers to the portal Web site. Notwithstanding the foregoing, the issuer may distribute a notice within Iowa that the issuer is conducting an offering of securities and that includes the name of the registered Iowa crowdfunding portal through which the offering is being conducted and a link directing the potential investor to the registered Iowa crowdfunding portal. The notice shall contain a disclaimer that the offer or sale of the security is limited to persons that are Iowa residents.

b. Communications. All communications between the issuer and potential purchasers taking place during the offer of securities pursuant to this rule shall occur through the portal Web site of the registered Iowa crowdfunding portal. During the time the securities are being offered on the portal Web site, the

INSURANCE DIVISION[191](cont'd)

Iowa crowdfunding portal shall, pursuant to paragraphs 50.90(6) “d” and “e,” provide channels through which potential purchasers can communicate with one another and with the issuer about the securities being offered. These communications shall be visible to all those with access to the portal Web site.

(1) An issuer shall respond within ten days to requests for information made by potential purchasers or by the administrator through the portal Web site.

(2) If such additional information is material and not previously included on the portal Web site, the crowdfunding issuer and the Iowa crowdfunding portal shall immediately amend the information contained on the portal Web site to provide such material information.

50.90(11) Target amount, offering period, and escrow requirements.

a. The crowdfunding issuer shall establish a target offering amount and include it in the disclosure document. More information regarding the establishment of a target amount may be found on the administrator’s Web site.

b. The offering period shall not exceed 12 months from the date of filing of the notice required by paragraph 50.90(8) “a.”

c. All offering proceeds shall be held in an escrow account, maintained in a custodial account in a state or federal financial institution located in Iowa, until offering proceeds (less any offering proceeds from the crowdfunding issuer or its management or affiliates) totaling at least the target offering amount are received.

d. If the target offering amount is not received by the end of the offering period, the proceeds shall be returned to the purchasers within 30 days.

e. All purchasers shall have the right to withdraw their investments, without deduction of any kind, until such time as offering proceeds totaling at least the target offering amount are received and the offering proceeds are released by the qualified custodian from the escrow account to the crowdfunding issuer.

50.90(12) Offering price. The offering price of the securities offered and sold pursuant to this exemption shall be the same for all purchasers and shall not be increased during the offering period. The offering price may be lowered, but only if all previous purchasers in the particular offering are notified of the change and allowed to rescind their previous investment and participate at the lower offering price.

50.90(13) Resales of securities. On the document that is to serve as evidence of ownership, the issuer shall place a prominent notice which states that the securities have not been registered and which sets forth limitations on resale contained in SEC Rule 147(e), 17 CFR §230.147(e), including that, for a period of nine months from the date of last sale by the issuer of the securities in the offering, all resales by any person shall be made only to Iowa residents.

This rule is intended to implement Iowa Code section 502.605 and section 502.202 as amended by 2015 Iowa Acts, House File 632.

ARC 2159C

IOWA PUBLIC INFORMATION BOARD[497]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 23.6, the Iowa Public Information Board hereby gives Notice of Intended Action to amend Chapter 8, “Open Meetings,” Iowa Administrative Code.

This amendment reflects the March 25, 2015, decision of the Iowa Court of Appeals in James W. Olinger and Larry C. Meyer vs. Robert Smith, Walter Utman and Gaylord Pitt, Harrison County, Iowa and Utman Drainage District in which the Court opined that when a governmental body holds a closed

IOWA PUBLIC INFORMATION BOARD[497](cont'd)

session under Iowa Code section 21.5(1)“c,” the legal counsel for the governmental body is required to be present.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 20, 2015, by contacting Charlie Smithson, Executive Director, Iowa Public Information Board, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by e-mail to Charlie.Smithson@iowa.gov.

The proposed amendment does not contain a waiver provision as the amendment implements a judicial decision interpreting the applicable law.

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

This amendment is intended to implement Iowa Code section 21.5.

The following amendment is proposed.

Adopt the following **new** rule 497—8.2(21,23):

497—8.2(21,23) Closed session.

8.2(1) *Who may attend.* A governmental body has the discretion as to who it may invite to attend a closed session. However, if the governmental body holds a closed session under Iowa Code section 21.5(1)“c” to discuss strategy with counsel, the legal counsel for the governmental body shall be in attendance at the closed session either in person or by electronic means.

8.2(2) Reserved.

This rule is intended to implement Iowa Code section 21.5.

ARC 2163C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

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

This amendment extends the effective period of an alteration permit and amends the process for getting an alteration permit extension.

The purposes of this amendment are to reduce unnecessary paperwork and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on October 20, 2015, a public hearing will be held on October 21, 2015, at 2:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted no later than October 21, 2015, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

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

After analysis and review of this rule making, no adverse impact on jobs is expected.

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

LABOR SERVICES DIVISION[875](cont'd)

The following amendment is proposed.

Amend subrule 71.9(6) as follows:

71.9(6) The alteration permit shall expire upon the earlier of the completion of the alteration as described in the permit application or ~~120 days~~ one year after issuance. However, ~~between 90 and 110 days during the tenth month~~ after issuance and upon submission to the labor commissioner of the fee set forth in this chapter, sufficient justification, and other required information, the labor commissioner may grant an extension of the alteration permit ~~may be granted at the discretion of the labor commissioner.~~

ARC 2155C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 144.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 95, “Vital Records: General Administration,” Iowa Administrative Code.

The Iowa Department of Public Health, Bureau of Health Statistics, is continuing its effort to review and amend administrative rules to allow for the processing of vital records through the electronic statewide vital records system and meet needs of Department stakeholders.

The proposed amendments implement changes that have been made to Iowa Code chapter 144 in 2015 Iowa Acts, House File 662, that remove the requirement that a fee be charged for all searches of vital records when no record is found and no copy is issued and allow county registrars access to all birth records available in the electronic vital records system.

Any interested person may make written comments or suggestions on the proposed amendments on or before October 20, 2015. Such written comments should be directed to Melissa Bird, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by e-mail to melissa.bird@idph.iowa.gov.

A public hearing via conference call is scheduled for October 23, 2015, from 10 to 11 a.m. The call-in number is 1-866-685-1580, and the conference code to enter when prompted is 9327091718. Persons may present their views orally during the conference call. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to participate in the public hearing and have special requirements, such as those relating to hearing impairments, should contact the Department of Public Health and advise of specific needs by October 15, 2015.

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

These amendments are intended to implement Iowa Code chapter 144 as amended by 2015 Iowa Acts, House File 662.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **641—95.1(144)**:

“Competent and disinterested person” means an individual of legal age who is acquainted with both applicants who plan to marry.

“Electronic access” means authority given by the state registrar to a county registrar to access electronic vital records through the electronic statewide vital records system for purposes of retrieving information. The state registrar shall provide guidelines for electronic access and the retrieval of information from the electronic statewide vital records system.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Electronic statewide vital records system*” means the combined vital records system for registration of birth records, registration of death records, issuance of certified copies of vital records by the state registrar and county registrar, and fee accounting.

ITEM 2. Amend rule ~~641—95.1(144)~~, definition of “Certified copy,” as follows:

“*Certified copy*” means an official copy of a registered vital record that is authenticated by the state registrar in whose jurisdiction the record is registered or county registrar. A certified copy contains a statement certifying the facts are true and accurate as recorded, is printed on security paper, and has authentication seals and signatures. A certified copy excludes all entries indicated as confidential or for statistical information.

ITEM 3. Amend subparagraph ~~95.6(1)“a”(3)~~ as follows:

(3) If, following a search, no record is found and no certified copy is printed, the \$20 fee ~~shall~~ may be retained. On and after July 1, 2019, this fee will revert to \$15.

ITEM 4. Adopt the following new subrule 95.6(9):

95.6(9) *Retention of applications and reports.* An application for a certified copy of a vital record in Iowa shall be retained by the county registrar for a minimum of six months from date of issuance of the certified copy. All financial reports for vital records fees shall be retained by the county registrar for a minimum of three calendar years.

ITEM 5. Amend subrule 95.7(2) as follows:

95.7(2) Electronic devices, including but not limited to scanners, cameras, tablets, eell cellular phones or laptops, shall not be used to secure ~~information~~ images or copies from county vital records. Laptops or like devices may be allowed only for purposes of typing information into a genealogy software program or electronic document and as directed by the state registrar or county registrar.

ITEM 6. Amend subrule 95.7(4) as follows:

95.7(4) County registrars may issue uncertified copies of vital records held in the registrars’ physical custody and or accessible to the general public through the electronic statewide vital records system, except those records excluded by statute or at the direction of the state registrar.

a. and b. No change.

ITEM 7. Amend subrules 95.7(7) to 95.7(9) as follows:

95.7(7) For records available in the electronic statewide vital records system, the state registrar shall send to the county registrars a list of all records that have been modified. County registrars shall, as directed by the state registrar, remove all forms of any vital record in their physical custody from the county vital records system if the vital record appears on the list of modified records. Records of births prior to July 1, 1995, that have been determined to be single parent births shall not be in the custody of the county registrar or accessible to the public. The county registrar shall allow the general public access to the electronic statewide vital records system to search as a public user as a right under Iowa Code chapter 22.

95.7(8) ~~Records of births on and after July 1, 1995, that have been determined to be single parent births shall be accessible to the public as a right under Iowa Code chapter 22.~~ For records not available in the electronic statewide vital records system, the state registrar shall send a copy of any modified vital record to the county of event and, if the record is a death record, to the county of residence.

95.7(9) ~~For a record of death registered on or after April 5, 2012, for a decedent who died outside of the county of the decedent’s residence, the state registrar shall send a clearly marked copy of the decedent’s death certificate and any amendments to the county registrar of the county of the decedent’s residence. The county registrar shall incorporate the clearly marked copy of the county resident death certificate in the vital records system maintained by the county. Certified or uncertified copies of county resident death certificates shall be clearly marked as “county resident copy.”~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 8. Amend subrule 95.9(5) as follows:

95.9(5) If, after the search is conducted, no record is on file, and the state registrar or county registrar shall issue issues a “notification of record search” on certified paper, ~~and~~ the fee for the search shall be retained pursuant to paragraph 95.6(1) “a.”

ITEM 9. Adopt the following new subrules 95.9(6) and 95.9(7):

95.9(6) If a certified copy of a vital record is issued and sent to the applicant using a mail service and the applicant does not receive the certified copy, the state registrar or the county registrar may replace the certified copy without an additional fee using an Affidavit of Non-Receipt. The applicant must contact the issuing registrar within 90 days of the date of request. A minimum of 30 days must have elapsed from the time the certified copy was mailed. The applicant shall read the instructions, complete the Affidavit of Non-Receipt and have the applicant’s signature notarized. The original Affidavit of Non-Receipt and a photocopy of the applicant’s driver’s license must be reviewed by the issuing registrar before the certified copy can be replaced for no additional fee. The state registrar or county registrar may refuse any Affidavit of Non-Receipt.

95.9(7) If printed from the electronic statewide vital records system by a county registrar, the certified copy of a vital record shall be stamped by the issuing county registrar to reflect the county in which the certified copy was issued.

ITEM 10. Rescind and reserve paragraph **95.11(1)“b.”**

ITEM 11. Reletter paragraph **95.11(1)“c”** as **95.11(1)“b.”**

ITEM 12. Amend subrule 95.12(2) as follows:

95.12(2) Confidential verifications of the facts contained in vital records may be furnished by the state registrar to any federal, state, county or municipal government agency or other entity in the conduct of the agency’s or entity’s official duties, subject to conditions the state registrar may impose to ensure that the verification is limited to official purposes. Confidential verification of the facts contained in vital records may be furnished by a county registrar to another county office, within the county jurisdiction, in the conduct of the county’s official duties, subject to conditions the state and county registrar may impose to ensure that the verification is limited to official purposes.

a. and *b.* No change.

ITEM 13. Amend **641—Chapter 95**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 144 as amended by 2015 Iowa Acts, House File 662.

ARC 2156C

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 144.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 97, “Death Registration and Disposition of Dead Human Bodies,” Iowa Administrative Code.

The proposed amendments reflect changes that have been made to Iowa Code chapter 144 that require the use of the electronic statewide vital records system for the registration of death records. The proposed amendments give medical certifiers access for up to one year from the date of death to view a death record using the electronic statewide vital records system. The amendments also incorporate fetal death certificates into the electronic statewide vital records system.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Any interested person may make written comments or suggestions on the proposed amendments on or before October 20, 2015. Such written comments should be directed to Melissa Bird, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by e-mail to melissa.bird@idph.iowa.gov.

A public hearing via conference call is scheduled for October 23, 2015, from 10 to 11 a.m. The call-in number is 1-866-685-1580, and the conference code to enter when prompted is 9327091718. Persons may present their views orally during the conference call. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to participate in the public hearing and have special requirements, such as those relating to hearing impairments, should contact the Department of Public Health and advise of specific needs by October 15, 2015.

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

These amendments are intended to implement Iowa Code sections 135.11(7), 144.12, 144.16 to 144.18, 144.26 to 144.29, 144.30 to 144.35, 144.47, 144.49 to 144.51, 144C.5, 331.802(3) and 633.517 to 633.520.

The following amendments are proposed.

ITEM 1. Amend paragraph **97.5(1)“c”** as follows:

c. Within three days after the death and prior to final disposition of the dead human body, file the completed certificate of death ~~in the county where the death occurred~~ using the electronic statewide vital records system or, within three days after delivery and prior to disposition of the fetus, file the completed certificate of fetal death with the state registrar.

ITEM 2. Amend subrule 97.5(2) as follows:

97.5(2) The funeral director or person other than the funeral director who first assumes custody of the dead human body ~~or fetus~~ for the purposes of disposition shall prepare the certificate of death ~~or fetal death on the official paper issued by the state registrar by one of the following means:~~ using the electronic statewide vital records system.

- a.* ~~Use of a typewriter with dark blue or black ribbon to complete the standard certificate form;~~
- b.* ~~Use of a funeral director's computer program to complete the form that has been preapproved by the state registrar pursuant to subrules 97.3(4) and 97.4(6);~~
- c.* ~~Use of an electronic form prescribed by the state registrar; or~~
- d.* ~~As directed by the state registrar.~~

ITEM 3. Renumber subrule **97.5(3)** as **97.5(4)**.

ITEM 4. Adopt the following **new** subrule 97.5(3):

97.5(3) The funeral director or person other than the funeral director who first assumes custody of the dead fetus for the purposes of disposition shall prepare the certificate of fetal death on the official paper issued by the state registrar by one of the following means:

- a.* Use of a typewriter with dark blue or black ribbon to complete the standard certificate form;
- b.* Use of a funeral director's computer program to complete the form that has been preapproved by the state registrar pursuant to subrules 97.3(4) and 97.4(6);
- c.* Use of an electronic form prescribed by the state registrar; or
- d.* As directed by the state registrar.

ITEM 5. Amend renumbered subrule 97.5(4) as follows:

97.5(4) Unless otherwise directed by the state registrar, a certificate of ~~death or~~ fetal death shall be accepted for filing and registration only when:

- a.* to *g.* No change.

ITEM 6. Adopt the following **new** subrule 97.8(4):

97.8(4) The medical certifier who signs the medical certification on a certificate of death shall be entitled to view the death record through the electronic statewide vital records system for up to one year from the date of death.

ARC 2177C**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.72, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 203, “Standards for Certificate of Need Review,” Iowa Administrative Code.

Certificate of Need is a regulatory review process that requires application to the Department of Public Health for and receipt of a Certificate of Need (CON) prior to the offering or development of a new or changed institutional health service. The proposed amendments initiate the first phase of the revision of Chapter 203. The proposed amendments rescind six rules that provide standards that are now excluded from Certificate of Need review under Iowa Code section 135.64 or have not been used in several years.

These proposed amendments were approved by the State Health Facilities Council on August 4, 2015.

Any interested person may make written comments or suggestions on the proposed amendments on or before October 20, 2015. Such written comments should be directed to Kala Shipley, Certificate of Need Program Manager, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to kala.shipley@idph.iowa.gov.

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

These amendments are intended to implement Iowa Code sections 135.61 to 135.83.

The following amendments are proposed.

- ITEM 1. Rescind and reserve rule **641—203.1(135)**.
- ITEM 2. Rescind and reserve rules **641—203.6(135)** and **641—203.7(135)**.
- ITEM 3. Rescind and reserve rules **641—203.9(135)**, **641—203.10(135)** and **641—203.11(135)**.

ARC 2170C**PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action**

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

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

Pursuant to the authority of 2015 Iowa Acts, House File 447, section 2 [Iowa Code section 34A.16], the Department of Public Safety gives Notice of Intended Action to adopt new Chapter 87, “Wireless Communications Service Provider Database,” Iowa Administrative Code.

Iowa Code chapter 34A established the Enhanced Emergency 911 Telephone Systems (E911 system) and created a mechanism for funding it. The E911 call system allows for requests for emergency law enforcement, fire fighting, medical, ambulance and other emergency services to be transmitted to a public safety agency so that the appropriate service can respond.

Pursuant to 2015 Iowa Acts, House File 447, the proposed chapter will establish a database of contact information for wireless communications service providers. This database will only be used by a law

PUBLIC SAFETY DEPARTMENT[661](cont'd)

enforcement officer, law enforcement agency, or a public safety answering point (PSAP), and only when there is an emergency situation that involves the risk of death or serious physical harm.

Nearly every person, including both adults and children, has a cell phone or other wireless communications device. These devices automatically communicate with nearby communications towers in order to receive and send information. The system can be queried in order to determine the location of a particular wireless communications device. This location information is transmitted to and stored on the wireless service provider's system.

The location information is confidential and known only to the service provider. Law enforcement officers are generally only able to obtain access to that information in an investigation by obtaining a court order or subpoena.

However, emergency situations can occur where there is a risk of death or serious physical harm, and a person is unable to use a wireless communications device to get help. In emergency situations where there is a risk of death or serious physical harm, this database will allow law enforcement officers, law enforcement agencies, and PSAPs to make immediate contact with a wireless communications service provider and obtain location information for the cell phone or other wireless communications device to help locate the person. In all other situations, law enforcement will continue to act consistent with state, federal, and constitutional law in accessing and obtaining location information.

Federal law already authorizes the creation and use of this database, and 2015 Iowa Acts, House File 447, and these rules create the specific steps to implement the database in Iowa. 2015 Iowa Acts, House File 447, requires the database of contact information to be maintained by the Department of Public Safety. The law also requires the Department to adopt rules to implement and administer the database. Having a central database administered by the Department allows the wireless communications service providers to supply their contact information to the Department. The Department can then make that contact information available statewide to local law enforcement officers, law enforcement agencies and PSAPs 24 hours a day. The requirements of 2015 Iowa Acts, House File 447, and these rules are consistent with federal law and will not add any new requirements or burdens to the wireless communications service providers.

There will not be any increase in costs to create and maintain the database. There is no cost to the law enforcement officer, law enforcement agency, or PSAP to access the database. The wireless service providers will be required to provide and maintain current contact information which can be used to contact their staff 24 hours a day when cell phone location information is needed, and there will be no additional cost to the service providers.

These rules will further the goals of making Iowa a safe and prosperous place to live and enhancing the health, safety and welfare of all persons in Iowa.

A public hearing on these proposed rules will be held on Tuesday, October 20, 2015, at 10 a.m. in the first floor public conference room (Room 125) of the Oran Pape Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

In addition, any written comments or information regarding these proposed rules may be directed to the Agency Rules Administrator by mail to Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319, or by electronic mail to admrule@dps.state.ia.us by 4:30 p.m. on October 20, 2015.

Any fiscal impact is expected to be minimal and less than \$100,000 annually or \$500,000 during the next five years.

The Department does not have the authority to waive requirements established by statute.

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

These rules are intended to implement 2015 Iowa Acts, House File 447 [Iowa Code section 34A.16].

The following amendment is proposed.

Adopt the following **new** 661—Chapter 87:

CHAPTER 87

WIRELESS COMMUNICATIONS SERVICE PROVIDER DATABASE

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—87.1(34A) Wireless communications service provider database established. The wireless communications service provider database is established in the department of public safety. All wireless communications service providers authorized to do business in the state of Iowa, or submitting to the jurisdiction of the state of Iowa, shall submit current contact information to the department of public safety in order to facilitate requests from law enforcement officers, law enforcement agencies, and public safety answering points (PSAPs), so that law enforcement officers, law enforcement agencies and PSAPs can promptly obtain location information concerning a cell phone or other wireless communications device in emergency situations.

661—87.2(34A) Definitions. The following definitions apply to rules 661—87.1(34A) through 661—87.6(34A):

“*Department*” means the Iowa department of public safety.

“*Law enforcement officers*” means:

1. Peace officer members of the department of public safety as defined in Iowa Code chapter 80 and section 801.4(11).
2. Sheriffs and their regular deputies who are subject to mandated law enforcement training.
3. Police chiefs and police officers of cities.

“*Public safety answering point*” or “*PSAP*” means the same as defined in Iowa Code section 34A.2(16).

661—87.3(34A) Administration of database. The database is administered by the division of intelligence within the department. The information in the database shall only be available to law enforcement officers, law enforcement agencies, and PSAPs and only as authorized in 2015 Iowa Acts, House File 447 [Iowa Code section 34A.16], and these rules.

661—87.4(34A) Confidentiality. All information and records in the wireless communications service provider database maintained by the department and all inquiries and results of inquiries to the service providers are confidential records pursuant to Iowa Code section 22.7(5) and chapter 692 and any other applicable federal or state laws or rules.

