



# IOWA ADMINISTRATIVE BULLETIN

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NUMBER 7  
Pages 761 to 918

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Professional Licensing and Regulation Bureau[193]  
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Filed, Electronic renewal of driver’s licenses and nonoperator’s ID cards—vision screen or report, eligibility, 601.2, 604.10, 605.25, 630.2 **ARC 1073C** ..... 914

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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

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## CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2013

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
<b>9</b>	<b>Friday, October 11, 2013</b>	<b>October 30, 2013</b>
<b>10</b>	<b>Wednesday, October 23, 2013</b>	<b>November 13, 2013</b>
<b>11</b>	<b>Wednesday, November 6, 2013</b>	<b>November 27, 2013</b>

**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 **Monday, October 7, 2013**, at 9:30 a.m. and on **Tuesday, October 8, 2013**, at 9:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the September 18, 2013, Iowa Administrative Bulletin.

### **ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Unethical or illegal conduct, 8.2(6)"a"(7) Filed **ARC 1084C** ..... 10/2/13

### **HUMAN SERVICES DEPARTMENT[441]**

Confidentiality of support payment records, 9.11, 97.3(3) Notice **ARC 1045C** ..... 10/2/13

Medicaid enrollment and reenrollment, ch 76 Filed Emergency After Notice **ARC 1069C** ..... 10/2/13

Habilitation services—administration, case management, method of reimbursement, 77.25,

78.27, 78.33, 79.1, 88.65(3)"a" Filed **ARC 1051C** ..... 10/2/13

HCBS transportation services rate, 77.33(11)"f," 77.37(24)"g," 77.39(18)"f," 77.41(6)"e,"

78.37(11), 78.41(11), 78.43(7), 78.46(5), 79.1(2) Filed Emergency After Notice **ARC 1071C** ..... 10/2/13

Reimbursement eliminated for elective, non-medically necessary cesarean sections,

78.1(1)"h" Filed **ARC 1052C** ..... 10/2/13

Prior authorization required for skilled nursing care in hospital swing bed, 78.3(16) Filed **ARC 1054C** ..... 10/2/13

Medicaid—provider reimbursement rate increases, amendments to chs 78, 79, 83 Filed **ARC 1056C** ..... 10/2/13

Reimbursement method for case management services, 79.1(1)"d," 79.1(2) Filed **ARC 1057C** ..... 10/2/13

Payment methodology for home health services and private duty nursing and personal cares,

79.1(2), 79.1(26), 79.1(27) Filed **ARC 1058C** ..... 10/2/13

Health care data match program, 80.7 Filed Emergency After Notice **ARC 1070C** ..... 10/2/13

IowaCare—suspension of enrollment beginning July 1, 2013, 92.5(6), 92.6(5), 92.14(1)

Filed **ARC 1059C** ..... 10/2/13

Payment methodology for federally qualified health centers; elimination of funding pool for

laboratory and radiology services, 92.8, 92.9(3) Filed Emergency After Notice **ARC 1072C** ..... 10/2/13

Record check evaluations for certain employees and educational training programs, 119.1 to

119.5 Notice **ARC 1046C** ..... 10/2/13

Elimination of purchase of service to set supervised apartment living rates; increase in child

welfare emergency services juvenile shelter care reimbursement rates, 150.3(5)"p"

Filed **ARC 1060C** ..... 10/2/13

Increase in foster family daily reimbursement and adoption subsidy daily maintenance rates,

156.6 Filed **ARC 1061C** ..... 10/2/13

Increase in maintenance rate and initial allowance for supervised apartment living, 156.8(2),

156.12(1) Filed **ARC 1062C** ..... 10/2/13

Child care assistance—provider rate ceiling increase, 170.4(7)"a" Filed **ARC 1063C** ..... 10/2/13

Preparation for adult living program—increase in youth stipend and provider rates, 187.12(2)

Filed **ARC 1064C** ..... 10/2/13

### **INSPECTIONS AND APPEALS DEPARTMENT[481]**

Nursing facilities and residential and intermediate care facilities—resident advocate

committee, certified volunteer long-term care ombudsman, amendments to chs 54, 57,

58, 62 to 65 Notice **ARC 1082C** ..... 10/2/13

Health care facilities—informal conference process for contested citations, 56.14(3), 56.15

Filed **ARC 1047C** ..... 10/2/13

Administration of certain immunizations, 57.19(3)"h," 58.21(15)"a," 62.15(2)"j,"

63.18(3)"i," 65.17(1)"i," 67.5(6)"a" Filed **ARC 1050C** ..... 10/2/13

Nursing facilities and residential and intermediate care facilities—dependent adult abuse,

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Nursing facilities—evaluation of residents by physician assistants, 58.14(8) Filed **ARC 1048C** ..... 10/2/13

Assisted living programs—informal conference process; elder group homes and adult day

services, 67.1, 67.10 to 67.18, 67.20 to 67.23 Filed **ARC 1055C** ..... 10/2/13

### **INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Securities regulation, amendments to ch 50 Filed **ARC 1076C** ..... 10/2/13

### **LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Federal occupational safety and health standards for digger derricks—adoption by reference,

26.1 Filed **ARC 1049C** ..... 10/2/13

**MEDICINE BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Supervision of pharmacists who administer adult immunizations, rescind 13.3 Filed **ARC 1033C** ..... 10/2/13  
 Standards of practice—physicians who prescribe or administer abortion-inducing drugs,  
 13.10 Filed **ARC 1034C** ..... 10/2/13

**PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Procedures required during the absence of the pharmacist, 6.7(2), 7.6(2) Notice **ARC 1040C** ..... 10/2/13  
 Drug product selection, 6.9(8)"b," 6.11 Notice **ARC 1041C** ..... 10/2/13  
 Use of automated medication distribution system (AMDS) by EMS programs, 11.20(1)  
Notice **ARC 1039C** ..... 10/2/13  
 Strip pack dispensing of drugs, 22.1(1), 22.5 Notice **ARC 1038C** ..... 10/2/13

**PUBLIC HEALTH DEPARTMENT[641]**

Human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome  
 (AIDS), ch 11 Notice **ARC 1044C** ..... 10/2/13  
 Plumbing and mechanical systems board—licensure fees, 28.1 Notice of Termination **ARC 1077C** ..... 10