661—87.5(34A) Database requirements.

87.5(1) A wireless communications service provider shall provide the following information for the database:

- a. Company name of the provider;
- b. Physical address;
- c. Mailing address;
- d. Name of the point of contact for the provider;
- e. Phone number and alternate phone number for the point of contact, which will be answered 24 hours a day, 7 days a week, by a person or persons who can promptly provide the location information of the cell phone or other wireless communications device upon the request of the department or other law enforcement officer, law enforcement agency, or PSAP;
- f. Fax number; and
- g. E-mail address.

87.5(2) Each wireless communications service provider shall immediately provide the department with any updates or changes to the information required in 87.5(1). On or before June 15 of each year, each wireless communications service provider shall confirm to the department the provider’s information for the database.

87.5(3) The information required in 87.5(1) shall be submitted to the department by at least one of the following:

- a. E-mail: intinfo@dps.state.ia.us.
- b. Fax: (515)725-6320, Attn: Division of Intelligence, Subject: Wireless Communications Provider contact information.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

c. U.S. mail: Iowa Department of Public Safety, Division of Intelligence, Oran Pape Building, 215 East 7th Street, Des Moines, Iowa 50319-0049.

661—87.6(34A) Procedures to request provider information. Upon a determination by a law enforcement officer, law enforcement agency, or PSAP that location information for a cell phone or other wireless communications device is required, the law enforcement officer, law enforcement agency, or PSAP shall contact Iowa state patrol communications to request the contact information for the wireless communications systems provider.

These rules are intended to implement 2015 Iowa Acts, House File 447 [Iowa Code section 34A.16].

ARC 2176C**REGENTS BOARD[681]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 1, “Admission Rules Common to the Three State Universities,” Iowa Administrative Code.

The proposed amendment revises paragraph 1.4(2)“b” to bring the public universities into compliance with the Home Base Iowa Initiative as well as with the federal Veterans Access, Choice and Accountability Act of 2014 (Choice Act).

Any interested person may make written comments on the proposed amendment on or before October 20, 2015, addressed to Andrea Anania, Board of Regents, State of Iowa, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905; fax (515)281-6420; or e-mail anania@iastate.edu.

A waiver provision is not included. The Board has adopted a uniform waiver rule, which may be found at 681—19.18(17A).

After analysis and review of this rule making, a positive impact on jobs could exist. This rule making will allow qualifying veterans, their spouses/domestic partners, and their dependents to be classified as residents for the purpose of receiving in-state tuition. This rule making provides that veterans will be allowed to receive veterans’ benefits; therefore, veterans may be attracted to the state for their postsecondary education and decide to remain in the state after graduation. This rule making reduces tuition costs for veterans and their spouses and dependents and thereby provides them opportunities for postsecondary education allowing them the opportunity to obtain better paying jobs.

This amendment is intended to implement Iowa Code section 262.9(3).

The following amendment is proposed.

Amend paragraph **1.4(2)“b”** as follows:

b. Additional guidelines are used in determining the resident classification of a veteran, qualified military person, and ~~children and spouses of a veteran or qualified military person~~ other qualified individuals for purposes of ~~admission and~~ undergraduate, graduate, ~~or professional,~~ or certificate tuition and mandatory fees:

(1) A person who is stationed on active duty at the Rock Island arsenal as a result of military orders, or the child or spouse/domestic partner of such person, is entitled to resident status for purposes of undergraduate, graduate, or professional tuition and mandatory fees. The child or spouse/domestic partner may be required to submit appropriate documentation to the university.

REGENTS BOARD[681](cont'd)

(2) ~~A veteran who is eligible for benefits or has exhausted benefits under any federal program authorizing veteran educational benefits is entitled to resident status for purposes of undergraduate, graduate, or professional tuition and mandatory fees. The child or spouse/domestic partner of a veteran who meets these requirements is entitled to resident status for undergraduate, graduate, or professional tuition. The rules for classification of veterans and qualified individuals shall be in full compliance with all federal laws, including Section 702 of the Veterans Access, Choice, and Accountability Act of 2014 (Choice Act). The child or spouse/domestic partner qualified individual~~ may be required to submit appropriate documentation to the university.

(3) A person who is moved into the state as the result of military or civil orders from the government for other than educational purposes, or the child or spouse/domestic partner of such a person, is entitled to resident status. The child or spouse/domestic partner may be required to submit appropriate documentation to the university. Legislation, effective July 1, 1977, requires that military personnel who claim residency in Iowa (home of record) will be required to file Iowa resident income tax returns.

ARC 2178C

REVENUE DEPARTMENT[701]**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 423.42, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 15, “Determination of a Sale and Sale Price,” Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage,” Chapter 219, “Sales and Use Tax on Construction Activities,” and Chapter 230, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code.

The primary purpose of this rule making is to amend rules that are related to the definition of machinery and equipment for purposes of the manufacturing exemption found in Iowa Code section 423.3(47). This exemption and its related rules have been the subject of substantial confusion and controversy. Most recently, the Department has received a petition for rule making with regard to the exemption. Under the Department’s current rules, many items that might ordinarily be thought of as machinery and equipment are considered real property and are therefore taxed as building materials, making the items ineligible for the manufacturer’s machinery and equipment exemption under the rules established pursuant to Iowa Code section 423.3(47). The proposed amendments implement a policy that eliminates, to the extent permitted by Iowa Code section 423.3(47), administratively burdensome distinctions that do not reflect modern manufacturing in Iowa. The proposed changes are prospective and will only apply to sales occurring as part of a contract entered into on or after January 1, 2016.

Items 1, 2, 3, and 7 amend existing rules on exemptions by adding cross references to new rules 701—230.14(423) to 701—230.22(423). The items also update terminology in the existing rules and make nonsubstantive stylistic changes.

Item 4 amends rule 701—219.11(423) to notify contractors that computers, machinery, and equipment used in an exempt manner under Iowa Code section 423.3(47) may remain tangible personal property after installation. The amendment also updates cross references, terminology, and the list of items that normally become part of realty after installation.

Item 5 amends rule 701—219.12(423) to inform contractors that the Department of Revenue will consider whether property is used for an exempt purpose under Iowa Code section 423.3(47) in deciding whether the property remains tangible personal property after installation. The amendment also removes an obsolete example and references to outdated court cases.

REVENUE DEPARTMENT[701](cont'd)

Item 6 amends subrule 219.13(3) by dividing the subrule into lettered paragraphs and updating an example.

Item 8 creates new rule 701—230.14(423). The rule provides a directory and definitions for all exemptions under Iowa Code section 423.3(47). The definition of “computer” is a consolidation of definitions from other related rules. The definition of “equipment” closely mirrors the statute in the context of the current Iowa manufacturing environment. The definition of “replacement parts” omits the presumption that exempt replacement parts have a useful life of 12 months or more. The rule expands the guidance for materials used to construct or self-construct computers, machinery, and equipment.

Item 9 creates new rule 701—230.15(423), which explains the exemption for property directly and primarily used in processing by a manufacturer.

Item 10 creates new rule 701—230.16(423), which applies to the exemption for property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions.

Item 11 creates new rule 701—230.17(423), which addresses the exemption for property directly and primarily used in research and development of new products or processes of processing.

Item 12 creates new rule 701—230.18(423), which pertains to the exemption for computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

Item 13 creates new rule 701—230.19(423), which discusses the exemption for property directly and primarily used in recycling or reprocessing of waste products.

Item 14 creates new rule 701—230.20(423), which describes the exemption for pollution-control equipment used by a manufacturer.

Item 15 creates new rule 701—230.21(423), which relates to the exemption for fuel used in exempt property.

Item 16 creates new rule 701—230.22(423), which provides guidance for the exemption for the design and installation of new industrial machinery and equipment.

The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 2, 2015, to Victoria Daniels, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Alternatively, requests may be e-mailed to victoria.daniels@iowa.gov. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 20, 2015. Such written comments should be e-mailed to Victoria Daniels at victoria.daniels@iowa.gov or mailed to Victoria Daniels, Policy and Communications Divisions, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact Victoria Daniels, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for public hearing must be received by October 20, 2015.

After analysis and review of this rule making, the Department finds that the changes to the program are likely to have a positive impact on jobs. The proposed changes will expand the number of items that qualify as exempt computers, machinery, or equipment. The Department estimates that, between 2017 and 2020, manufacturers will reduce their sales and use tax burden by \$35 million to \$40 million annually under the proposed amendments. The Department also estimates that manufacturers will reduce their local option sales tax burden by \$5 million to \$6 million annually between 2017 and 2020. Reducing the tax burden on business inputs for manufacturers is likely to have a positive impact on jobs.

These amendments are intended to implement Iowa Code section 423.2(1)“b” and “c,” 423.3(47), and 423.3(48).

The following amendments are proposed.

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Amend paragraph **15.3(3)“a,”** definition of “Fuel consumed in processing,” as follows:

“*Fuel consumed in processing*” includes fuel used in grain drying, or providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in implements of husbandry engaged in agricultural production, as well as fuel used in “processing” as defined in rules 701—18.29(422,423), and 701—18.58(422,423), and 701—230.15(423). See rule 701—17.2(422) for a detailed description of “fuel used in processing.” See rule 701—17.3(422,423) for extensive discussion regarding electricity and steam used in processing.

ITEM 2. Amend subrule 18.29(7) as follows:

18.29(7) Other department rules concerned with processing. Various sections of the Iowa Code set out activities which that are defined by statute to be “processing.” The rules interpreting these statutes for the purposes of sales and use tax law are the following:

a. 701—15.3(422,423) Certificates of resale, processing, and fuel used in processing Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

b. 701—17.2(422) Fuel used in processing—when exempt.

c. 701—17.3(422,423) Electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax Processing exemptions.

d. 701—17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), 17.9(6), and 17.9(7) for processing exemptions.

e. 701—17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.

f. 701—18.3(422,423) Chemical compounds used to treat water.

g. 701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.

h. 701—18.58(422,423) Sales or rentals of machinery, equipment, and computers and sales of fuel and electricity to manufacturers and sales or rentals of computers to commercial enterprises for periods on and after July 1, 1997, but before January 1, 2016.

i. 701—26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.

j. 701—28.2(423) Processing of property defined.

k. 701—33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.

l. 701—33.7(423) Property used to manufacture certain vehicles to be leased.

m. For property sold as part of a contract entered into on or after January 1, 2016, computers, machinery, and equipment used for an exempt purpose under Iowa Code section 423.3(47). See rules 701—230.14(423) to 701—230.22(423).

ITEM 3. Amend rule 701—18.58(422,423), introductory paragraph, as follows:

701—18.58(422,423) Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997, but before January 1, 2016. The sale or rental of machinery, equipment, or computers used by a manufacturer in processing; the sale or rental of a computer used in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise; and the sale or rental of various other types of tangible personal property are, under certain circumstances, exempt from tax as of July 1, 1997, but before January 1, 2016. For sales that occur as part of a contract entered into on or after January 1, 2016, see rules 701—230.14(423) to 701—230.22(423).

ITEM 4. Amend rule 701—219.11(423) as follows:

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract may include many activities, but it does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment includes property that is tangible personal property

REVENUE DEPARTMENT[701](cont'd)

when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, it does not bear the weight of the structure, and it does not in any other manner constitute an integral part of a structure. ~~Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.~~ For exemptions related to the sale of computers, machinery, and equipment if the sale occurs as part of a contract entered into on or after January 1, 2016, see rules 701—230.14(423) to 701—230.22(423).

219.11(1) The following is a list of property ~~which~~ that, under normal conditions, remains tangible personal property after installation. The list is nonexclusive and is offered for illustrative purposes only:

a. Furniture, radio and television sets and antennas, washers and dryers, portable lamps, home freezers, portable appliances and window air-conditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment, and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors and others performing a processing function with the items, including:

(1) Computers, machinery, and equipment directly and primarily used in processing by a manufacturer (see rule 701—230.15(423)).

(2) Computers, machinery, and equipment directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer (see rule 701—230.16(423)).

(3) Computers, machinery, and equipment directly and primarily used in research and development of new products or processes of processing (see rule 701—230.17(423)).

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise (see rule 701—230.18(423)).

(5) Computers, machinery, and equipment directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

(6) Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of Iowa or the United States government (see rule 701—230.20(423)).

d. Office, bank, and savings and loan association furniture and equipment, including office machines.

e. Radio, television, and cable television station equipment, but not broadcasting towers.

f. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens. See Petition of Taylor Industries Inc. (Dkt No. 94-30-6-0367, 3-14-95).

219.11(2) The following is a list of property ~~which~~ that, under normal conditions, becomes a part of realty. The list is nonexclusive and is offered for illustrative purposes only:

a. Boilers and furnaces.

b. Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals, and incinerators.

c. Buildings, and structural and other improvements to buildings, including awnings, canopies, foundations for machinery, floors (including computer room floors), walls, general wiring and lighting facilities, roofs, stairways, stair lifts, sprinkler systems, storm doors and windows, door controls, air curtains, loading platforms, central air-conditioning units, building elevators, sanitation and plumbing systems, decks, and heating, cooling and ventilation systems.

d. Fixed (year-round) wharves and docks.

e. Improvements to land including patios, retaining walls, roads, walks, bridges, fencing, railway switch tracks, ponds, dams, ditches, wells, underground irrigation systems, drainage, storm and sanitary sewers, and water supply lines for drinking water, sanitary purposes, and fire protection. ~~Reference rule 701—18.35(422,423)~~ See rule 701—226.10(423) relating to drainage tile.

REVENUE DEPARTMENT[701](cont'd)

- f.* Mobile and modular homes installed on foundations.
- g.* Planted nursery stock.
- h.* Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems, and music and sound equipment (except portable equipment).
- i.* Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).
- j.* Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).
- ~~*k.* Silos and grain storage bins.~~
- ~~*l.* Storage tanks constructed on the site.~~
- ~~*m.* *k.* Swimming pools (wholly or partially underground (except portable pools)).~~
- ~~*n.* *l.* Truck platform scale foundations.~~
- ~~*o.* *m.* Walk-in cold storage units that become a component part of a building.~~

ITEM 5. Amend rule 701—219.12(423) as follows:

701—219.12(423) Tangible personal property which that becomes structures. Items which that are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis. For exemptions related to the sale of computers, machinery, and equipment occurring as part of a contract entered into on or after January 1, 2016, see rules 701—230.14(423) to 701—230.22(423). The following is a listing of criteria which that courts have used in making such a determination:

1. The degree of architectural and engineering skills necessary to design and construct the structure.
2. The overall scope of the business and the contractual obligations of the person designing and building the structure.
3. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.
4. The size and weight of the structure.
5. The permanency or degree of annexation of the structure to other real property which would affect its mobility.
6. The cost of building, moving or dismantling the structure.
7. For property sold as part of a contract entered into on or after January 1, 2016, computers, machinery, or equipment used for an exempt purpose under Iowa Code section 423.3(47) remains tangible personal property. See rules 701—230.14(423) to 701—230.22(423).

~~EXAMPLE. A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high and 20 feet around, weighs 30 tons, and is affixed to a concrete foundation weighing 60 tons which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of \$7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, the silo is considered a structure and not machinery or equipment. *Wisconsin Department of Revenue v. A. O. Smith Harvestore*, 240 N.W.2d 357 (Wisc. 1976).~~

~~The above criteria are intended only to be a summation of factors which the department will consider in determining whether or not a project involves construction. The following cases are used as reference material: *Wisconsin Department of Revenue v. A. O. Smith Harvestore Products, Inc.*, 240 N.W.2d 357 (Wisc. 1976); *Prairie Tank or Construction Co. v. Department of Revenue*, 364 N.W.2d 963 (Ill. 1977); *Levine v. State Board of Equalization*, 299 P. 2d 738 (Calif. 1956); *State of Alabama v. Air Conditioning Engineers, Inc.*, 174 So 2d 315 (Ala. 1965); *A. S. Schulman Electric Company v. State Board of Equalization*, 122 Cal. Rptr 278 (Calif. 1975); *Western Pipeline Constructors, Inc. v. J. M. Dickinson*, 310 S.W.2d 455 (Tenn.); and *City of Pella Municipal Light Plant*, Order of the Director of Revenue, June 16, 1975.~~

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ITEM 6. Amend subrule 219.13(3) as follows:

219.13(3) “On or connected with.” The term “on or connected with” is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. “On or connected with” does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property.

a. Incidental relationship. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

b. Proximity in time. The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of ~~production machinery and~~ institutional kitchen equipment in a building while remodeling of the real property was in progress. (Tax could apply to the sales price of the ~~production machinery and equipment; reference rule 701—18.58(422,423)~~ institutional kitchen equipment; see rule 701—230.14(423)). However, if a year after all construction activity has ended, the owner decides to install a piece of ~~production machinery~~ institutional kitchen equipment in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if, following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. ~~Reference 701—subrule 18.58(8) for the exemption regarding the installation of new industrial machinery and equipment.~~ Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

c. Physical proximity. A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

d. Totality of the facts and circumstances. ~~On the other hand, an~~ An incidental relationship, a time relationship, and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction. For example, a homeowner hires a general contractor to add a new room to an existing home (which is new construction; see 219.13(2) “d”). The existing home is in need of a number of the repairs described in subrule 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax. ~~The department would like to emphasize that~~ facts and motives are important in the determination of the taxability of services relating to construction activities. However, it should also be noted that taxes on enumerated services are applicable to repair or installation work that is not a construction activity. ~~Refer to~~ See subrule 219.13(1) relating to persons who make repairs or perform enumerated services for more information.

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ITEM 7. Amend rule 701—230.5(423) as follows:

701—230.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases ~~which~~ that are similar to argon. An “inert gas” is any gas ~~which~~ that is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases ~~which~~ that are not inert. These sales are exempt only if the gas is purchased by a “manufacturer,” for use in “processing,” as those terms are defined in ~~referenced~~ rule 701—18.58(1) subrules 230.15(3) and 230.15(4).

This rule is intended to implement Iowa Code section 423.3(51).

ITEM 8. Adopt the following new rule 701—230.14(423):

701—230.14(423) Exemption for the sale of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment used for certain manufacturing purposes if the sale occurs as part of a contract entered into on or after January 1, 2016. Rules 701—230.14(423) to 701—230.20(423) exempt the sales price of computers, machinery, and equipment used in an exempt manufacturing purpose. Rule 701—230.21(423) exempts the purchase of fuel used in such machinery and equipment. Rule 701—230.22(423) exempts the service of designing or installing such machinery and equipment. Rules 701—230.14(423) to 701—230.22(423) apply to sales of such products occurring as part of a contract entered into on or after January 1, 2016. For sales occurring as part of a contract entered into prior to January 1, 2016, see rule 701—18.58(422,423). A sale occurs as part of a contract entered into prior to January 1, 2016, if the purchaser enters into a contract with a retailer to purchase the product and the contract date is prior to January 1, 2016, or if the purchaser enters into a contract with a contractor, subcontractor, or builder to construct or assemble the property and the contract date is prior to January 1, 2016.

230.14(1) Generally. The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax if the property is any of the following:

- a. Directly and primarily used in processing by a manufacturer (see rule 701—230.15(423)).
- b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (see rule 701—230.16(423)).
- c. Directly and primarily used in research and development of new products or processes of processing (see rule 701—230.17(423)).
- d. Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise (see rule 701—230.18(423)).
- e. Directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).
- f. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (see rule 701—230.20(423)).
- g. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph “a,” “b,” “c,” “e,” or “f” (see rule 701—230.21(423)).

230.14(2) Computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment.

- a. *Computers.* A “computer” is an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions. A computer includes all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other

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communication medium are terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. A computer also includes any operating system or executive program, but not application software, purchased as part of the sale of the computer for which the operating system or executive program operates. For purposes of this paragraph, “operating system or executive program” means computer software that is fundamental and necessary to the functioning of a computer. The operating system or executive program controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software, which is a collection of one or more programs used to develop and implement the specific applications that the computer is to perform and which calls upon the services of the operating system or executive program. Application software, or an operating system or executive program priced separately or sold at a later time from the computer for which the operating system or executive program operates, may be taxable as “prewritten computer software.” See rule 701—211.1(423).

b. Machinery. “Machinery” is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. Machinery also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Jigs, dies, tools, and other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery. All property that is in the nature of machinery (other than structural components of a building or other inherently permanent structure) is considered tangible personal property even if located outside of a building. A structure that is essentially machinery remains tangible personal property for purposes of this paragraph. For more information on distinguishing machinery from buildings and other constructed realty, see subparagraph 230.14(2)“f”(1).

c. Equipment. In general usage, “equipment” refers to devices or tools used to produce a final product or achieve a given result. Equipment includes supplies that do not qualify as “replacement parts,” such as drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters. All property that is in the nature of equipment (other than structural components of a building or other inherently permanent structure) is considered tangible personal property even if located outside of a building. A structure that is essentially equipment may remain tangible personal property for purposes of this paragraph. For more information on distinguishing equipment from buildings and other constructed realty, see subparagraph 230.14(2)“f”(1).

d. Replacement parts. “Replacement part” means tangible personal property other than computers, machinery, or equipment, regardless of the cost or useful life of such tangible personal property. A replacement part can be separated from the computer, machinery, or equipment. A “replacement part” is a part or component of a computer, machinery, or equipment that came with the original item purchased or has been added over time to improve or restore the computer, machinery, or equipment.

e. Materials used to construct or self-construct computers, machinery, and equipment. “Materials used to construct or self-construct computers, machinery, and equipment” means tangible personal property that is incorporated into a computer, machinery, or equipment when the computer, machinery, or equipment is constructed or assembled. Materials used to construct a structure that is essentially machinery or equipment are exempt from sales and use tax so long as the machinery or equipment is used in an exempt manner under rules 701—230.14(423) to 701—230.20(423).

f. Exclusions. Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—230.14(423) to 701—230.20(423) regardless of how the property is used.

(1) Constructed realty.

1. Generally. Iowa Code section 423.2(1)“b” and “c” imposes sales and use tax upon building materials, supplies, and equipment used for the erection of buildings or other realty. However, Iowa Code section 423.3(47) exempts from sales and use tax certain computers, machinery, and equipment as well as items used to construct or self-construct certain computers, machinery, and equipment.

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Determining whether constructed items are realty or exempt computers, machinery, or equipment under Iowa Code section 423.3(47) ultimately depends on the use of the items. In general, exempt computers, machinery, and equipment under Iowa Code section 423.3(47) are tangible personal property when purchased, and they remain tangible personal property after installation. Materials used to construct realty remain taxable when purchased by the contractor, subcontractor, or builder under Iowa Code section 423.2(1) "b" and "c." For more information about sales and use tax on construction activities, see 701—Chapter 219.

2. Distinguishing constructed realty from tangible personal property. For purposes of rules 701—230.14(423) to 701—230.22(423), an item remains tangible personal property after installation if all of the following apply:

- The item can be removed without causing material damage or injury to the item or to the building that houses it or the real property upon which it is located;
 - The item does not bear the weight of a building or other realty;
 - The item does not in any other manner constitute an integral part of a building or other realty;
- and
- The item is used in an exempt manner under rules 701—230.14(423) to 701—230.20(423).

3. Buildings. Buildings are constructed realty. A "building" is any structure or edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is, for example, to provide shelter or housing for machinery or equipment or to provide working, office, parking, display, or sales space. Materials used to construct a building or any other realty are not exempt under rules 701—230.14(423) to 701—230.20(423), even if the realty is specially designed to house exempt computers, machinery, or equipment.

4. Examples.

- Property that, under normal conditions, remains tangible personal property after installation for purposes of rules 701—230.14(423) to 701—230.22(423) includes, but is not limited to:
 - Storage tanks that rest upon a foundation and are secured with bolts.
 - Industrial piping systems directly and primarily used in processing.
 - Cooling towers directly and primarily used in processing.
 - Structural steel, if exposed and used to support other computers, machinery, or equipment.
- Property that, under normal conditions, becomes constructed realty after installation for purposes of rules 701—230.14(423) to 701—230.22(423) includes, but is not limited to:
 - Underground storage tanks constructed on site.
 - Foundations made of concrete or other materials, regardless of whether they are used exclusively as platforms for machinery and equipment.
 - Cooling towers primarily used to cool a building or other constructed realty.
 - Structural steel, if used to construct a building or other constructed realty.

(2) Land.

(3) Intangible property.

(4) Hand tools. "Hand tool" means a tool that can be held in the hand or hands and is powered by human effort.

(5) Point-of-sale equipment and computers. "Point-of-sale equipment and computers" means input, output, and processing equipment used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at the counter, desk, or other specific point where the transaction occurs.

(6) Certain centrally assessed industrial machinery, equipment, and computers. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423). Property used but not owned by persons whose property is defined by such provisions of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—230.14(423) to 701—230.20(423).

(7) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new

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registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—230.14(423) to 701—230.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (see rule 701—230.19(423)).

g. Examples. When used for an exempt purpose under rules 701—230.14(423) to 701—230.20(423), the following items may be exempt computers, machinery, or equipment. This list is not all-inclusive.

- (1) Coolers, including coolers that do not change the nature of materials stored in them.
- (2) Equipment that eliminates bacteria.
- (3) Palletizers.
- (4) Storage bins.
- (5) Property used to transport raw, semifinished, or finished goods.
- (6) Vehicle-mounted cement mixers.
- (7) Self-constructed machinery and equipment.
- (8) Packaging and bagging equipment, including conveyer systems.
- (9) Equipment that maintains an environment necessary to preserve a product's integrity.
- (10) Equipment that maintains a product's integrity directly.
- (11) Quality control equipment.

230.14(3) *Leased and rented property.* The exemptions under rules 701—230.14(423) to 701—230.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, machinery, or equipment may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—230.14(423) to 701—230.20(423). Additionally, a lessor's purchase of computers, machinery, or equipment for lease may be an exempt sale for resale under Iowa Code section 423.3(2).

ITEM 9. Adopt the following **new** rule 701—230.15(423):

701—230.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer if the sale occurs as part of a contract entered into on or after January 1, 2016. The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer. For sales occurring as part of a contract entered into prior to January 1, 2016, see rule 701—18.58(422,423).

230.15(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

- a.* Computers, machinery, or equipment, including replacement parts, or materials used to construct or self-construct computers, machinery, or equipment (see subrule 230.14(2));
- b.* Directly used (see subrule 230.15(2));
- c.* Primarily used (see subrule 230.15(2));
- d.* Used in processing (see subrule 230.15(3)); and
- e.* Used by a manufacturer (see subrule 230.15(4)).

230.15(2) *Directly and primarily used.*

a. Directly used.

(1) Generally. Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property to the exempt activity;
2. The temporal proximity of the use of the property to the use of other property that is directly used in the exempt activity; and
3. The active causal relationship between the use of the property and the exempt activity. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

(2) Examples. The following property typically is not directly used in an exempt manner:

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1. Property used exclusively for the comfort of workers, such as air cooling, air conditioning, or ventilation systems.
 2. Property used in support operations, such as a machine shop, where production machinery is assembled, maintained, or repaired.
 3. Property used by administrative, accounting, or personnel departments.
 4. Property used by security, fire prevention, first aid, or hospital stations.
 5. Property used in communications or safety.
- b. Primarily used.* The primary use of property is the activity or activities for which the property is used more than half of the time.

230.15(3) Processing.

a. Generally. "Processing" means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; construction of packaging and shipping devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the processor. "Receipt or producing of raw materials" means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, "production of raw materials" is deemed to occur immediately following the severance of the raw materials from the real estate.

b. The beginning of processing. Processing begins with a processor's receipt or production of raw material. Thus, when a processor produces its own raw material, it is engaged in processing. Processing also begins when a supplier transfers possession of raw materials to a processor.

c. The completion of processing. Processing ends when the finished product is transferred from the processor or delivered for shipment by the processor. Therefore, a processor's packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

d. Examples of the beginning, intervening steps, and the ending of processing. Of the following, Examples A and B illustrate when processing begins under various circumstances; Example C demonstrates the middle stages of processing; and Example D demonstrates when the end of processing takes place.

EXAMPLE A: Company A manufactures fine furniture. Company A owns a grove of walnut trees that it uses as raw material. Company A's employees cut the trees, transport the logs to Company A's facility, store the logs in a warehouse to begin the curing process, and eventually take the logs to Company A's sawmill. The walnut trees are real property while they are growing. Thus, no "production of raw materials" has occurred with regard to the trees until they have been severed from the soil and transformed into logs. Processing of the logs begins when they are placed on vehicles for transport to Company A's factory. However, if the transport vehicles are "vehicles subject to registration," they are not exempt from the fee for new registration under this rule (see subparagraph 230.14(2) "f"(7)).

EXAMPLE B: Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its equipment to offload the logs from railroad cars at its facility. Company A then stores and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C: Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer it brews. Company C also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing, including fermentation or aging (the transformation of the raw materials from one state to another) as well as the storage of hops in a bin and the storage of beer

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prior to bottling (the holding of materials in an existing state). Any movement of the product between containers is also a part of processing.

EXAMPLE D: After the brewing process is complete, Company C places its beer in various containers, stores the beer, and moves the beer to Company C's customers by a common carrier that picks up the beer at Company C's facility. Company C's activities of placing the beer into bottles, cans, and kegs, storing it after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are part of processing.

230.15(4) Manufacturer:

a. Generally. "Manufacturer" means a person that purchases, receives, or holds personal property of any description for the purpose of adding to its value by a process of manufacturing, refining, purifying, or combining of different materials, or by the packing of meats, with a view to selling the property for gain or profit, but also includes contract manufacturers. A "contract manufacturer" is a manufacturer that otherwise falls within the definition of manufacturer, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers. A business engaged in activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials, is a manufacturer with respect to these activities. A person does not need to be primarily engaged in an activity listed in this subrule in order to qualify as a manufacturer for purposes of this rule.

b. Nonexclusive examples. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; repairing of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; and the activities of restaurateurs, hospitals, medical doctors, and those who merely process data are illustrative, nonexclusive examples of businesses that ordinarily are not manufacturers.

EXAMPLE A: Company A owns and operates a gravel pit. Company A sells the gravel extracted from the pit to others who use the gravel for surfacing roads and as an ingredient in concrete manufacture. Company A removes overlay and raw gravel from the pit and then transports the gravel to a plant where washing and sizing of the gravel take place. Company A is a manufacturer, but only with respect to those activities that occur after it extracts the gravel from the ground.

EXAMPLE B: Company B owns a manufacturing plant. Company B also owns a machine shop where it uses a metal press machine to fabricate patterns. All of these patterns are used in Company B's manufacturing plant as part of processing, and the metal press machine is used solely to fabricate these patterns. The sales price of the metal press machine is not exempt from sales and use tax under this rule because Company B does not use the metal press machine to manufacture a product for sale at a gain or profit. However, the computers, machinery, and equipment in Company B's manufacturing plant may be exempt if they are directly and primarily used in processing.

This rule is intended to implement Iowa Code section 423.3(47) "a"(1).

ITEM 10. Adopt the following **new** rule 701—230.16(423):

701—230.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions if the sale occurs as part of a contract entered into on or after January 1, 2016. The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product. For sales occurring as part of a contract entered into prior to January 1, 2016, see rule 701—18.58(422,423).

230.16(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, machinery, or equipment, including replacement parts, or materials used to construct or self-construct computers, machinery, and equipment (see subrule 230.14(2));

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- b. Directly used (see subrule 230.15(2));
- c. Primarily used (see subrule 230.15(2));
- d. Used by a manufacturer (see subrule 230.15(4)); and
- e. Used to maintain:
 - (1) A manufactured product's integrity;
 - (2) Unique environmental conditions required for a manufactured product; or
 - (3) Unique environmental conditions required for other computers, machinery, or equipment directly and primarily used in processing by a manufacturer.

230.16(2) *Example of property directly and primarily used to maintain integrity or unique environmental conditions.* A manufacturer purchases a cooling tower to directly and primarily maintain the proper temperature of its machinery and equipment. The manufacturer uses such machinery and equipment directly and primarily in processing. Because the cooling tower maintains the environmental conditions necessary for machinery and equipment that is directly and primarily used in processing, the cooling tower and materials used to construct or self-construct the cooling tower are exempt from sales and use tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47) "a"(2).

ITEM 11. Adopt the following new rule 701—230.17(423):

701—230.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing if the sale occurs as part of a contract entered into on or after January 1, 2016. The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing. For sales occurring as part of a contract entered into prior to January 1, 2016, see rule 701—18.58(422,423).

230.17(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Computers, machinery, or equipment, including replacement parts, or materials used to construct or self-construct computers, machinery, and equipment (see subrule 230.14(2));
- b. Directly used (see subrules 230.15(2) and 230.17(3));
- c. Primarily used (see subrule 230.15(2)); and
- d. Used in research and development (see subrule 230.17(2)) of:
 - (1) New products; or
 - (2) Processes of processing.

230.17(2) "Research and development" means experimental or laboratory activity that has as its ultimate goal the development of new products or processes of processing.

230.17(3) Property is used "directly" in research and development only if it is used in actual experimental or laboratory activity that qualifies as research and development under this rule.

230.17(4) Example of property directly and primarily used in research and development of new products or processes of processing. A hybrid seed producer maintains a research and development laboratory for use in developing new varieties of corn seed. The hybrid seed producer purchases the following items for use in its research and development laboratory: a laboratory computer for processing data related to the genetic structure of various corn plants, an electron microscope for examining the structure of corn plant genes, a steam cleaner for cleaning rugs in the laboratory offices, and a desktop computer for use by the laboratory receptionist. The laboratory computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the receptionist's computer are not directly used in research. Therefore, the sales prices of the laboratory computer and the microscope are exempt from sales and use tax. The sales prices of the steam cleaner and the receptionist's computer are not exempt from tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47) "a"(3).

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ITEM 12. Adopt the following new rule 701—230.18(423):

701—230.18(423) Exemption for the sale of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise if the sale occurs as part of a contract entered into on or after January 1, 2016. The sales price of computers is exempt from sales tax when the computers are used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise. For sales occurring as part of a contract entered into prior to January 1, 2016, see rule 701—18.58(422,423).

230.18(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Computers (see paragraph 230.14(2) “a”);
- b. Used in processing or storage of data or information (see subrule 230.18(2)); and
- c. Used by:
 - (1) An insurance company (see subrule 230.18(3));
 - (2) A financial institution (see subrule 230.18(3)); or
 - (3) A commercial enterprise (see subrule 230.18(3)).

230.18(2) Processing or storage of data or information. All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be eligible for exemption from tax under this rule.

230.18(3) Insurance company, financial institution, or commercial enterprise.

a. *Insurance company.* An insurance company is an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or an insurer authorized to do business in Iowa as an insurer or as a licensed insurance producer under Iowa Code chapter 522B. Excluded from the definition of “insurance company” are benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

b. *Financial institution.* A financial institution is any bank incorporated under the provisions of any state or federal law, any savings and loan association incorporated under the provisions of federal law, any credit union organized under the provisions of any state or federal law, any corporation licensed as an industrial loan company under Iowa Code chapter 536A, and any affiliate of a bank, savings and loan association, credit union, or industrial loan company.

c. *Commercial enterprise.* A commercial enterprise is a business or manufacturer conducted for profit, other than an insurance company or financial institution. “Commercial enterprise” includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations as well as nonprofit organizations. A hospital that is a not-for-profit organization is not a commercial enterprise. The term “profession” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term “occupation” means the principal business of an individual, such as the business of farming. A professional entity that carries on any profession or occupation, such as an accounting firm, is not a commercial enterprise.

230.18(4) Examples of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise. A health insurance company has four computers. Computer A is used to monitor the temperature within the insurance company’s building. Computer A transmits messages to the building’s heating and cooling systems, which tell the systems when to raise or lower the level of heating or air conditioning. Computer B is used to store patient records and to recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company’s employees to perform various additional tasks or to better perform work the employees can already do. Computer D uses various canned programs to accomplish this function. The final output of Computer A is neither stored nor processed information. Therefore, Computer A does not meet the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information.

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The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sales prices of Computers B, C, and D are exempt from sales and use tax as computers used in processing or storage of data or information by an insurance company.

This rule is intended to implement Iowa Code section 423.3(47) "a"(4).

ITEM 13. Adopt the following new rule 701—230.19(423):

701—230.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products if the sale occurs as part of a contract entered into on or after January 1, 2016. The sales price of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment is exempt from sales and use tax when the property is directly and primarily used in recycling or reprocessing of waste products. For sales occurring as part of a contract entered into prior to January 1, 2016, see rule 701—18.58(422,423).

230.19(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Computers, machinery, or equipment, including replacement parts, or materials used to construct or self-construct computers, machinery, and equipment (see subrule 230.14(2));
- b. Directly used (see subrule 230.15(2));
- c. Primarily used (see subrule 230.15(2)); and
- d. Used in:
 - (1) Recycling of waste products (see subrule 230.19(2)); or
 - (2) Reprocessing of waste products (see subrule 230.19(2)).

230.19(2) Recycling and reprocessing.

a. "Recycling" is any process by which waste or materials that would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. Recycling includes, but is not limited to, the composting of yard waste that has been previously separated from other waste. Recycling does not include any form of energy recovery.

b. "Reprocessing" is not a subcategory of processing. Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property.

c. Recycling or reprocessing generally begins when the waste products are collected or separated. Recycling or reprocessing generally ends when waste products are in the form of raw material or another non-waste product. Activities that occur between these two points and are an integral part of recycling or processing qualify as recycling or reprocessing.

230.19(3) Examples.

a. Computers, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

b. End loaders, forklifts, trucks, conveyor systems, and other moving devices directly and primarily used in the movement of waste products during recycling or reprocessing may be exempt from sales and use tax under this rule.

c. A bin or other container used to store waste products before collection for recycling or reprocessing is not directly and primarily used in recycling or reprocessing, and its sales price is not exempt from sales and use tax under this rule.

d. A vehicle used directly and primarily for collecting waste products for recycling or reprocessing could be a vehicle used for an exempt purpose under this rule, and such a vehicle could be exempt from the fee for new registration. Thus, a garbage truck could qualify for this exemption if the truck is directly and primarily used in recycling; however, a garbage truck primarily used to haul garbage to a landfill does not qualify for exemption under this rule.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

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EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code section 423.3(47)“a”(5).

ITEM 14. Adopt the following new rule 701—230.20(423):

701—230.20(423) Exemption for the sale of pollution control equipment used by a manufacturer if the sale occurs as part of a contract entered into on or after January 1, 2016. The sales price of pollution control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer. For sales occurring as part of a contract entered into prior to January 1, 2016, see rule 701—18.58(422,423).

230.20(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Pollution control equipment (See subrule 230.20(2)); and
- b. Used by a manufacturer (See subrule 230.15(4)).

230.20(2) “Pollution control equipment” is any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. Pollution control equipment does not include any apparatus used to eliminate noise pollution. Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.” Pollution control equipment specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or of the United States government. Wastewater treatment equipment, dust mitigation systems, and scrubbers used in smokestacks are examples of pollution control equipment. However, pollution control equipment does not include any equipment used only for worker safety, such as a gas mask.

EXAMPLE: A manufacturer constructs a wastewater treatment facility to treat wastewater from its manufacturing facility. The wastewater treatment facility uses aboveground piping and other equipment to divert wastewater from the local water treatment plant. The facility then converts wastewater into a biogas, which the manufacturer uses as an energy source in its manufacturing facility. The equipment used for the wastewater treatment facility is pollution control equipment used by a manufacturer. The sales price of the equipment is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47)“a”(6).

ITEM 15. Adopt the following new rule 701—230.21(423):

701—230.21(423) Exemption for the sale of fuel or electricity used in exempt property if the sale occurs as part of a contract entered into on or after January 1, 2016. The sales price of fuel or electricity consumed by property that is exempt from sales and use tax under rule 701—230.14(423), 701—230.15(423), 701—230.16(423), 701—230.17(423), 701—230.19(423), or 701—230.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such computers are exempt under rule 701—230.18(423). For sales occurring as part of a contract entered into prior to January 1, 2016, see rule 701—18.58(422,423).

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer’s power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47)“b.”

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ITEM 16. Adopt the following new rule 701—230.22(423):

701—230.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment if the sale occurs as part of a contract entered into on or after January 1, 2016. The sales price from the services of designing or installing new industrial machinery or equipment is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

230.22(1) Required elements. To qualify for the exemption, the purchaser must prove the service is:

- a. A design or installation service (see subrule 230.22(2));
- b. Of new (see subrule 230.22(3)); and
- c. Industrial machinery or equipment (see subrule 230.22(4)).

230.22(2) Design or installation services include electrical and electronic installation. “Design or installation” services do not include any repair service.

230.22(3) “New” means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.

230.22(4) Industrial machinery or equipment.

a. *Generally.* “Industrial machinery or equipment” means machinery or equipment, as defined in subrule 230.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

(1) Property used directly and primarily in processing by a manufacturer (see rule 701—230.15(423)).

(2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer’s product or to maintain unique environmental conditions for computers, machinery, or equipment (see rule 701—230.16(423)).

(3) Property used directly and primarily in research and development of new products or processes of processing (see rule 701—230.17(423)).

(4) Property used directly and primarily in recycling or reprocessing of waste products (see rule 701—230.19(423)).

(5) Pollution control equipment used by a manufacturer (see rule 701—230.20(423)).

b. *Exclusions.* The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

(1) Computers (see paragraph 230.14(2) “a”).

(2) Supplies, including but not limited to drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters.

(3) Replacement parts (see paragraph 230.14(2) “d”).

230.22(5) Billing. The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where it is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where it is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).

ARC 2160C

VOTER REGISTRATION COMMISSION[821]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 47.8, 48A.13 and 17A.4, the Voter Registration Commission hereby gives Notice of Intended Action to amend Chapter 2, “Voter Registration Forms, Acceptability, Registration Dates, and Effective Dates,” Chapter 8, “Transmission of Registration Forms by Agencies,” and Chapter 11, “Registration Procedure at the Office of Driver Services, Department of Transportation,” Iowa Administrative Code.

These amendments permit the use of electronic signatures on file with the Iowa Department of Transportation to be used on subsequent online voter registration transactions conducted via the Iowa Department of Transportation’s Web site.

Subrule 2.8(2), which provides guidance on how applicants who start but do not finish an online registration should be processed, is amended in Item 3 by striking the reference to “primary elections.” Furthermore, Item 5 provides guidance on how applicants who do not choose to select a party affiliation during online registration should be treated. Those applicants with previous affiliations will maintain that affiliation. Those applicants without previous affiliations will be marked as “no party” when the applicant is registered by the county election commissioner.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 20, 2015. Written suggestions or comments should be directed to Eric Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-7550 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by October 20, 2015.

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

These amendments are intended to implement Iowa Code section 48A.13.

The following amendments are proposed.

ITEM 1. Amend subrules 2.4(2) and 2.4(3) as follows:

2.4(2) The applicant shall be shown a list of the eligibility requirements for registering to vote and the penalties for falsely registering, printed or displayed in large, easy-to-read type, and shall be advised to read them.

2.4(3) The application to register to vote and the signature of the applicant shall be recorded in digitized form in the agency’s computer system and shall be kept permanently by the agency. The system shall ensure that neither the application ~~form~~ information nor the signature, once captured, can be edited.

ITEM 2. Adopt the following **new** subrule 2.4(6):

2.4(6) In the case of a voter registration applicant who registers to vote online through the Web site of the office of driver services, department of transportation, the applicant’s signature for voter registration purposes shall be the last signature on file with the office of driver services, department of transportation. If there is no signature on file with the office of driver services, department of transportation, the applicant shall be offered the opportunity to print, complete, sign and return a paper copy of the Iowa voter registration application.

VOTER REGISTRATION COMMISSION[821](cont'd)

ITEM 3. Amend subrule 2.8(2) as follows:

2.8(2) The notice mailed to applicants who submit incomplete voter registration applications shall instruct the applicant that the applicant may provide the required information in writing by appearing in person at the commissioner's office to complete a new application or by mailing a new and complete application. If the incomplete registration application is received during the period in which registration is closed pursuant to Iowa Code section 48A.9 and by 5 p.m. on the Saturday before the election for general ~~and primary~~ elections or by 5 p.m. on the Friday before the election for all other elections, the commissioner shall send a notice advising the applicant of election day and in-person absentee registration procedures under Iowa Code section 48A.7A.

ITEM 4. Amend rule 821—8.1(48A) as follows:

821—8.1(48A) ~~Cataloging registration data~~ Transmission of electronic voter registration applications. Every agency ~~which that~~ registers voters in a paperless manner shall ~~daily catalog~~ transmit a file of registration records applications to the computer system used by the registrar on a daily basis. The file shall contain all voter registration ~~records applications~~ collected by the agency during the previous working day, ~~except that the file containing registration records collected on the last day of registration for a regularly scheduled election shall be cataloged not later than 8 p.m. of that day.~~

ITEM 5. Amend rule 821—11.6(48A) as follows:

821—11.6(48A) Signature on attestation required. The signature required for voter registration shall be obtained in the following manner:

11.6(1) In-person applicants. At the conclusion of the ~~client's~~ applicant's business, ~~clients~~ applicants who apply to register, or give information to update an existing registration shall be asked to sign the registration application attestation, either on a paper copy or an electronic version. Any ~~client~~ applicant who fails to sign the attestation shall be deemed to have declined to apply to register to vote.

11.6(2) Online driver's license and nonoperator identification card renewal applicants. During the online renewal transaction, applicants shall be asked if they would like to register to vote or update an existing voter registration record. If an applicant answers the question in the affirmative, the applicant shall have the opportunity to select a political party and affirm the use of the applicant's last digitized signature on file with the office of driver services, department of transportation, to finalize the voter registration transaction.

11.6(3) Stand-alone online voter registration applicants. The office of driver services, department of transportation, may offer stand-alone online voter registration through its Web site to individuals with current state-issued driver's licenses or nonoperator identification cards. Applicants for voter registration must provide information from their state-issued identification cards to begin the online voter registration application, including the applicant's first and last name and date of birth as they appear on the state-issued identification card, the last five digits of the applicant's social security number, the state-issued identification card number and the first five digits of the document discriminator number which is printed on the state-issued identification card. Applicants who do not have a state-issued identification card who attempt to use the stand-alone online voter registration function shall be offered the opportunity to print, complete, sign and mail a paper copy of the Iowa voter registration application.

11.6(4) A notice shall appear on screen if a stand-alone online voter registration applicant transaction is terminated because of incomplete information. The notice shall instruct the applicant that the applicant may provide the required information by completing a paper voter registration form and mailing it to the commissioner's office or by completing a new application in person at the commissioner's office. Applicants shall also be advised of election day and in-person registration procedures under Iowa Code section 48A.7A.

11.6(5) If a stand-alone online voter registration applicant fails to make a party selection and the application is for a new registration, the commissioner shall enter the selection as "no party." If a stand-alone online voter registration applicant fails to make a party selection and the applicant is already a registered voter in the county, the previous party choice of the registrant shall be retained.

ARC 2164C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 24, “Accreditation of Providers of Services to Persons with Mental Illness, Intellectual Disabilities, or Developmental Disabilities,” Chapter 25, “Disability Services Management,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Chapter 83, “Medicaid Waiver Services,” Chapter 88, “Managed Health Care Providers,” and Chapter 90, “Targeted Case Management,” Iowa Administrative Code.

Current administrative rules do not comply with the current versions of medically related resource manuals as specified by the Centers for Medicare and Medicaid Services, pursuant to the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II). Specifically, the administrative rules stipulating services covered under the Iowa Medicaid program currently refer to outdated versions of the following resource manuals: International Classification of Diseases (ICD-10), Diagnostic and Statistical Manual of Mental Disorders (DSM-5), Code on Dental Procedures and Nomenclature (CDT), and American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Addictive, Substance-Related and Co-Occurring Conditions (ASAM-PPC). In order to keep these references current without having to amend them in the future, the Department is amending the administrative rules to refer to the “current version” of the resource.

In addition, the amendments:

- Update the definitions of “mental retardation” and “serious emotional disturbance” and the term “developmental disorders,” pursuant to the current version of the DSM.
- Eliminate the references to “V codes,” pursuant to the change of that designation in the current version of the ICD.
- Update ICD diagnoses listed in subrule 78.8(2) regarding coverage of chiropractic manipulative therapy (CMT), pursuant to the current version of the ICD.
- Update coverage of mental health and substance abuse services in rule 441—88.61(249A) and subrule 88.65(5), pursuant to the current version of the ICD.
- Change the diagnosis of “bulimia” to “bulimia nervosa,” pursuant to the current version of the DSM.
- Eliminate the diagnosis of “bulimarexia,” pursuant to the current version of the DSM.
- Rescind the definition of “International classifications of diseases—fourth edition, ninth revision (ICD-9)” in paragraph 79.1(16)“a” because the term is not used in the current version of subrule 79.1(16) and, therefore, is being removed because it is obsolete.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2062C** on July 22, 2015. The Department received comments from one respondent regarding these amendments. The respondent’s comments and the Department’s response are as follows:

The respondent’s comments were regarding Item 4 under this rule making, which generally makes various technical corrections to various current rules, including in Item 4. Item 4 amends subrule 78.1(24), which is related to the application of topical fluoride varnish. The amendment to the subrule updates technical references to the Code on Dental Procedures and Nomenclature. The current version of subrule 78.1(24) and the amended subrule as published under Notice both use the term “physician,” as it relates to such practitioners providing these services. The respondent asserted that the subrule’s language limiting practitioners to “physicians” would exclude other appropriately licensed and competent health professionals from providing these services within the scope of their professional licensure. In this regard, the respondent recommended revising the amendment to 78.1(24) to add the phrase “or auxiliary personnel” after the word “physicians.”

The Department’s response is as follows: It is important to note that the use of the term “physicians” in the context of both the current version of subrule 78.1(24) and the amended version adopted herein is

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related to the fact that the subrule is under the broader rule 441—78.1(249A) pertaining to “physicians services.” That fact notwithstanding, the Department understands the respondent’s concerns and agrees with the respondent’s reason for revision and has revised the introductory paragraph of subrule 78.1(24) to read as follows:

“**78.1(24)** Topical fluoride varnish. Payment shall be made for application of an FDA-approved topical fluoride varnish, as defined by the current version of the Code on Dental Procedures and Nomenclature (CDT) published by the American Dental Association, for the purpose of preventing the worsening of early childhood caries in children aged 0 to 36 months of age, when rendered by physicians or other appropriately licensed practitioners under the supervision of or in collaboration with a physician and who are acting within the scope of their practice, licensure, and other applicable state law, subject to the following provisions and limitations:”

Pursuant to Iowa Code section 17A.5(2)“b”(2) as amended by 2015 Iowa Acts, House File 536, section 27, the Department finds that the normal effective date of these amendments, 35 days after the publication, should be waived and the amendments should be made effective October 1, 2015. The normal effective date can be waived since these amendments will confer a benefit on the public. The amendments confer a benefit on the public by ensuring that state regulations remain in compliance with federal regulations and requirements in accordance with federal law. These updates to references were mandated by the Centers for Medicare and Medicaid Services.

The Council on Human Services adopted these amendments on September 9, 2015.

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

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

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

These amendments will become effective October 1, 2015.

The following amendments are adopted.

ITEM 1. Amend rule **441—24.1(225C)**, definitions of “Mental retardation” and “Serious emotional disturbance,” as follows:

“~~Mental retardation~~ Intellectual disability” means a diagnosis of ~~mental retardation~~ intellectual disability (intellectual developmental disorder), global developmental delay, or unspecified intellectual disability (intellectual developmental disorder) under these rules which shall be made only when the onset of the person’s condition was ~~before the age of 18 years~~ during the developmental period and shall be based on an assessment of the person’s intellectual functioning and level of adaptive skills. A licensed psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person’s adaptive skills shall make the diagnosis. A diagnosis of ~~mental retardation~~ intellectual disability shall be made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth Edition~~, published by the American Psychiatric Association.

“Serious emotional disturbance” means a diagnosable mental, behavioral, or emotional disorder that (1) is of sufficient duration to meet diagnostic criteria for the disorder specified by the current version of the Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth Edition~~ (DSM-IV-TR), published by the American Psychiatric Association; and (2) has resulted in a functional impairment that substantially interferes with or limits a consumer’s role or functioning in family, school, or community activities. “Serious emotional disturbance” shall not include ~~developmental neurodevelopmental disorders, substance-related disorders, or conditions or problems classified in~~ the current version of the DSM-IV-TR as “other conditions that may be a focus of clinical attention,” (V-codes), unless those conditions co-occur with another diagnosable serious emotional disturbance.

ITEM 2. Amend paragraph **25.41(2)“c”** as follows:

c. Demographic information including date of birth, sex, ethnicity, marital status, education, residential living arrangement, current employment status, monthly income, income sources, type of insurance, insurance carrier, veterans’ status, guardianship status, legal status in the system, source of referral, diagnosis in the current version of the DSM IV diagnosis, diagnosis in the current version of

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the ICD-9 diagnosis, disability group (i.e., ~~mental retardation~~ intellectual disability, developmental disability, chronic mental illness, mental illness), central point of coordination (county number preceded by A 1), and central point of coordination (CPC) name.

ITEM 3. Amend paragraph **25.41(3)“b,”** table entries for “DSMIV” and “ICD9,” as follows:

Field Name	Data Type	Field Size	Format	Description
DSMIV DSM (current version)	Text	50		DSM IV (current version) diagnosis code of client
ICD9 ICD (current version)	Text	50		ICD-9 (current version) diagnosis code (optional for county use; not tied to CoMIS entry)

ITEM 4. Amend subrule 78.1(24) as follows:

78.1(24) Topical fluoride varnish. Payment shall be made for application of an FDA-approved topical fluoride varnish, as defined by the current version of the ~~Current Dental Terminology, Third Edition~~ Code on Dental Procedures and Nomenclature (CDT-3), published by the American Dental Association, for the purpose of preventing the worsening of early childhood caries in children aged 0 to 36 months of age, when rendered by physicians or other appropriately licensed practitioners under the supervision of or in collaboration with a physician and who are acting within the scope of their practice, licensure, and other applicable state law, subject to the following provisions and limitations:

a. to d. No change.

ITEM 5. Rescind paragraph **78.8(2)“a”** and adopt the following **new** paragraph in lieu thereof:

a. The subluxation must have resulted in a neuromusculoskeletal condition set forth in the table below for which CMT is appropriate treatment. The symptoms must be directly related to the subluxation that has been diagnosed. The mere statement or diagnosis of “pain” is not sufficient to support the medical necessity of CMT. CMT must have a direct therapeutic relationship to the patient’s condition. No other diagnostic or therapeutic service furnished by a chiropractor is covered under the Medicaid program.

ICD	CATEGORY I	ICD	CATEGORY II	ICD	CATEGORY III
G44.1	Vascular headache NEC*	G54.0- G54.4	Nerve root and plexus disorders, brachial plexus disorders, lumbosacral plexus disorders, cervical root disorders NEC, thoracic root disorders NEC, lumbosacral root disorders NEC	M48.30- M48.33	Traumatic spondylopathy, site unspecified, occipito-atlanto-axial region, cervical region, cervicothoracic region
G44.209	Tension headache, unspecified, not intractable	G54.8	Other nerve root and plexus disorders	M48.35- M48.38	Traumatic spondylopathy, thoracolumbar region, lumbar region, lumbosacral region, sacral and sacrococcygeal region
M47.21- M47.28	Other spondylosis with radiculopathy, occipito-atlanto-axial region, cervical region, cervicothoracic region, thoracic region, thoracolumbar region, lumbar region, lumbosacral region, sacral and sacrococcygeal region	G54.9	Nerve root and plexus disorder, unspecified	M50.20- M50.23	Other cervical disc displacement

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ICD	CATEGORY I	ICD	CATEGORY II	ICD	CATEGORY III
M47.811- M47.818	Spondylosis without myelopathy or radiculopathy, occipito-atlanto-axial region, cervical region, cervicothoracic region, thoracic region, thoracolumbar region, lumbar region, lumbosacral region, sacral and sacrococcygeal region	G55	Nerve root and plexus compressions in diseases classified elsewhere	M50.30- M50.33	Other cervical disc degeneration
M47.891- M47.898	Other spondylosis, occipito-atlanto-axial region, cervical region, cervicothoracic region, thoracic region, thoracolumbar region, lumbar region, lumbosacral region, sacral and sacrococcygeal region	M43.00- M43.28	Spondylolysis; spondylolisthesis; fusion of spine	M51.24- M51.27	Other thoracic, thoracolumbar and lumbosacral intervertebral disc displacement
M54.2	Cervicalgia	M43.6	Torticollis	M51.34- M51.37	Other thoracic, thoracolumbar and lumbosacral intervertebral disc degeneration
M54.5	Low back pain	M46.00- M46.09	Spinal enthesopathy	M54.30- M54.32	Sciatica
M54.6	Pain in the thoracic spine	M46.41- M46.47	Discitis, unspecified, occipito-atlanto-axial region, cervical region, cervicothoracic region, thoracic region, thoracolumbar region, lumbar region, lumbosacral region	M54.40- M54.42	Lumbago with sciatica
M54.81	Occipital neuralgia	M48.00- M48.08	Spinal stenosis	M96.1	Postlaminectomy syndrome, NEC
M54.89	Other dorsalgia	M48.34	Traumatic spondylopathy, thoracic region		
M54.9	Dorsalgia, unspecified	M50.10- M50.13	Cervical disc disorder with radiculopathy		
R51	Headache	M50.80- M50.83	Other cervical disc disorders		
		M50.90- M50.93	Cervical disc disorder, unspecified		
		M51.14- M51.17	Intervertebral disc disorders with radiculopathy, thoracic region, thoracolumbar region, lumbar region, lumbosacral region		
		M51.84- M51.87	Other thoracic, thoracolumbar and lumbosacral intervertebral disc disorders		
		M53.0	Cervicocranial syndrome		
		M53.1	Cervicobrachial syndrome		
		M53.2X1- M53.2X9	Spinal instabilities		

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ICD	CATEGORY I	ICD	CATEGORY II	ICD	CATEGORY III
		M53.3	Sacrococcygeal disorders NEC		
		M53.80	Other specified dorsopathies, site unspecified		
		M53.84- M53.88	Other specified dorsopathies, thoracic region, thoracolumbar region, lumbar region, lumbosacral region, sacral and sacrococcygeal region		
		M53.9	Dorsopathy, unspecified		
		M54.10- M54.18	Radiculopathy		
		M60.80	Other myositis, unspecified site		
		M60.811, M60.812	Other myositis, shoulder, right, left		
		M60.819	Other myositis, unspecified shoulder		
		M60.821, M60.822	Other myositis, upper arm, right, left		
		M60.829	Other myositis, unspecified upper arm		
		M60.831, M60.832	Other myositis, forearm, right, left		
		M60.839	Other myositis, unspecified forearm		
		M60.841, M60.842	Other myositis, hand, right, left		
		M60.849	Other myositis, unspecified hand		
		M60.851, M60.852	Other myositis, thigh, right, left		
		M60.859	Other myositis, unspecified thigh		
		M60.861, M60.862	Other myositis, lower leg, right, left		
		M60.869	Other myositis, unspecified lower leg		
		M60.871, M60.872	Other myositis, ankle and foot, right, left		
		M60.879	Other myositis, unspecified ankle and foot		
		M60.88, M60.89	Other myositis, other site, multiple sites		
		M60.9	Myositis, unspecified		
		M62.830	Muscle spasm of back		
		M72.9	Fibroblastic disorder, unspecified		
		M79.1	Myalgia		
		M79.2	Neuralgia and neuritis, unspecified		

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ICD	CATEGORY I	ICD	CATEGORY II	ICD	CATEGORY III
		M79.7	Fibromyalgia		
		M99.20- M99.23	Subluxation stenosis of neural canal, head region, cervical region, thoracic region, lumbar region		
		M99.30- M99.33	Osseous stenosis of neural canal, head region, cervical region, thoracic region, lumbar region		
		M99.40- M99.43	Connective tissue stenosis of neural canal, head region, cervical region, thoracic region, lumbar region		
		M99.50- M99.53	Intervertebral disc stenosis of neural canal, head region, cervical region, thoracic region, lumbar region		
		M99.60- M99.63	Osseous and subluxation stenosis of intervertebral foramina, head region, cervical region, thoracic region, lumbar region		
		M99.70- M99.73	Connective tissue and disc stenosis of intervertebral foramina, head region, cervical region, thoracic region, lumbar region		
		Q76.2	Congenital spondylolisthesis		
		S13.4XXA, S13.4XXD	Sprain of ligaments of cervical spine, initial encounter, subsequent encounter		
		S13.8XXA, S13.8XXD	Sprain of joints and ligaments of other parts of neck, initial encounter, subsequent encounter		
		S16.1XXA, S16.1XXD	Strain of muscle, fascia and tendon at neck level, initial encounter, subsequent encounter		
		S23.3XXA, S23.3XXD	Sprain of ligaments of thoracic spine, initial encounter, subsequent encounter		
		S23.8XXA, S23.8XXD	Sprain of other specified parts of thorax, initial encounter, subsequent encounter		
		S33.5XXA, S33.5XXD	Sprain of ligaments of lumbar spine, initial encounter, subsequent encounter		
		S33.6XXA, S33.6XXD	Sprain of sacroiliac joint, initial encounter, subsequent encounter		

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* NEC means not elsewhere classified.

ITEM 6. Amend subrule **78.12(1)**, definition of “Mental disorder,” as follows:

“*Mental disorder*” means a disorder, dysfunction, or dysphoria diagnosed pursuant to the current version of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, excluding intellectual disabilities, personality disorders, medication-induced movement disorders and other adverse effects of medication, and other conditions that may be a focus of clinical attention.

ITEM 7. Amend subparagraph **78.31(4)“b”(1)** as follows:

(1) General characteristics. Eating disorders are characterized by gross disturbances in eating behavior. Eating disorders include anorexia nervosa, or bulimia, or bulimarexia nervosa. Compulsive overeaters are not ~~acceptable~~ approved for this program.

ITEM 8. Amend subparagraph **78.31(4)“b”(4)**, introductory paragraph, as follows:

(4) Admission criteria. In order to be accepted for treatment, the patient shall meet the diagnostic criteria for anorexia nervosa or bulimia nervosa as established by the current version of the DSM III R (Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised) published by the American Psychiatric Association.

ITEM 9. Amend paragraph **78.45(1)“c”** as follows:

c. The member has a validated principal mental health diagnosis consistent with a severe and persistent mental illness. For this purpose, a mental health diagnosis means a disorder, dysfunction, or dysphoria diagnosed pursuant to the current version of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, excluding neurodevelopmental disorders, substance-related disorders, personality disorders, medication-induced movement disorders and other adverse effects of medication, and other conditions that may be a focus of clinical attention. Members with a primary diagnosis of substance-related disorder, developmental disability, or organic disorder are not eligible for ACT services.

ITEM 10. Rescind the definition of “International classifications of diseases—fourth edition, ninth revision (ICD-9)” in paragraph **79.1(16)“a.”**

ITEM 11. Amend subrule 79.1(20) as follows:

79.1(20) Dentists. The dental fee schedule is based on the definitions of dental and surgical procedures given in the Current Dental Terminology, Third Edition current version of the Code on Dental Procedures and Nomenclature (CDT-3) published by the American Dental Association.

ITEM 12. Amend rule **441—83.121(249A)**, definition of “Serious emotional disturbance,” as follows:

“*Serious emotional disturbance*” means a diagnosable mental, behavioral, or emotional disorder that (1) is of sufficient duration to meet diagnostic criteria for the disorder specified by the current version of the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), published by the American Psychiatric Association; and (2) has resulted in a functional impairment that substantially interferes with or limits a consumer’s role or functioning in family, school, or community activities. “Serious emotional disturbance” shall not include ~~developmental neurodevelopmental disorders, substance-related disorders, or conditions or problems classified in the current version of the DSM-IV-TR as “other conditions that may be a focus of clinical attention,” (V-codes)~~, unless these conditions co-occur with another diagnosable serious emotional disturbance.

ITEM 13. Amend rule **441—88.61(249A)**, definitions of “ASAM-PPC-2R,” “Mental health services,” “Service necessity” and “Substance abuse services,” as follows:

“*ASAM-PPC-2R*” shall mean the current version of the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Addictive, Substance-Related Disorders, Second Edition Revised, and Co-Occurring Conditions published by the American Society of Addiction Medicine in 2001.

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“*Mental health services*” shall mean those clinical, rehabilitative, or supportive services provided by an individual, agency, or other entity that is licensed, accredited, certified, or otherwise approved as required by law to treat any mental disorder listed in the current version of the International Classification of Diseases—Ninth Edition (ICD-9) published by the World Health Organization. At a minimum, covered disorders include the following ranges of the ICD-9: ~~290-302.9; 306-309.9; and 311-314.9~~ F01, F03 to F06 (mental disorders due to known physiological conditions: vascular dementia, amnesic disorder due to physiological condition, delirium due to physiological condition, other mental disorders due to physiological conditions); F20 to F25, F28, F29 (schizophrenia, schizotypal, delusional and other non-mood psychotic disorders); F30 to F34, F39 (mood (affective) disorders); F40 to F45, F48 (anxiety, dissociative, stress-related, somatoform and other nonpsychotic mental disorders); F50 to F53, F59 (behavioral syndromes associated with physiological disturbances and physical factors: eating disorders, sleep disorders not due to substance/known physiological condition, sexual dysfunction not due to substance/known physiological condition, puerperal psychosis); F60, F63 to F66, F68, F69 (disorders of adult personality and behavior); F84 (except F84.2) (pervasive developmental disorders); and F90 to F95, F98, F99 (behavioral and emotional disorders with onset usually occurring in childhood and adolescence). Additional code ranges may be included in the contract. Mental health services shall include, but not be limited to, those services listed at subrule 88.65(3).

“*Service necessity*” shall mean that substance abuse services for the treatment of conditions related to substance abuse meet the following requirements according to the ~~criteria of the~~ current version of the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Addictive, Substance-Related, and Co-Occurring Conditions (ASAM-PPC-2R) published by the American Society of Addiction Medicine. The services shall be:

1. to 5. No change.

“*Substance abuse services*” shall mean those clinical, rehabilitative, supportive and other services provided in response to and to alleviate the symptoms of any substance abuse disorder listed in the current version of the International Classification of Diseases—Ninth Edition (ICD-9), published by the World Health Organization, disorders ~~303 through 305.9~~ F10 to F19, F55 (mental and behavioral disorders due to known psychoactive substance use), provided by an individual, agency, or other entity that is licensed, accredited, certified, or otherwise approved as required by law to treat any of these substance abuse disorders. Services include, but are not limited to, services listed at subrule 88.65(4).

ITEM 14. Amend subrule 88.65(4) as follows:

88.65(4) *Covered and required substance abuse services.* The contractor shall ensure, arrange, monitor and reimburse the following services for the treatment of substance abuse:

a. Outpatient services (all Level ~~I~~ I services according to the current version of the ASAM-PPC-2R).

b. Intensive outpatient and partial hospitalization services (all Level ~~II~~ II services according to the current version of the ASAM-PPC-2R).

c. Residential or inpatient services (all Level ~~III~~ III services according to the current version of the ASAM-PPC-2R).

d. Medically managed intensive inpatient services (all Level ~~IV~~ IV services according to the current version of the ASAM-PPC-2R).

e. to j. No change.

ITEM 15. Amend subrule 88.65(5) as follows:

88.65(5) *Covered diagnoses.* Services for a covered diagnosis cannot be denied solely on the basis of an individual’s also having a noncovered diagnosis. Mental health services, including inpatient care, cannot be denied solely on the basis of an individual’s having no diagnosis pursuant to the current version of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association. The contractor will be responsible for ensuring, arranging, monitoring, and reimbursing services necessary for the behavioral care and treatment of the covered diagnoses for Iowa Plan enrollees who are diagnosed with a covered diagnosis and a noncovered diagnosis.

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The services defined at subrules 88.65(3) and 88.65(4) shall be provided to all Iowa Plan enrollees who meet the diagnostic criteria for the following disorders listed in the current version of the International Classification of Diseases—~~Ninth Edition~~ (ICD-9) published by the World Health Organization:

- ~~1. a.~~ Mental health: ~~290-302.9; 306-309.9; 311-314.9.~~
- (1) Mental disorders due to known physiological conditions (vascular dementia, amnestic disorder due to physiological condition, delirium due to physiological condition, other mental disorders due to physiological conditions): ICD codes F01 and F03 to F06.
- (2) Schizophrenia, schizotypal, delusional and other non-mood psychotic disorders: ICD codes F20 to F25, F28 and F29.
- (3) Mood (affective) disorders: ICD codes F30 to F34 and F39.
- (4) Anxiety, dissociative, stress-related, somatoform and other nonpsychotic mental disorders: ICD codes F40 to F45 and F48.
- (5) Behavioral syndromes associated with physiological disturbances and physical factors (eating disorders, sleep disorders not due to substance/known physiological condition, sexual dysfunction not due to substance/known physiological condition, puerperal psychosis): ICD codes F50 to F53 and F59.
- (6) Disorders of adult personality and behavior: ICD codes F60, F63 to F66, F68 and F69.
- (7) Pervasive developmental disorders: ICD codes F84 (except F84.2).
- (8) Behavioral and emotional disorders with onset usually occurring in childhood and adolescence: ICD codes F90 to F95, F98 and F99.
- ~~2. b.~~ Substance abuse: ~~303-305.9.~~ Mental and behavioral disorders due to known psychoactive substance use: ICD codes F10 to F19 and F55.

ITEM 16. Amend **441—Chapter 90**, preamble, as follows:

PREAMBLE

These rules define and structure medical assistance targeted case management services provided in accordance with Iowa Code section 225C.20 for Medicaid members with ~~mental retardation~~ an intellectual disability, a chronic mental illness, or a developmental disability and members eligible for the home- and community-based services (HCBS) children's mental health waiver. Provider accreditation standards are set forth in 441—Chapter 24.

Case management is a method to manage multiple resources effectively for the benefit of Medicaid members. The service is designed to ensure the health, safety, and welfare of members by assisting them in gaining access to appropriate and necessary medical services and interrelated social, educational, housing, transportation, vocational, and other services.

ITEM 17. Amend rule **441—90.1(249A)**, definitions of “Mental retardation” and “Targeted population,” as follows:

~~“Mental retardation~~ Intellectual disability” means a diagnosis of ~~mental retardation~~ intellectual disability (intellectual developmental disorder), global developmental delay, or unspecified intellectual disability (intellectual developmental disorder) which:

1. Is made only when the onset of the person's condition was before the age of 18 years during the developmental period;
2. Is based on an assessment of the person's intellectual functioning and level of adaptive skills;
3. Is made by a licensed psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills; and
4. Is made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders, ~~Fourth Edition~~, published by the American Psychiatric Association.

~~“Targeted population”~~ “Targeted population” means people who meet one of the following criteria:

1. An adult who is identified with a primary diagnosis of ~~mental retardation~~ intellectual disability, chronic mental illness or developmental disability; or

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2. A child who is eligible to receive HCBS ~~mental-retardation~~ intellectual disability waiver or HCBS children's mental health waiver services according to 441—Chapter 83.

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ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapter 1, “Definitions,” Chapter 3, “Certification of CPAs,” Chapter 5, “Licensure Status and Renewal of Certificates and Licenses,” Chapter 6, “Attest and Compilation Services,” Chapter 7, “Certified Public Accounting Firms,” Chapter 8, “Licensed Public Accounting Firms,” Chapter 10, “Continuing Education,” Chapter 11, “Peer Review,” Chapter 13, “Rules of Professional Ethics and Conduct,” and Chapter 14, “Disciplinary Authority and Grounds for Discipline,” Iowa Administrative Code.

The Governor signed 2015 Iowa Acts, Senate File 198, on March 31, 2015. Among other changes, this bill amends Iowa Code chapter 542, the Accountancy Examining Board’s enabling Act. The primary change in 2015 Iowa Acts, Senate File 198, that requires corresponding rule changes is the amendment to the definition of “report” and the associated changes to the breadth of the services that are included within the definition of “attest.”

These amendments are, for the most part, technical in nature and will ensure that the rules mirror 2015 Iowa Acts, Senate File 198, which became effective July 1, 2015.

In addition, the amendments to Chapter 1 align the definition of “audit” to correspond with the definition in the Uniform Accountancy Act model rule and rescind the definition of “ALD.” The amendment to Chapter 3 updates resource information provided to the public. The amendments to Chapter 5 update resource information provided to the public and remove outdated information. The amendments to Chapter 6 correspond to 2015 Iowa Acts, Senate File 198. The amendments to Chapter 7 correspond to 2015 Iowa Acts, Senate File 198, and remove mandatory disclosures that are no longer necessary. The amendments to Chapter 8 remove mandatory disclosures that are no longer necessary. The amendments to Chapter 10 clarify flexible continuing education deadlines. The amendments to Chapter 11 correspond to 2015 Iowa Acts, Senate File 198. Several of the amendments to Chapter 13 provide for flexible continuing education deadlines, and others correspond to 2015 Iowa Acts, Senate File 198. The amendment to Chapter 14 corresponds to 2015 Iowa Acts, Senate File 198.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 8, 2015, as **ARC 2058C**. A public hearing was held on July 28, 2015, at 9 a.m. in the Board office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa. No comments were received. In the only change from the Notice, the last sentence of rule 193A—11.1(542) in Item 34 was revised for clarity. Rule 193A—11.1(542) now reads as follows:

“193A—11.1(542) Peer review required. As a condition of renewal for a CPA or LPA who issues compilation reports other than through a CPA or LPA firm which holds a permit to practice, and as a condition of permit renewal for LPA firms which issue compilation reports or CPA firms which provide attest services or issue compilation reports, the applicant shall submit certification of completion of a peer review issued pursuant to this chapter. Such review shall be completed at the highest level of service provided by the firm or licensee. The performance of preparation services under SSARS 21 does not alone subject a firm or individual to peer review, although if a firm or individual is otherwise subject to peer review, the reviewer may include preparation services in the scope of practices reviewed.”

There is no fiscal impact. No current fees are being changed, and no new fees are being imposed.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These amendments were adopted by the Board on August 26, 2015.

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

These amendments are intended to implement Iowa Code chapter 542 as amended by 2015 Iowa Acts, Senate File 198.

These amendments will become effective November 4, 2015.

The following amendments are adopted.

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ITEM 1. Rescind the definition of “ALD” in rule **193A—1.1(542)**.

ITEM 2. Amend rule **193A—1.1(542)**, definitions of “Audit” and “Report,” as follows:

“*Audit*” means ~~an examination of financial statements by a CPA, conducted in accordance with generally accepted auditing standards accompanied by the CPA’s opinion as to whether the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting~~ the procedures performed in accordance with applicable auditing standards for the purpose of expressing or disclaiming an opinion on the fairness with which the historical financial or other information is presented in conformity with generally accepted accounting principles, another comprehensive basis of accounting, or basis of accounting described in the report.

“*Report*,” when used with reference to ~~financial statements~~ any attest or compilation services, means a report, opinion, or other form of a writing that states or implies assurance as to the reliability of ~~any the attested information or compiled~~ financial statements and that includes or is accompanied by a statement or implication that the person or firm issuing the report has special knowledge or competence in accounting or auditing. Such statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. “Report” includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply a positive assurance as to the reliability of the attested information or compiled financial statements referred to or special knowledge or competence on the part of the person or firm issuing the language, and any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

ITEM 3. Amend rule 193A—3.2(542) as follows:

193A—3.2(542) Colleges or universities recognized by the board. Iowa Code section 542.5, in providing for educational qualifications for a certificate as a certified public accountant, refers to colleges or universities “recognized by the board.” For such purpose, the board recognizes educational institutions accredited by the ~~American Assembly of Collegiate Schools of Business Association to Advance Collegiate Schools of Business~~ and the regional accrediting bodies listed in the current publication of the Accredited Institutions of Post Secondary Education, which listing is made a part of these rules by reference.

This rule is intended to implement Iowa Code section 542.5.

ITEM 4. Amend subrule 5.1(6) as follows:

5.1(6) Exercising a practice privilege in Iowa or for a client with a home office in Iowa while holding an inactive or lapsed Iowa CPA certificate places a special burden on the individual to ensure that the public is informed about the individual’s licensure status in Iowa and in the jurisdiction of active licensure, as provided in 193A—paragraphs 20.8(2)“*b*” and 20.8(3)“*b*.” As a practical matter, an individual’s failure to clarify licensure status in Iowa and in the jurisdiction of the individual’s principal place of business may confuse the public. However, the public may consult ~~ALD~~ CPAverify, a comprehensive national data bank, to verify an individual’s licensure in another jurisdiction. ~~ALD~~ CPAverify may be accessed at www.NASBA.org www.cpaverify.org. A client contacting the board or consulting the board’s Web site will be informed of the individual’s licensure status in Iowa ~~and in the individual’s jurisdiction of active licensure.~~

ITEM 5. Amend rule 193A—5.3(542), catchwords, as follows:

193A—5.3(542) Renewal of license that expires on or after June 30, 2011 License renewal.

ITEM 6. Amend subrule 5.3(1) as follows:

5.3(1) Licenses issued pursuant to Iowa Code section 542.6 (CPA certificates), 542.8 (LPA licenses), or 542.19 (CPA certificates by substantial equivalency) ~~that expire on June 30, 2011, and thereafter~~ shall be renewed on an annual basis, and shall expire on June 30 of each year. Licenses shall be renewed through electronic on-line renewal, except that licensees who are ineligible to renew on line because they

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must disclose a criminal conviction or disciplinary order, or for other cause, shall renew upon forms that may be obtained from the board office or on the board's Web site. An annual renewal fee will be charged.

ITEM 7. Rescind subrule 5.3(2) and adopt the following **new** subrule in lieu thereof:

5.3(2) The board plans to develop a renewal process in which a firm permit to practice and the individual licenses associated with the firm may be renewed together. The board shall adopt rules governing the combined renewal process when further details are known and the technological means to implement the process are in place.

ITEM 8. Rescind subrules **5.3(3)** and **5.3(4)**.

ITEM 9. Amend subrule 6.1(3) as follows:

6.1(3) CPAs performing attest services, whether the CPAs are certified in Iowa or exercising a practice privilege, must do so in a CPA firm that holds a permit to practice pursuant to Iowa Code section 542.7. However, a CPA exercising a practice privilege who works for an out-of-state CPA firm that does not hold a permit to practice under Iowa Code section 542.7 may provide review services in Iowa or for a client with a home office in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, ~~as amended by 2012 Iowa Acts, Senate File 2122,~~ and associated rules.

ITEM 10. Amend subrule 6.1(4) as follows:

6.1(4) CPAs who are responsible for supervising attest services for a CPA firm or who sign or authorize someone to sign the accountant's report ~~on the financial statements~~ on behalf of a CPA firm shall satisfy the experience or competency requirements established by nationally recognized professional standards that are applicable to the attest services performed and shall, at a minimum, satisfy the experience requirements of rule 193A—6.2(542).

ITEM 11. Amend subrule 6.2(1) as follows:

6.2(1) A CPA who is responsible for supervising attest services or who signs or authorizes someone to sign the accountant's report ~~on financial statements~~ on behalf of a firm shall have two years of full-time or part-time equivalent experience that extends over a period of no less than two years and includes no fewer than 4,000 hours, at least 2,000 of which shall be in providing attest services under the supervision of one or more CPAs responsible for supervising attest services on behalf of a CPA firm that holds a permit to practice in Iowa or an equivalent form of CPA firm licensure in another jurisdiction.

ITEM 12. Amend paragraph **6.2(2)“e”** as follows:

e. Experience in the preparation and analysis of reports and financial statements together with explanations and notes thereon.

ITEM 13. Rescind subrule **6.3(3)**.

ITEM 14. Renumber subrule **6.3(4)** as **6.3(3)**.

ITEM 15. Amend renumbered subrule 6.3(3) as follows:

6.3(3) ~~Beginning July 1, 2009, when the practice privilege provisions of Iowa Code chapter 542 become effective, attest qualification may be attained or established~~ CPAs who did not hold a permit to practice prior to July 1, 2002, may attain or establish attest qualification as follows:

a. Applicants may apply for attest qualification when initially applying for a certificate as an Iowa CPA under Iowa Code section 542.6; or when applying for reciprocal Iowa certification under Iowa Code section 542.19.

b. Iowa CPA certificate holders may apply for attest qualification at any time at which they are qualified to do so.

c. Out-of-state CPAs performing attest services while exercising a practice privilege under Iowa Code section 542.20 are not required to individually apply to the board for attest qualification, but the Iowa CPA firm in which such attest services are performed shall affirm when applying for an initial or renewal firm permit to practice that the CPAs who supervise attest services for the firm or who sign or authorize someone to sign the accountant's report ~~on the financial statements~~ on behalf of the firm, as such attest services are or will in the following year be performed in Iowa or for a client with a home office in Iowa, have been qualified to perform attest services in Iowa or another jurisdiction.

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ITEM 16. Amend paragraph **7.1(5)“c”** as follows:

c. Designate an Iowa CPA or person with a practice privilege under Iowa Code section 542.20 who is responsible for supervising attest services or who will sign or authorize someone to sign the accountant's report ~~on financial statements~~ on behalf of the firm, as such attest services will be performed in Iowa or for a client with a home office in Iowa; and

ITEM 17. Amend paragraph **7.2(3)“b”** as follows:

b. Based on the firm's failure to comply with the requirements of Iowa Code section 542.7 including, but not limited to, a failure to make the designations described in subrule 7.1(5) or a failure to sustain the simple majority of ownership required by Iowa Code section 542.7(3); or

ITEM 18. Adopt the following **new** paragraph **7.2(3)“c”**:

c. Based on a regulatory or disciplinary action or criminal conviction described in subrules 7.3(14) and 7.3(15) against any of the firm's licensed or unlicensed owners.

ITEM 19. Amend subrule 7.3(1) as follows:

7.3(1) The lawful name of the firm ~~and any trade or assumed names, or aliases the firm will use in Iowa or when communicating with Iowans.~~

ITEM 20. Amend subrule 7.3(3) as follows:

7.3(3) Contact information for the principal place of business of the firm and each Iowa office; ~~including name, physical address, mailing address, telephone number, facsimile number, E-mail address, and Web-site address.~~

ITEM 21. Amend subrule 7.3(4) as follows:

7.3(4) All jurisdictions in which the firm is licensed or has applied for licensure; ~~all unexpired firm license numbers, and the expiration date of each license.~~

ITEM 22. Amend subrule 7.3(5) as follows:

7.3(5) The names, licensure, and contact information for all persons described in subrule 7.1(5); ~~including name, title, physical address, mailing address, telephone number, facsimile number, E-mail address, jurisdiction of the person's principal place of business, and the certificate number and expiration date of the certificate held in the person's principal place of business.~~

ITEM 23. Amend subrule 7.3(8) as follows:

7.3(8) The identity of all owners (e.g., partners, shareholders, or members) of the firm who perform professional services in Iowa or for a client with a home office in Iowa; ~~including sufficient~~ Sufficient information from which the board can determine that a simple majority of owners hold a CPA certificate under Iowa Code section 542.6 or 542.19 or hold a CPA certificate in another state and are eligible to exercise a practice privilege under Iowa Code section 542.20. ~~The board may modify this requirement on the application form as warranted to secure only the information the board deems reasonably needed and may accept an affirmation, subject to audit.~~ The board reserves the right to require at any time a full list of owners, or a targeted sublist, such as a list of those persons who perform services from an Iowa office or those who perform attest or compilation services in Iowa or for a client with a home office in Iowa.

ITEM 24. Amend subrule 7.3(9) as follows:

7.3(9) The affirmation described in 193A—~~paragraph 6.3(4)“e.”~~ 6.3(3)“c.”

ITEM 25. Amend subrule 7.3(10) as follows:

7.3(10) Affirmation that all CPAs who are responsible for supervising attest services for the CPA firm or who sign or authorize someone to sign the accountant's report ~~on the financial statements~~ on behalf of the CPA firm satisfy the experience or competency requirements established by nationally recognized professional standards that are applicable to the attest services performed in Iowa or for clients with a home office in Iowa.

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ITEM 26. Rescind subrule **7.7(1)**.

ITEM 27. Renumber subrules **7.7(2)** to **7.7(5)** as **7.7(1)** to **7.7(4)**.

ITEM 28. Amend subrule 8.1(2) as follows:

8.1(2) The application may be obtained from the board office or on the board's Web site and shall ~~list the names of all licensed or unlicensed owners, provide sufficient information from which the board can determine that~~ a simple majority of ~~whom shall~~ owners hold licenses issued under Iowa Code section 542.8 or certificates issued under Iowa Code section 542.6 or 542.19, ~~be~~ are eligible to practice under practice privilege pursuant to Iowa Code section 542.20, or otherwise hold a license or certificate to practice public accounting in another state. At least one owner must be licensed under Iowa Code section 542.8.

ITEM 29. Amend subrule 8.1(3) as follows:

8.1(3) The application shall list the name, title, ~~physical address, mailing address, telephone number, facsimile number, E-mail address, jurisdiction(s) of individual licensure or certification, principal place of business, each license or certificate number, and the expiration date of each license or certificate of any licensure, and contact information for each licensee or practice privilege practitioner who is responsible for supervising compilation services and who signs or authorizes someone to sign the accountant's report on financial statements on behalf of the firm.~~ The application shall affirm that any licensee listed meets the competency requirements set forth in SSARS and holds a valid license or certificate issued under Iowa Code section 542.6, 542.8, or 542.19 or is eligible to exercise a practice privilege under Iowa Code section 542.20.

ITEM 30. Amend subrule 8.1(4) as follows:

8.1(4) The application shall list the physical location and contact information (~~telephone number, E-mail address, facsimile number, and Web site address~~) for all offices within this state and the licensee in charge of each such office. ~~For each such designated licensee, the jurisdiction(s) of licensure, license or certificate number, and expiration date of each license or certificate shall also be listed.~~

ITEM 31. Amend rule 193A—10.5(542) as follows:

193A—10.5(542) Basic requirement.

10.5(1) ~~During the three-year period ending on the December 31 preceding the July 1 renewal date of the certificate or license~~ Except as provided in subrules 10.5(2) to 10.5(7), an applicant for renewal shall have completed 120 hours of qualifying continuing professional education subject to the following exceptions: during the three-year period ending on the December 31 or June 30 preceding the July 1 renewal date of the certificate or license. The following conditions shall apply:

a. On each online or paper renewal, a CPA or LPA shall self-select December 31 or June 30 as the date by which continuing education requirements must be satisfied in order to be eligible to renew the certificate or license.

b. A CPA or LPA applying to renew a certificate or license may declare a continuing education deadline of December 31 in one renewal cycle and a continuing education deadline of June 30 in a subsequent renewal cycle, and vice versa.

c. Licensees shall maintain continuing education records in a manner that corresponds with the self-selected continuing education deadline of December 31 or June 30.

d. When declaring a June 30 continuing education deadline, licensees must be cautious to ensure that the continuing education is fully completed on or prior to the date the renewal application is submitted to the board.

e. Licensees who renew with penalty during the 30-day grace period following June 30 must declare either December 31 or June 30 as the continuing education deadline and may not extend the deadline beyond June 30.

~~**10.5(1)**~~ **10.5(2)** At the first annual renewal date of July 1 that is less than 12 months from the date of filing of the initial application for the certificate or license, the certificate holder or license holder shall not be required to report continuing professional education.

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~~10.5(2)~~ **10.5(3)** At the annual renewal date of July 1 that is 12 months or more than 12 months, but less than 24 months, from the date of filing of the initial application for the certificate or license, the certificate holder or license holder shall report 40 hours of continuing professional education earned in the one-year period ending December 31 or June 30 prior to the July 1 renewal date.

~~10.5(3)~~ **10.5(4)** At the annual renewal date of July 1 that is 24 months or more than 24 months, but less than 36 months, from the date of filing of the initial application for the certificate or license, the certificate holder or license holder shall report 80 hours of continuing professional education earned in the two-year period ending December 31 or June 30 prior to the July 1 renewal date.

~~10.5(4)~~ An applicant who wishes to restore a certificate or license to active status must meet the basic requirement of 120 hours of continuing professional education earned in the preceding three-year period prior to the date of application to restore active status.

10.5(5) A licensee shall be deemed to have complied with the requirements of this rule if, for the period that the licensee is a resident of another state or district having a continuing professional education requirement, the licensee met the resident state's mandatory requirement.

10.5(6) The board shall have authority to make exceptions for reasons of individual hardship including health, certified by a medical doctor, military service, foreign residency, retirement, or other good cause. No exceptions shall be made solely because of age. Applicants entitled to a full or partial exception under the provisions of Iowa Code section 272C.2, subsection 4, for active military service or government service outside of the United States may request an exception by submitting acceptable documentation as applicable to the exception requested. Applicants seeking an exception on other grounds of undue hardship must submit an application for waiver or variance as provided in 193—Chapter 5.

10.5(7) Licensees who apply to reinstate a lapsed or inactive certificate or license to active status pursuant to 193A—subrule 5.6(3) or 5.9(7) shall satisfy the basic requirement of 120 hours of continuing professional education earned in the preceding three-year period prior to the date of the application, including all required mandatory education described in rule 193A—10.7(542), ~~to reinstate on an annual renewal schedule, modified as needed to incorporate the phase-in schedule for initial licensees described in subrules 10.5(1) to 10.5(3).~~ Once the certificate or license is reinstated, the basic requirement shall apply at each subsequent renewal. The 120-hour requirement described in this subrule shall be modified as needed to incorporate the phase-in schedule for initial licensees described in subrules 10.5(2) to 10.5(4).

ITEM 32. Amend subrule 10.7(1) as follows:

10.7(1) Every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on the financial statements on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of eight hours of continuing professional education devoted to financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates. When required, the financial statement presentation continuing education shall be completed within the three-year period ending on the December 31 or June 30 preceding the application for certificate or license renewal. For credit to be claimed for a course covering multiple topics, a minimum of one hour as outlined in subrule 10.6(1) shall be devoted to financial statement presentation. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to financial statement presentation, then only one hour shall be claimed toward meeting the requirement of this subrule.

ITEM 33. Amend subrule 10.7(2), introductory paragraph, as follows:

10.7(2) Every CPA certificate holder or LPA license holder shall complete a minimum of four hours of continuing education devoted to ethics and rules of professional conduct during the three-year period ending December 31 or June 30, prior to the July 1 annual renewal date. For a course to qualify to meet this requirement, the course description shall clearly outline the subject matter covered as professional or business ethics. If credit is to be claimed for a course covering multiple topics, a minimum of one hour as outlined in rule 193A—10.6(542), measurement standards, specifically in subrule 10.6(1), shall

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be devoted to business or professional ethics. For example, if a seminar or presentation is conducted for a total of four hours and only one hour is devoted to business or professional ethics, then only one hour shall be claimed toward meeting the requirement of this subrule. Ethics courses, which are defined as courses dealing with regulatory and behavioral ethics, shall be limited to courses on the following:

ITEM 34. Amend rule 193A—11.1(542) as follows:

193A—11.1(542) Peer review required. As a condition of renewal for a CPA or LPA who issues compilation reports other than through a CPA or LPA firm which holds a permit to practice, and as a condition of permit renewal for LPA firms which issue compilation reports or CPA firms which provide attest services or issue compilation reports, the applicant shall submit certification of completion of a peer review issued pursuant to this chapter. Such review shall be completed at the highest level of service provided by the firm or licensee. The performance of preparation services under SSARS 21 does not alone subject a firm or individual to peer review, although if a firm or individual is otherwise subject to peer review, the reviewer may include preparation services in the scope of practices reviewed.

ITEM 35. Amend rule 193A—11.3(542) as follows:

193A—11.3(542) System of internal quality control. If the firm has not ~~issued reports on financial statements~~ performed any attest or compilation services prior to the application for renewal, the firm shall have in place a system of internal quality control prior to the commencement of ~~a financial reporting an engagement~~; including attest or compilation services and shall come into compliance with the peer review requirement within 18 months of completion of ~~a financial reporting an engagement~~ including attest or compilation services.

ITEM 36. Amend subrule 13.4(3) as follows:

13.4(3) Engagement standards. Unless they have complied with applicable generally accepted engagement standards, CPAs and LPAs shall not permit their names to be ~~associated~~ linked with ~~financial statements~~ a report associated with any attest or compilation service. The board will consider the American Institute of Certified Public Accountants Professional Standards, Public Company Accounting Oversight Board, International Accounting Standards Board, Statements on Auditing Standards, and Statements on Standards for Accounting and Review Services as sources of interpretations of generally accepted engagement standards.

ITEM 37. Amend subrule 13.4(5) as follows:

13.4(5) Requirements of governmental bodies, commissions, or other regulatory agencies.

a. Many governmental bodies, commissions, or other regulatory agencies have established requirements, such as audit standards, guides, rules and regulations, that CPAs are required to follow in preparation of reports, financial statements or related information, such as management's discussion or analysis, and in performing attest or similar services for entities subject to the jurisdiction of the governmental bodies, commissions, or regulatory agencies. For example, the Securities and Exchange Commission, Government Accountability Office, office of auditor of state, state insurance division and other regulatory agencies have established such requirements.

b. A CPA shall not prepare reports, financial statements or related information for the purposes of reporting to such bodies, commissions, or regulatory agencies, unless the CPA agrees to follow the requirements of such organizations in addition to generally accepted auditing standards, where applicable, unless the CPA discloses in the financial statements or the accountant's report that such requirements were not followed.

ITEM 38. Amend subrule 13.4(16) as follows:

13.4(16) Accounting principles. A CPA or LPA shall not state in the CPA's or LPA's report ~~on financial statements~~ that the financial statements ~~are~~ or other information is presented in conformity with generally accepted accounting principles if such ~~financial statements contain~~ report contains any departure from such accounting principles which has a material effect on the ~~financial statements report~~ taken as a whole, unless the CPA or LPA can demonstrate that by reason of unusual circumstances

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the ~~financial statements report~~ would otherwise have been misleading. In such cases, the accountant's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle(s) would result in a misleading statement. The board will consider the pronouncements issued by the Financial Accounting Standards Board and its predecessor entities as sources of interpretations of generally accepted accounting principles.

ITEM 39. Amend subrule 13.4(26) as follows:

13.4(26) Mandatory ethics continuing professional education. Every CPA certificate holder or LPA license holder shall complete a minimum of four hours of continuing professional education devoted to ethics and rules of professional conduct during the three-year period ending December 31 or June 30, prior to the July 1 annual renewal date. This requirement is more fully described in 193A—subrule 10.7(2).

ITEM 40. Amend subrule **13.6(1)**, definition of “Audit,” as follows:

“Audit” means ~~an examination of financial statements by a CPA, conducted in accordance with generally accepted auditing standards accompanied by the CPA's opinion as to whether the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting~~ the procedures performed in accordance with applicable auditing standards for the purpose of expressing or disclaiming an opinion on the fairness with which the historical financial or other information is presented in conformity with generally accepted accounting principles, another comprehensive basis of accounting, or basis of accounting described in the report.

ITEM 41. Amend subrule 13.6(2) as follows:

13.6(2) Practice privilege. All audit, review, and other attest services performed in Iowa or for a client with a home office in Iowa must be performed through a CPA firm that holds an active Iowa firm permit to practice; provided that, an out-of-state CPA firm exercising a practice privilege may perform review services in Iowa or for a client with a home office in Iowa without first obtaining a firm permit to practice in Iowa as long as the firm complies with Iowa Code section 542.20, subsections 5 and 6, ~~as amended by 2012 Iowa Acts, Senate File 2122~~, and associated rules. Unless Iowa certification is specifically required by a governmental body or client, the individual CPAs performing such attest services may either hold an active Iowa CPA certificate or exercise a practice privilege as more fully described in Iowa Code section 542.20 ~~as amended by 2012 Iowa Acts, Senate File 2122~~. LPAs and LPA firms are not authorized to perform attest services.

ITEM 42. Amend subrule 13.6(4), introductory paragraph, as follows:

13.6(4) Independence. A CPA or CPA firm shall not issue a report on ~~financial statements~~ of a client in such a manner as to imply that the CPA is acting as an independent public accountant with respect thereto unless the CPA is independent with respect to such client. Independence will be considered to be impaired if, for example:

ITEM 43. Amend paragraph **13.6(4)“b,”** introductory paragraph, as follows:

b. During the period covered by the ~~financial statements reports~~, during the period of the professional engagement, or at the time of expressing an opinion, the licensee:

ITEM 44. Amend paragraph **14.3(5)“d”** as follows:

d. Performing attest services as a firm without holding a permit to practice pursuant to Iowa Code section 542.7, or without ensuring that the individuals responsible for supervising attest services or signing or authorizing someone to sign the accountant's report ~~on financial statements~~ are attest qualified, hold the required certification or are eligible to exercise a practice privilege, or otherwise performing attest services in a manner inconsistent with Iowa Code chapter 542 and 193A—Chapters 6 and 7.

[Filed 8/28/15, effective 11/4/15]

[Published 9/30/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/30/15.

ARC 2165C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

The Medicaid program’s provider participation requirements for psychologists currently refer to “the standards of the National Register of Health Service Providers in Psychology, 1981 edition.” The National Register of Health Service Providers in Psychology is now the National Register of Health Service Psychologists. The Register has credentialing requirements but no longer publishes dated editions of standards. These amendments update rule 441—77.22(249A) to reflect the current credentialing requirements of the National Register of Health Service Psychologists.

The Centers for Medicare and Medicaid Services (CMS) claim form requirements for payment of some Medicaid program services currently refer to “Form UB-92.” This form is outdated. These amendments also update paragraph 80.2(2)“a” to reflect the current UB-04 CMS claim form.

The option to copy rather than purchase CMS claim forms for Medicaid billing purposes is also eliminated.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2061C** on July 22, 2015. The Department received comments from two respondents during the comment period. The respondents’ comments and Department responses are as follows:

Respondent 1 Comment: In the Notice of Intended Action, the National Register of Health Service Psychologists and current credentialing requirements for Medicaid provider eligibility are highlighted. The commenter requested clarification regarding whether a licensed psychologist is required to be a listed member on the National Register of Health Service Psychologists registry or if meeting the credentialing requirements outlined by the Register without being listed on the registry is acceptable to attain Medicaid eligibility.

Department Response: If the licensed psychologist is listed on the registry of individuals certified by the National Register of Health Service Psychologists, the psychologist does not need to submit supporting documents. Medicaid enrollment staff verifies registration on the National Register of Health Service Psychologists registry Web site: <http://www.findapsychologist.org/>.

If the licensed psychologist is not listed on the registry of individuals certified by the National Register of Health Service Psychologists, submission of one of the following documents is required in order to meet credentialing requirements:

1. Doctoral level psychologists are considered to meet the National Register of Health Service Psychologist standards. A copy of the diploma is acceptable.
2. Iowa Health Service certification requirements are the same as the National Register of Health Service Psychologists certification requirements. A copy of the Iowa Health Service certification document is acceptable.
3. A written statement explaining how the licensed psychologist meets credentialing qualifications through health care service experience. The statement must include the psychologist’s name, national provider identification (NPI), date, and signature and be submitted on office letterhead to be acceptable.

The Department did not change the proposed amendment to address the respondent’s comment. There is no requirement outlined in this proposed amendment related to being listed on the registry of individuals certified by the National Register of Health Service Psychologists.

Respondent 2 Comment: The respondent expressed concern about the provision under the proposed amendment to 441—77.22(249A) regarding credentialing psychologists by current National Register of Health Service Psychologists credentialing requirements. The respondent’s fear is that this provision will disqualify several Iowa-licensed, masters-level psychologists from being reimbursed by Medicaid.

The respondent provided a history of formal allowances for both masters- and doctoral-level clinical psychologists. In the 1970s and 1980s, the profession led a movement to require clinical psychologists

HUMAN SERVICES DEPARTMENT[441](cont'd)

to have a doctoral degree. Recognizing that there were still some qualified (and licensed) masters-level psychologists, both the Iowa Board of Psychology and the national credentialing associations permitted masters-level clinical psychologists to apply to be grandfathered in. In about 1985, the State of Iowa told masters-level psychologists they could still become licensed if they applied for licensure, demonstrated their experience, took the tests, and passed the oral examinations. The respondent believed that the National Register was also following a similar process in the late 1970s.

The respondent noted that now all (new) applicants would need to be doctoral degree applicants. The respondent noted that there are still several licensed or credentialed masters-level psychologists practicing and that the psychologists would have been practicing as such for the past 30-plus years.

The respondent noted that his organization has an Iowa licensed masters-level psychologist who met the grandfathered criteria to be on the National Register and in 1985 applied for and subsequently received his Iowa licensure. That masters-level psychologist was also duly credentialed by Medicaid and provided assessments for children for years since and continues to do so through the respondent's organization. The respondent is concerned that the proposed change would disqualify this masters-level psychologist and therefore would affect the children served by his organization. The respondent also noted that it is very difficult to recruit psychologists, stating that the last time his organization undertook such recruitment, it took 18 months to find a qualified applicant.

Department Response: The Department will not disqualify currently licensed masters-level psychologists licensed by the Iowa Board of Psychology from being reimbursed by Medicaid.

In reviewing current and historical versions of the Iowa Code and Iowa Administrative Code provisions under the Department's purview, no provisions are found which specifically address the "grandfathering" of masters-level psychologists for the purposes of enrolling as providers under Iowa Medicaid. The Department has consistently followed the guidance of the Board of Psychology and other national organizations on the "grandfathering" of masters-level psychologists. Iowa Code section 154B.6 addresses "requirements for licensure" for psychologists. This Iowa Code section was originally effective July 1, 1985, and does allow for "grandfathering" of masters-level psychologists. Specifically, Iowa Code section 154B.6(1) states: "Except as provided in this section, after July 1, 1985, a new applicant for licensure as a psychologist shall possess a doctoral degree in psychology from an institution approved by the board..." (emphasis added). The Iowa Code section implies an allowance for masters-level licensure for a psychologist prior to July 1, 1985, as long as the person possesses at least a masters-level degree from an institution approved by the board.

With respect to the respondent's concerns regarding masters-level psychologists and the technical corrections being made to 441—77.22(249A), it must be noted that even before the changes were proposed in **ARC 2061C**, the same concerns would have been present regarding the standards under the existing rule. The standard under the current rule language (i.e., "meeting the standards of the National Register of Health Service Providers in Psychology, 1981 edition, published by the council for the National Register of Health Service Providers in Psychology") requires psychologists to be at the doctoral level. The Department understands that both the existing rule and the proposed amendment only apply to new applicants for licensure, not to those currently licensed, including those masters-level psychologists "grandfathered" prior to July 1, 1985. The Department did not make any additional changes to the proposed amendment as the result of the respondent's comments.

These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 9, 2015.

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

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

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

These amendments will become effective December 1, 2015.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend rule 441—77.22(249A) as follows:

441—77.22(249A) Psychologists. All psychologists licensed to practice in the state of Iowa and meeting the ~~standards current credentialing requirements~~ of the National Register of Health Service ~~Providers in Psychology, 1981 edition, published by the council for the National Register of Health Service Providers in Psychology;~~ Psychologists are eligible to participate in the medical assistance program. Psychologists in other states are eligible to participate when they are duly licensed to practice in that state and meet the ~~standards current credentialing requirements~~ of the National Register of Health Service ~~Providers in Psychology~~ Psychologists.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.15.

ITEM 2. Amend paragraph **80.2(2)“a”** as follows:

a. The following providers shall submit claims on Form ~~UB-92~~ UB-04, CMS-1450:

(1) to (9) No change.

ITEM 3. Amend subrule 80.2(3) as follows:

80.2(3) Providers shall purchase ~~or copy~~ their supplies of forms CMS-1450 and CMS-1500 for use in billing.

[Filed 9/10/15, effective 12/1/15]

[Published 9/30/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/30/15.

ARC 2166C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2015 Iowa Acts, Senate File 505, division V, section 12(23), the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

This amendment is related to a 2015 mandate by the General Assembly that administrative rules be adopted to provide for coverage of telehealth under the Medicaid program. The administrative rule must provide that an in-person contact between a health care professional and a patient is not required as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided. The mandate also directs that health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

This amendment formalizes a long-standing (non-rule-based) coverage standard that payment may be made for services rendered via telehealth to the same extent as such services are covered under Medicaid when they are rendered in person and where provision of such services via telehealth is considered appropriate by the current standards in the medical community.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2096C** on August 5, 2015. The Department received comments from three respondents during the comment period. The respondents' comments and the Department's responses to those comments are as follows:

Respondent 1's comments. The respondent stated that the rule should include a definition of telehealth that is consistent with accepted telehealth technologies, including store-and-forward technology, remote monitoring and real-time observation. The respondent urged the Department to adopt a definition consistent with Iowa Administrative Code 653—subrule 13.11(1), which defines telemedicine and provides for all three categories of telemedicine technologies. The respondent stated that adding this language would be beneficial for providers and patients. Additionally, the respondent stated that the rule should make clear that all provider types are included under the rule. The respondent

HUMAN SERVICES DEPARTMENT[441](cont'd)

indicated that the rule as proposed was vague and needed to be specific. The respondent represents Iowa hospitals which have reported inconsistent reimbursement policies from Iowa Medicaid for telehealth services. The respondent noted that this has a negative impact on the health care continuum—affecting the ability of patients to receive timely and efficient care, prohibiting providers from providing the best health care to their patients, and slowing down the overall delivery of care.

Department response to Respondent 1's comments. The Department believes the rule is consistent with the mandate in 2015 Iowa Acts, Senate File 505, division V, section 12, subsection 23, regarding what the rule needs to address. Specifically, the rule formalizes a long-standing (non-rule-based) Iowa Medicaid coverage standard that payment may be made for services rendered via telehealth. Telehealth services are to be rendered to the same extent as such services are covered under Medicaid when they are rendered in an in-person setting and where provision of such services via telehealth is considered appropriate by the current standards in the medical community.

Relative to the portion of the comment concerning the need to provide more specificity in the rule, there was no further direction from the Legislature indicating what further specification, such as specifying which particular telehealth services must be covered, was needed or required to be in the rule.

As to the concern noted regarding the respondent's represented organizations' having reported inconsistent reimbursement policies from Iowa Medicaid for telehealth services, specifics were not provided in this regard.

The respondent's comment also mentioned the need to include in rule language specifying store-and-forward technology and remote monitoring and real-time observation as examples of telehealth services, consistent with Iowa Board of Medicine (IBoM) rules defining different telemedicine technologies under 653—subrule 13.11(1). As is noted in the responses to the additional comments below, the Department has revised the rule to include a general reference to rule 653—13.11(147,148,272C), which is IBoM's rule regarding telemedicine.

Lastly, the respondent suggested that the rule should make clear that all provider types are included under the rule. The Department does not believe a change to the rule in this regard is necessary since the rule is a stand-alone rule under Chapter 78.

Respondent 2's comments. Respondent 2 stated that as the Department moves forward with the transition to Medicaid managed care, it is imperative that there be consistency in the policy and payment for these services across the four managed care organizations. To ensure consistency in claims processing, the respondent recommended that “telehealth” be clearly defined in the rule and that the definition include that the telehealth technologies of store and forward, remote monitoring, and real-time observation are all appropriate forms of telehealth services for the purposes of provider payment. The respondent encouraged the Department to adopt a definition that includes those three technologies and is consistent with Iowa Administrative Code 653—subrule 13.11(1).

Department response to Respondent 2's comments. As noted above in the response to the previous comment, the legislative mandate does specify a standard for telehealth coverage. The Department believes that this standard would be consistent with the telemedicine rule of the Iowa Board of Medicine (IBoM) (i.e., 653—13.11(147,148,272C)). The Department notes that subrule 13.11(1) of the rule is related to definitions associated with telehealth. The Department has revised rule 441—78.55(249A) to add a reference to the IBoM telemedicine rule as follows:

“441—78.55(249A) Services rendered via telehealth. An in-person contact between a health care professional and a patient is not required as a prerequisite for payment for otherwise-covered services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided, as well as being in accordance with provisions under rule 653—13.11(147,148,272C). Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.”

Adding a reference to rule 653—13.11(147,148,272C) in the Department's adopted rule incorporates by reference the entire rule, including subrule 13.11(1), and as such addresses the different types of technologies as mentioned by the respondents.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Respondent 3's comments. Respondent 3 stated that telehealth is a critical tool as the system moves toward integrated, person-centered, outcome-driven health care. The respondent stated that many providers rely on telehealth to deliver the best services possible for the individuals they serve and that the rule is a step in the right direction and will help achieve the overall goal of health care transformation. The respondent was also seeking confirmation that the rule is for all Medicaid-covered services, including substance use disorder and other behavioral health services.

Department response to Respondent 3's comments. The Department notes that telehealth services (i.e., telepsychiatry services) have been available under the Iowa Plan for Behavioral Health, which has been administered by Magellan Behavioral Care of Iowa. As noted in the Department's responses to the preceding comments, the coverage standard would be that specified by the Legislature. The addition, as noted above, of the reference to the IBoM's rule 653—13.11(147,148,272C) regarding telemedicine addresses the use of telemedicine for substance use disorder and other behavioral health services.

In addition to the change described above, one additional change has been made to rule 441—78.55(249A). Specifically, an implementation sentence, which simply cites the particular statute the rule is intended to implement, has been added at the end of the rule.

The Council on Human Services adopted this amendment on September 9, 2015.

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

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

This amendment is intended to implement Iowa Code section 249A.4 and 2015 Iowa Acts, Senate File 505, division V, section 12(23).

This amendment will become effective November 4, 2015.

The following amendment is adopted.

Adopt the following **new** rule 441—78.55(249A):

441—78.55(249A) Services rendered via telehealth. An in-person contact between a health care professional and a patient is not required as a prerequisite for payment for otherwise-covered services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services are provided, as well as being in accordance with provisions under rule 653—13.11(147,148,272C). Health care services provided through in-person consultations or through telehealth shall be treated as equivalent services for the purposes of reimbursement.

This rule is intended to implement Iowa Code section 249A.4 and 2015 Iowa Acts, Senate File 505, division V, section 12(23).

[Filed 9/10/15, effective 11/4/15]

[Published 9/30/15]

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ARC 2167C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment changes the current threshold for inpatient hospital readmissions combined into a single claim from 7 days to 30 days, effective July 1, 2015. As a function of the amendment, the Iowa Medicaid program will combine claims for a given member's inpatient readmissions to the same hospital for the same conditions occurring within 30 days.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment implements a cost-savings initiative that is part of the basis for the Department's budgets for state fiscal years 2016 and 2017, beginning July 1, 2015, as appropriated by the Iowa Legislature in 2015 Iowa Acts, Senate File 505. The change to a 30-day standard, which is the policy of the Medicare program, was incorporated into the Governor's budget as proposed to the Legislature and used by the Legislature's Conference Committee in estimating the needs to be met by the Medicaid budget. In both the Governor's and the Committee's budgets, it was assumed that the change would be effective for dates of service on or after July 1, 2015. Therefore, this amendment provides that the change will be effective for dates of service on or after July 1, 2015. To the extent necessary, the policy will be applied retroactively to hospital claims after that date.

This amendment will result in cost savings over the current 7-day standard because it allows a greater number of inpatient readmissions for the same condition to be combined with the original inpatient hospital stay.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin as **ARC 2076C** on August 5, 2015. The amendment was also Adopted and Filed Emergency and published as **ARC 2075C** on the same date and became effective July 15, 2015. The Department received no comments during the comment period. This amendment is identical to the one published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on September 9, 2015.

This amendment does not provide for waivers because requests for waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

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

This amendment will become effective November 4, 2015, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subparagraph **79.1(5)“g”(5)** as follows:

(5) Inpatient readmissions within ~~seven~~ 30 days for same condition. ~~When Effective for dates of service on or after July 1, 2015, when~~ an inpatient is discharged or transferred from an acute care hospital and is readmitted as an inpatient to the same hospital within ~~seven~~ 30 days for the same condition, any claim for the subsequent inpatient stay shall be combined with the claim for the original inpatient stay and payment shall be under a single DRG for both stays.

[Filed 9/10/15, effective 11/4/15]

[Published 9/30/15]

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ARC 2168C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

In 2013 Iowa Acts, chapter 138, section 12(19)(a)(7), the Iowa Legislature mandated a functional assessment for recipients of intellectual disability (ID) waiver services using the Supports Intensity Scale® (SIS) developed and licensed by the American Association on Intellectual and Developmental Disabilities (AAIDD), to be administered by an independent entity under contract with the Department.

In the past, a variety of assessment tools, interview questions, and information-gathering processes have been used by case managers responsible for assessing the needs of individuals receiving ID waiver services. Conflicts of interest were possible, in that case managers performing needs assessments were also responsible for developing a care plan using services provided by the case manager's employer.

HUMAN SERVICES DEPARTMENT[441](cont'd)

As noted, the Supports Intensity Scale® was developed and licensed by the American Association on Intellectual and Developmental Disabilities. AAIDD is a nonprofit organization of professionals who work with individuals with intellectual and developmental disabilities. The SIS has been in use since 2004 and, as of August 2014, was being used by 22 other states and three Canadian provinces to plan the services provided to individuals with intellectual or developmental disabilities. As administered by an independent contractor, the SIS will provide consistent information statewide about individuals receiving ID waiver services, to objectively assess their needs and match those needs with services, free from conflicts of interest.

In addition to the 2013 legislative mandate, use of the SIS, administered by an independent contractor, is consistent with the recommendations of the stakeholder groups convened to advise the Department on implementation of the legislatively mandated redesign of Iowa's mental health and disability services system, pursuant to 2011 Iowa Acts, chapter 121 (Senate File 525), and 2012 Iowa Acts, chapter 1120 (Senate File 2315). And the SIS has also been specified in Iowa's application for enhanced federal Medicaid funding under the federal Balancing Incentive Program (BIP), established by Pub.L. No.111-148, § 10202), which application was submitted pursuant to the state Legislature's direction in 2012 Iowa Acts, chapter 1133 (Senate File 2336), section 14.

These amendments bring the Department's rules into compliance with the 2013 legislative mandate, the recommendations of the redesign stakeholder groups, Iowa's BIP application, and current practice regarding use of the SIS in the ID waiver program. People with intellectual disabilities who are receiving long-term services through Medicaid, as home- and community-based services or in intermediate care facilities for the intellectually disabled, have been evaluated using the SIS beginning August 1, 2014, providing consistent information statewide to objectively assess needs and match those needs with services, free from conflicts of interest. When managed care entities (MCEs) begin operation, they will utilize the same core standardized assessment instrument as the existing contractor and will absorb responsibility for conducting core standardized assessments for all long-term services and supports (LTSS) waiver Medicaid members who are already enrolled for regular Medicaid benefits. MCEs' assessors will be required to comply with conflict-free standards for case management and qualifications for assessor staff to ensure quality and objectivity of assessment processes.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2095C** on August 5, 2015. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 9, 2015.

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

These amendments are intended to implement Iowa Code section 249A.4 and 2013 Iowa Acts, chapter 138, section 12(19)(a)(7).

These amendments will become effective November 4, 2015.

The following amendments are adopted.

ITEM 1. Rescind the definition of "Assessment" in rule **441—83.60(249A)**.

ITEM 2. Adopt the following **new** definition of "SIS assessment" in rule **441—83.60(249A)**:

"*SIS assessment*" means the Supports Intensity Scale® assessment developed and licensed by the American Association on Intellectual and Developmental Disabilities for use in the assessment of the support and service needs of individuals.

ITEM 3. Amend paragraph **83.61(2)"a"** as follows:

a. Applicants currently receiving Medicaid case management ~~or services of a department-qualified intellectual disability professional (QIDP)~~ shall have the applicable coordinating staff ~~and other interdisciplinary team members complete Form 470-4694, Case Management Comprehensive Assessment, and identify the applicant's needs and desires as well as the availability and appropriateness of the services~~ coordinate with the department to arrange an SIS assessment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Amend subparagraph **83.61(2)“b”(1)** as follows:

(1) ~~Complete Form 470-4694, Case Management Comprehensive Assessment, Arrange an SIS assessment for the initial level of care determination;~~

ITEM 5. Amend paragraph **83.61(2)“f”** as follows:

~~f. The service worker, department QMRP, or Medicaid case manager shall complete Form 470-4694, Case Management Comprehensive Assessment, coordinate with the department to arrange an SIS assessment for the initial level of care determination within 30 days from the date of the HCBS application unless the worker can document difficulty in locating information necessary for completion of Form 470-4694 to arrange the SIS assessment or other circumstances beyond the worker’s control.~~

ITEM 6. Amend paragraph **83.61(2)“g”** as follows:

~~g. At initial enrollment, the service worker, department QIDP, case manager or Medicaid case manager shall establish an interdisciplinary team for each applicant and, with the team, identify the applicant’s need for service based on the applicant’s needs and desires as well as the availability and appropriateness of services. The Medicaid case manager shall complete an annual review thereafter. The following criteria shall be used for the initial and ongoing assessments identification of need for services:~~

~~(1) The assessment shall be based, in part, on information on the completed Case Management Comprehensive Assessment, Form 470-4694. The assessment shall be based on the results of the most recent SIS assessment or of the SIS contractor’s off-year review.~~

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

ITEM 7. Amend paragraph **83.62(3)“c”** as follows:

~~c. An applicant shall be given the choice between HCBS waiver services and ICF/ID care. The case manager or worker shall have the consumer or legal representative complete and sign Form 470-4694, Case Management Comprehensive Assessment, indicating indicate the consumer’s choice of care.~~

ITEM 8. Amend rule 441—83.64(249A) as follows:

441—83.64(249A) Redetermination. A redetermination of nonfinancial eligibility for HCBS intellectual disability waiver services shall be completed at least once every 12 months. In years in which an SIS assessment is not completed, the SIS contractor shall conduct a review in collaboration with the case manager, documenting any changes in the member’s functional status since the previous SIS or other full assessment.

A redetermination of continuing eligibility factors shall be made when a change in circumstances occurs that affects eligibility in accordance with rule 441—83.61(249A).

[Filed 9/10/15, effective 11/4/15]

[Published 9/30/15]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/30/15.

ARC 2169C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 109, “Child Care Centers,” and Chapter 170, “Child Care Services,” Iowa Administrative Code.

These amendments revise rules regarding child care providers who are currently allowed to operate child care facilities considered exempt from licensing by the Department of Human Services because the facilities are administered under contract with the Department of Education.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments also modify rules regarding the definition of “child care” and pertaining to allowable exemptions. Programs previously exempt when operating under the Department of Education will no longer be allowable exemptions.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2073C** on August 5, 2015. The Department received no comments during the comment period. However, the Department reviewed the Notice of Intended Action and determined that a phrase in the definition of “Child care” had been inadvertently stricken. In Item 1, in the definition of “Child care,” paragraph “1” now reads as follows:

“1. An instructional program administered by a public or nonpublic school system accredited by the department of education or the state board of regents.”

The Council on Human Services adopted these amendments on September 9, 2015.

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

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

These amendments are intended to implement Iowa Code section 234.6.

These amendments will become effective January 1, 2016.

The following amendments are adopted.

ITEM 1. Amend rule **441—109.1(237A)**, definition of “Child care,” as follows:

“*Child care*” means the care, supervision, or guidance of a child by a person other than the parent, guardian, or custodian for periods of less than 24 hours per day per child on a regular basis in a place other than the child’s home, but does not include care, supervision, or guidance of a child by any of the following:

1. An instructional program administered by a public or nonpublic school system accredited by the department of education or the state board of regents ~~or a program provided under Iowa Code sections 279.49 and 280.3A.~~

2. to 14. No change.

ITEM 2. Amend **441—Chapter 170**, preamble, as follows:

PREAMBLE

The intent of this chapter is to establish requirements for the payment of child care services. Child care services are for children of low-income parents who are in academic or vocational training; or employed or looking for employment; or for a limited period of time, unable to care for children due to physical or mental illness; or needing protective services to prevent or alleviate child abuse or neglect. Services may be provided in a licensed child care center, a registered child development home, the home of a relative, the child’s own home, or a nonregistered family child care home, ~~or in a facility exempt from licensing or registration.~~

ITEM 3. Amend rule **441—170.1(237A)**, definition of “Provider,” as follows:

“*Provider*” means a licensed child care center, a registered child development home, a relative who provides care in the relative’s own home solely for a related child, a caretaker who provides care for a child in the child’s home, or a nonregistered child care home, ~~or a child care facility which is exempt from licensing or registration.~~

ITEM 4. Rescind subparagraph **170.4(2)“a”(3)**.

ITEM 5. Rescind paragraph **170.4(3)“g.”**

ITEM 6. Reletter paragraphs **170.4(3)“h”** to **“j”** as **170.4(3)“g”** to **“i.”**

ITEM 7. Amend relettered paragraph **170.4(3)“i”** as follows:

i. Transgressions. If any person subject to the record checks in paragraph 170.4(3)“~~h~~“g” or 170.4(3)“~~i~~“h” has a record of founded child abuse, dependent adult abuse, a criminal conviction,

HUMAN SERVICES DEPARTMENT[441](cont'd)

or placement on the sex offender registry, the department shall follow the process for prohibition or evaluation defined at 441—subrule 110.7(3).

(1) and (2) No change.

[Filed 9/10/15, effective 1/1/16]

[Published 9/30/15]

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ARC 2157C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

This amendment adopts the 2014 Guidelines for Design and Construction of Hospitals and Outpatient Facilities produced by the Facility Guidelines Institute as the minimum construction standards for hospitals and off-site premises licensed under Iowa Code chapter 135B.

The rule making also strikes language pertaining to the number of beds per patient room in a critical access hospital and strikes restrictions on maternity services and other surgical procedures that may be conducted in critical access hospitals. These restrictions are no longer needed because the 2014 Guidelines address these issues.

Additionally, the amendment makes technical changes to incorporate suggestions from the State Fire Marshal's Office pertaining to the submission of architectural plans and drawings and makes changes to make references to the state building code consistent with citations in the administrative rules of the State Fire Marshal's Office.

The Department does not believe that the adopted amendment imposes any financial hardship on any regulated entity, body, or individual.

The State Board of Health initially reviewed the proposed amendment at its July 8, 2015, meeting, and approved the amendment at the Board's September 9, 2015, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 5, 2015, as **ARC 2080C**. The Department received no comments during the public comment period. This amendment is identical to the one published under Notice of Intended Action.

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

This amendment is intended to implement Iowa Code sections 10A.104(5) and 135B.7.

This amendment shall become effective November 4, 2015.

The following amendment is adopted.

Amend rule 481—51.50(135B) as follows:

481—51.50(135B) Minimum standards for construction.

51.50(1) Minimum standards. Hospitals and off-site premises licensed under this chapter shall be built in accordance with the following construction standards.

a. Construction shall be in accordance with the standards set forth in ~~Part 2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010~~ the Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 edition, produced by the Facility Guidelines Institute.

b. A critical access hospital as defined in rule 481—51.1(135B) shall meet the standards for construction for ~~small primary care hospitals~~ set forth in ~~Part 2.3 2.4~~ 2.4 of the ~~Guidelines for Design and Construction of Health Care Facilities, 2010~~ Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 edition, produced by the Facility Guidelines Institute, ~~with the following exceptions:~~

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

~~(1) The patient room capacity requirements contained in section 2.3-2.2.2.1(1) shall not apply. The maximum number of beds per room shall be two.~~

~~(2) The first paragraph of section 2.3-2.2.4.6 is amended to read as follows: "The small primary care hospital shall include the following:"~~

~~(3) Section 2.3-3.4.1, which limits the types of surgical procedures, shall not apply.~~

~~c. Existing hospitals, critical access hospitals, and off-site premises built in compliance with prior editions of the hospital construction guidelines will be deemed in compliance with subsequent regulations, with the exception of any new structural renovations, additions, functional alterations, or changes in utilization to existing facilities, which shall meet the standards specified in this subrule.~~

~~d. The design and construction of a hospital or off-site premises shall be in conformance with the provisions of 661—Chapter 205.~~

~~e. In jurisdictions without a local building code enforcement program, the construction shall be in conformance with the state building code, as authorized by Iowa Code section 103A.7, in effect at the time of plan submittal for review and approval. In jurisdictions with a local building code enforcement program, local building code enforcement must include both the adoption and enforcement of a local building code through plan reviews and inspections.~~

~~A hospital or off-site premises that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the hospital or off-site premises is in compliance with the provisions of rule 661—205.5(100). In any case in which an applicable requirement of the Life Safety Code, 2000 edition, 661—Chapter 205 is inconsistent with an applicable requirement of the state building code, the hospital or off-site premises shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement of 661—Chapter 205 is met.~~

~~Rule 661—301.5(103A) shall not be applicable to hospitals and other structures required under this chapter to meet the provisions of the state building code.~~

~~e. The design and construction of a hospital or off-site premises shall be in conformance with NFPA 101: Life Safety Code 2000 as published by the National Fire Protection Association.~~

51.50(2) *Submission of construction documents.*

~~a. Submissions of architectural technical documents, engineering documents, and plans and specifications to the building code commissioner are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.~~

~~b. Submissions shall comply with the provisions of rule 661—300.4(103A).~~

~~b. "Responsible design professional" means a registered architect or licensed professional engineer who signs the documents submitted.~~

~~c. Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code.~~

~~d. In section 107.2.5 of the International Building Code, 2009 edition, the word "permit" shall be replaced by the words "plan review."~~

~~e. Submittals to the commissioner shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.~~

~~f. c. The responsible design professional shall certify that the building plans meet the requirements specified in subrule 51.50(1), unless a variance has been granted pursuant to subrule 51.50(3).~~

51.50(3) *Variances.* The director of the department may grant variances to building and construction guidelines as contained in the ~~2010 edition of the Guidelines for Design and Construction of Health Care Facilities~~ Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 edition. The hospital or off-site premises must submit a variance request in writing to the director. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the variance. The facility must demonstrate its ability to completely fulfill all other requirements of the

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

service. The director shall make a written determination of the request. In determining whether a variance request shall be granted, the director shall give consideration to the following conditions and to any other conditions the director deems relevant:

- a.* The design and planning for the specific property shall offer improved or compensating features which provide equivalent desirability and utility;
- b.* Alternate or special construction methods, techniques, and mechanical equipment shall offer equivalent durability; utility; safety; structural strength and rigidity; sanitation; odor control; protection from corrosion, decay and insect attack; and quality of workmanship;
- c.* The health, safety or welfare of any patient shall not be endangered;
- d.* The variance shall be limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;
- e.* Occupancy and function of the building shall be considered; and
- f.* The type of licensing shall be considered.

[Filed 9/9/15, effective 11/4/15]

[Published 9/30/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/30/15.

ARC 2158C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals hereby amends Chapter 56, "Fining and Citations," Iowa Administrative Code.

The amendments implement changes to Iowa Code chapter 135C, "Health Care Facilities," resulting from 2015 Iowa Acts, House File 579. The legislation permits health care facilities to request a contested case hearing pursuant to Iowa Code chapter 17A without first going through the informal conference process. The legislation also requires any state penalty, including a fine or citation, to be retained or reinstated if a corresponding federal deficiency is retained or reinstated.

The Department does not believe that the amendments impose any financial hardship on any regulated entity, body, or individual.

The State Board of Health initially reviewed the amendments at its July 8, 2015, meeting, and approved them at the Board's September 9, 2015, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 5, 2015, as **ARC 2081C**. The Department received no comments during the public comment period. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code section 135C.14 and 2015 Iowa Acts, House File 579.

These amendments shall become effective November 4, 2015.

The following amendments are adopted.

ITEM 1. Adopt the following **new** paragraph **56.3(5)"c"**:

c. Any state penalty, including a fine or citation, shall be retained or reinstated if the federal deficiency is retained or reinstated.

ITEM 2. Amend paragraph **56.14(1)"a"** as follows:

a. The violation was issued in conjunction with a federal civil money penalty, and the department holds the fine issued pursuant to this chapter in abeyance pursuant to Iowa Code section ~~249A.19~~ 249A.57, or

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

ITEM 3. Amend subrule 56.14(3) as follows:

56.14(3) Informal conference. ~~If the facility desires to contest a citation for a class I, class II or class III violation, the facility shall notify the department of inspections and appeals in writing that it the facility desires to contest such citation and request in writing an informal conference with an independent reviewer. The informal conference will be held concurrently with any informal dispute resolution held pursuant to 42 CFR Section 488.331 for those health care facilities certified under Medicare or the medical assistance program. shall do one of the following:~~

~~a.—*Definition.* For purposes of these rules, “independent reviewer” means an attorney licensed in the state of Iowa who is not currently and has not been employed by the department in the past eight years, or has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.~~

~~b.—*Request for informal conference.* The request for an informal conference must be in writing, addressed to the compliance officer and include the following:~~

- ~~(1) Identification of the citation(s) being disputed;~~
- ~~(2) The type of informal conference requested: face-to-face or telephone conference; and~~
- ~~(3) A request for surveyor worksheets for the citation(s) being disputed, if desired.~~

~~c.—*Submission of documentation.* Within the same ten-day period required for submission of a plan of correction pursuant to 481—subrule 50.10(7), the facility shall submit the following:~~

- ~~(1) The names of those who will be attending the informal conference, including legal counsel; and~~
- ~~(2) Documentation supporting the facility’s position. The facility must highlight or use some other means to identify written information pertinent to the disputed deficiency(ies). Supporting documentation that is not submitted within the required time frame will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. “Good cause” means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the facility has shown good cause, the independent reviewer shall consider what circumstances kept the facility from submitting the supporting documentation within the required time frame.~~

~~d.—*Face-to-face or telephone conference.* A face-to-face or telephone conference, if requested, will be scheduled to occur within ten business days of the receipt of the written request, all supporting documentation, and the plan of correction required by 481—subrule 50.10(7).~~

- ~~(1) Failure to submit supporting documentation will not delay scheduling.~~
- ~~(2) The conference will be scheduled for one hour to allow the facility to informally present information and explanation concerning the contested deficiencies. Due to the confidential nature of the conference, attendance may be limited.~~
- ~~(3) If additional information is requested during the informal conference, the facility will have two business days to deliver the additional materials to the department.~~
- ~~(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the facility may be given one opportunity to reschedule the face-to-face conference.~~

~~e.—*Results.* The results of the informal conference will generally be sent within ten business days after the date of the informal conference, or within ten business days after the receipt of additional information, if requested.~~

~~(1) The independent reviewer may affirm or may modify or dismiss the citation. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the citation.~~

~~(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) citation if changes result from the informal conference.~~

~~(3) The facility must submit to the department a new plan of correction for the amended or corrected citation within ten calendar days from the date of the letter conveying the results of the informal conference.~~

a. Request an informal conference with an independent reviewer pursuant to rule 481—56.15(135C); or

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

b. Request a contested case hearing in the manner provided by Iowa Code chapter 17A for contested cases.

ITEM 4. Renumber rule **481—56.15(135C)** as **481—56.16(135C)**.

ITEM 5. Adopt the following **new** rule 481—56.15(135C):

481—56.15(135C) Informal conference. An informal conference will be held concurrently with any informal dispute resolution held pursuant to 42 CFR Section 488.331 for those health care facilities certified under Medicare or the medical assistance program.

56.15(1) Definition. For purposes of these rules, “independent reviewer” means an attorney licensed in the state of Iowa who is not currently employed by the department, has not been employed by the department in the past eight years, and has not appeared in front of the department on behalf of a health care facility in the past eight years. Preference shall be given to an attorney with background knowledge, experience or training in long-term care.

56.15(2) Request for informal conference. The request for an informal conference must be in writing, addressed to the compliance officer and include the following:

- a. Identification of the citation(s) being disputed;
- b. The type of informal conference requested: face-to-face or telephone conference; and
- c. A request for surveyor worksheets for the citation(s) being disputed, if desired.

56.15(3) Submission of documentation. Within the same ten-day period required for submission of a plan of correction pursuant to 481—subrule 50.10(7), the facility shall submit the following:

- a. The names of those who will be attending the informal conference, including legal counsel; and
- b. Documentation supporting the facility’s position. The facility must highlight or use some other means to identify written information pertinent to the disputed deficiency(ies). Supporting documentation that is not submitted within the required time frame will not be considered, except as otherwise permitted by the independent reviewer upon good cause shown. “Good cause” means substantial or adequate grounds for failing to submit documentation in a timely manner. In determining whether the facility has shown good cause, the independent reviewer shall consider what circumstances kept the facility from submitting the supporting documentation within the required time frame.

56.15(4) Face-to-face or telephone conference. A face-to-face or telephone conference, if requested, will be scheduled to occur within ten business days of the receipt by the department of the written request, all supporting documentation, and the plan of correction required by 481—subrule 50.10(7).

- a. Failure to submit supporting documentation will not delay scheduling.
- b. The conference will be scheduled for one hour to allow the facility to informally present information and explanation concerning the contested deficiencies. Due to the confidential nature of the conference, attendance may be limited.
- c. If additional information is requested during the informal conference, the facility will have two business days to deliver the additional materials to the department.
- d. When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the facility may be given one opportunity to reschedule the face-to-face conference.

56.15(5) Results. The results of the informal conference will generally be sent to the facility within ten business days after the date of the informal conference or, if additional information is requested, within ten business days after the department’s receipt of the additional information.

- a. The independent reviewer may affirm or may modify or dismiss the citation. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the citation.
- b. The department will issue an amended (changes in factual content) or corrected (correction of typographical/data errors) citation if changes result from the informal conference.
- c. The facility must submit to the department a new plan of correction for the amended or corrected citation within ten calendar days from the date of the letter conveying the results of the informal conference.

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ITEM 6. Amend renumbered subrule 56.16(2) as follows:

56.16(2) If the facility does desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five business days after ~~the informal conference, or within five business days after~~ receipt of the written decision and explanation of the independent reviewer, ~~whichever occurs later~~, notify the department of inspections and appeals in writing of the facility's intent to formally contest the citation.

[Filed 9/9/15, effective 11/4/15]

[Published 9/30/15]

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ARC 2175C

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.605, the Insurance Division hereby amends Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

Iowa Code chapter 502, among other things, prescribes the terms and conditions under which broker-dealers, investment advisers and securities offerings operate. Amendments to Iowa Code chapter 502 were enacted by 2015 Iowa Acts, House File 632, and became effective July 1, 2015.

The amendments to this chapter do the following:

- Require entities that wish to make Form D filings to do so electronically. The amendment to rule 191—50.81(502) will go into effect November 4, 2015, and securities issuers must be in compliance with this rule by January 1, 2016.
- In rule 191—50.60(502), change the fees for notice filings for investment company securities offerings.
- Clarify the travel reimbursement guidelines that may be used for an audit or inspection made pursuant to Iowa Code section 502.411(4).
- Update the address of the Iowa Insurance Division, Iowa Securities and Regulated Industries Bureau.
- Provide the Web site address for North American Securities Administrators Association information.
- Require Rule 506 offerings to be filed electronically.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 5, 2015, as **ARC 2079C**. Written comments were accepted through August 27, 2015, and a public hearing was held on August 27, 2015, at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa. The Division received one comment in writing related to the proposed amendments, requesting that paper submissions still be permitted. Because the reason for requiring electronic submissions is to streamline the filing process, that change was not made.

The Division also received comments from the Administrative Rules Review Committee that resulted in the removal of proposed Items 3 and 4 pertaining to business continuity and succession planning. In addition, the implementation sentence for rule 191—50.81(502) has been corrected and the items have been renumbered, as necessary.

The Insurance Division's general waiver provisions at 191—Chapter 4 apply to these rules.

These amendments impose no fiscal impact on the State.

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

These amendments implement Iowa Code chapter 502 as amended by 2015 Iowa Acts, House File 632.

These amendments shall become effective on November 4, 2015.

The following amendments are adopted.

INSURANCE DIVISION[191](cont'd)

ITEM 1. Rescind the definition of "Form D" in rule **191—50.1(502)**.

ITEM 2. Amend rule 191—50.2(502) as follows:

191—50.2(502) Cost of audit or inspection.

50.2(1) ~~A~~ The administrator may assess the broker-dealer or investment adviser ~~may be assessed the actual and necessary costs for~~ reasonable charges of travel, lodging, and other expenses incurred by division staff or independent persons conducting an audit or inspection and directly attributable to an audit or inspection made pursuant to Iowa Code section 502.411(4). The assessment of costs of ~~travel meals, lodging, transportation, and other actual and necessary travel~~ expenses, if any, incurred by persons conducting an audit or inspection shall be determined in accordance with one of the following, as agreed by the administrator and the persons conducting an audit or inspection:

a. ~~the~~ The department of administrative services (DAS) state accounting enterprise Accounting Policy and Procedures Manual guidelines for employee travel (<https://das.iowa.gov/state-accounting/sae-policies-procedures-manual>) and the DAS form Travel Section Policy and Procedures (<https://das.iowa.gov/state-accounting/travel-relocation>) in effect at the time of the audit or inspection.

b. The department of administrative services state accounting enterprise Accounting Policy and Procedures Manual guidelines for travel for in-state board, commission, advisory council, and task force member expenses.

c. The United States General Services Administration Continental United States ("CONUS") per diem travel allowances for lodging, meals and incidental expenses.

d. A reimbursement schedule as agreed by the administrator and the persons conducting the audit or inspection.

50.2(2) and **50.2(3)** No change.

50.2(4) ~~Assessments collected pursuant to this rule shall be paid to the administrator and shall be deposited as provided in Iowa Code section 505.7 by the broker-dealer or investment adviser as directed by the administrator either to the administrator or to the persons conducting the audit or inspection. The persons conducting the audit or inspection shall be reimbursed only for the actual and necessary costs incurred in conducting the audit or inspection.~~

This rule is intended to implement Iowa Code section 502.411(4).

ITEM 3. Amend paragraph **50.60(3)"b"** as follows:

b. Payment of the applicable fee under Iowa Code section ~~502.302(1)"a."~~ 502.302(1)"a" as amended by 2015 Iowa Acts, House File 632.

ITEM 4. Amend subrule 50.60(4) as follows:

50.60(4) ~~Amendments to notice filings are made on Form NF and are effective upon receipt by the administrator. Withdrawal or termination of a notice filing is made by filing Form NF or providing the administrator with notice of the withdrawal or termination in a similar format. An amendment, withdrawal, or termination is effective upon receipt by the administrator of the required notice and all fees required by Iowa Code section ~~502.302(1)"a."~~ 502.302(1)"a" as amended by 2015 Iowa Acts, House File 632.~~

This subrule is intended to implement Iowa Code section 502.302 and 2015 Iowa Acts, House File 632.

ITEM 5. Amend subrule 50.60(6) as follows:

50.60(6) ~~An investment company that makes a notice filing under subrule 50.60(2) and that pays an initial \$250 \$400 filing fee under Iowa Code section 502.302(1)"a" as amended by 2015 Iowa Acts, House File 632, shall pay an additional \$1,250 filing a \$400 renewal fee within 90 days after prior to the notice filing's annual renewal date, or shall file on Form NF an annual or periodic report of the value of the federal covered securities offered or sold in Iowa, together with a filing fee of one-tenth of 1 percent~~

INSURANCE DIVISION[191](cont'd)

~~of the amount of securities sold in excess of \$250,000. Notice filings that are not renewed by the annual renewal date shall expire.~~

~~This subrule is intended to implement Iowa Code section 502.302 and 2015 Iowa Acts, House File 632.~~

ITEM 6. Amend subrule 50.61(1) as follows:

~~**50.61(1)** Form U-7 may be obtained by contacting the Iowa Securities and Regulated Industries Bureau, 340 East Maple Street, Des Moines, Iowa 50319-0066; via E-mail at iowa.sec@iid.state.ia.us; or from the division Web site at <http://www.iid.state.ia.us/division/securities> from the NASAA Web site at www.nasaa.org. Form U-7 has been developed under the Small Business Investment Incentive Act of 1980 which prescribes state and federal cooperation in furthering the policies of the Act: diminishing the burden of raising investment capital and minimizing interference with the business of capital formation.~~

ITEM 7. Amend subrule 50.66(1) as follows:

~~**50.66(1)** *Overview of national models.* In cooperation with the securities administrators of other states and with a view to effectuating a policy to achieve maximum uniformity of regulations regarding the registration of securities, registration and business practices of securities industry and investment advisory registrants, and enforcement of antifraud laws, and in the interest of streamlining the rules contained in Chapter 50, the administrator incorporates by reference the following guidelines and statements of policy promulgated by NASAA. This rule does not include any later amendments or editions of the incorporated matter.~~

~~The official reporter for NASAA statements of policy is the NASAA Reports volume printed by CCH. A copy of the CCH NASAA Reports is available to the public during regular business hours at the office of the administrator. Upon request, and for a reasonable fee not to exceed the cost of providing the service, the administrator will furnish to any person photostatic or other copies of the following NASAA guidelines and statements of policy. The office of the administrator is located at and requests may be mailed to the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066; via E-mail at iowa.sec@iid.state.ia.us; or from the division Web site at <http://www.iid.state.ia.us/division/securities>. NASAA statements of policy may also generally be found at www.nasaa.org. The NASAA Web site allows access to statements of policy, comment letters, model rules, NASAA proposals published for comment, and state rule proposals and may be found at www.nasaa.org, under “regulatory & legal activity.”~~

ITEM 8. Rescind paragraphs **50.80(2)“c”** and **“d.”**

ITEM 9. Reletter paragraph **50.80(2)“e”** as **50.80(2)“c.”**

ITEM 10. Amend rule 191—50.81(502) as follows:

191—50.81(502) Notice filings for Rule 506 offerings.

~~**50.81(1)** An Beginning January 1, 2016, an issuer offering a security that is a covered security pursuant to Section 18(b)(4)(D) of the Securities Act of 1933 shall submit no later than 15 days after the first sale of such federal covered security in Iowa: an electronic filing and fees through www.efdnasaa.org, under “filers and issuers.”~~

~~*a.*— A notice on Form D, including the Appendix;~~

~~*b.*— A consent to service of process on Form U-2; and~~

~~*c.*— A \$100 filing fee, or a \$250 fee for any late filing.~~

~~**50.81(2)** “SEC Form D,” for the purposes of this rule, means the document, as adopted by the SEC and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled “FORM D: Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption,” including Part E and the Appendix.~~

~~This rule is intended to implement Iowa Code section 502.302(3).~~

INSURANCE DIVISION[191](cont'd)

ITEM 11. Rescind subrule **50.82(3)**.

[Filed 9/10/15, effective 11/4/15]

[Published 9/30/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/30/15.

ARC 2179C**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of 2015 Iowa Acts, Senate File 274, section 21, the Department of Public Health hereby amends Chapter 108, "Medical Residency Training State Matching Grants Program," Iowa Administrative Code.

The rules in Chapter 108 provide for the awarding of grants to sponsors of accredited graduate medical education residency programs to establish new programs, expand existing programs, or support medical residency programs in excess of the federal residency cap.

These amendments implement 2015 Iowa Acts, Senate File 274, section 21 [Iowa Code section 135.176]. These amendments remove language that requires sponsors, including those sponsors funding residency positions in excess of the federal residency cap, to establish a dedicated fund. The amendments replace this language with language which requires that all sponsors demonstrate that funds have been budgeted. In addition, the amendments change the total amount of a grant awarded to a sponsor proposing the establishment of a new or alternative campus accredited medical residency training program from not more than 25 percent of the amount the sponsor has budgeted to 100 percent of the amount a sponsor has budgeted. In addition, these amendments change the maximum award for an individual sponsor that establishes a new or alternative campus accredited medical residency training program to no more than 50 percent of the state matching funds available each year to support the program funding priorities. These amendments also change the contract period with the Department from a three-year period to a minimum of a three-year period.

Notice of Intended Action was published in the July 22, 2015, Iowa Administrative Bulletin as **ARC 2066C**. A public hearing was held on August 11, 2015.

Comments were received from Broadlawn Medical Center; UnityPoint Health-Des Moines-Medical Residency, Graduate Medical Education Department; University of Iowa Health Care; and Des Moines University. The following comments and questions were received:

- There was a request for clarification on the funding and grant cycles.
 - Staff provided dates of this new funding period using State Fiscal year 2015 balance and State Fiscal year 2016 new funds. The upcoming grant cycle will be for a minimum of 3 years.
- The rules were as expected as they did not vary from the legislation. The participant thanked the Department for continued communications to stakeholders.
 - The comment was acknowledged. No changes were made to the Noticed rules as a result of this comment.
- There was a question asking if the focus on family medicine and psychiatry will be maintained.
 - Staff stated that the focus will continue on family medicine and psychiatry. No changes were made to the Noticed rules as a result of this comment.
- A UnityPoint spokesperson reflected on the continuing need to address workforce shortages as demonstrated by recent community health needs assessments in the greater Des Moines area.
 - The comment was acknowledged, and references to the assessments were exchanged. No changes were made to the Noticed rules as a result of this comment.
- A Des Moines University representative stated that Des Moines University would not be applying for the next round of funding but wanted to ensure that this endeavor continued and would be available in the state for others.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

o The comment was acknowledged. No changes were made to the Noticed rules as a result of this comment.

These amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on September 9, 2015.

After analysis and review of this rule making, it is projected that these amendments will positively impact both physician employment opportunities in Iowa as well as employment of associated health care providers and other jobs supporting the work of physicians in Iowa communities. No specific projection for employment can be made at this time.

These amendments are intended to implement 2015 Iowa Acts, Senate File 274.

These amendments will become effective January 13, 2016.

The following amendments are adopted.

ITEM 1. Rescind subrule **108.3(2)**.

ITEM 2. Renumber subrules **108.3(3)** to **108.3(5)** as **108.3(2)** to **108.3(4)**.

ITEM 3. Amend renumbered subrules 108.3(2) to 108.3(4) as follows:

108.3(2) A sponsor shall demonstrate through documented financial information that funds have been ~~reserved~~ budgeted and will be expended by the sponsor in the amount required to provide matching funds for each residency proposed in the request ~~for proposal~~ for state matching funds. A sponsor shall document this requirement by providing with its request ~~for proposal~~ a signed, notarized statement of the organization's chief financial officer that such a fund exists, as well as what amounts of moneys have been set aside in this fund for purposes of supporting residency programs a line-item budget showing sponsor funding amounts and state matching funds requested.

108.3(3) A sponsor shall demonstrate a need for such residency program in the state by providing with its request ~~for proposal~~ state matching funds objective evidence of such need including:

a. to d. No change.

108.3(4) A sponsor shall submit with its request ~~for proposal~~ state matching funds a recruitment and retention plan to encourage residents to enter practice in Iowa with a preference for health professional shortage areas and to demonstrate over time the impact on Iowa's workforce.

ITEM 4. Amend rule 641—108.4(135) as follows:

641—108.4(135) Amount of grant.

108.4(1) The department shall award funds based upon the funds ~~set aside in the special fund budgeted as demonstrated in the request~~, as identified in subrule ~~108.3(3)~~ 108.3(2).

108.4(2) The total amount of a grant awarded to a sponsor proposing the establishment of a new or alternative campus accredited medical residency training program shall be limited to no more than 100 percent of the amount of funds the sponsor has budgeted as demonstrated through a line-item budget for each residency sponsored for the purpose of the residency program.

The total amount of a grant awarded to a sponsor proposing the provision of a new residency position within an existing accredited medical residency or fellowship training program, or a sponsor funding residency positions which are in excess of the federal residency cap, shall be limited to no more than 25 percent of the amount of funds the sponsor demonstrates through documented financial information have been reserved and will be expended by the sponsor for each residency sponsored for the purpose of the residency program has budgeted as demonstrated through a line-item budget for each residency position sponsored for the purpose of the residency program.

108.4(3) A sponsor, if awarded, shall enter into a contract with the department over a minimum of a three-year project period to include approximately one-year (12 months -month) renewable contract periods. Annual contracts shall include annual budgets and, upon approval of annual performance measures, renewal applications for the project period. Annual contract periods shall be renewed based on the availability of funds.

108.4(4) No change.

108.4(5) An individual sponsor that establishes a new or alternative campus accredited medical residency training program shall not receive more than 50 percent of the state matching funds available

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~each year to support the program. An individual sponsor proposing the provision of a new residency position within an existing accredited medical residency or fellowship training program, or a sponsor funding residency positions which are in excess of the federal residency cap, shall not receive more than 25 percent of the state matching funds available each year to support the program. However, if less than 95 percent of the available funds have been awarded in a given year, a sponsor may receive more than 25 percent of the state matching funds available if total funds awarded do not exceed 95 percent of the available funds. If more than one sponsor meets the requirements of this rule and has established, expanded, or supported a graduate medical residency training program in excess of the sponsor's 25 percent maximum share of state matching funds, the state matching funds shall be divided proportionately among such sponsors.~~

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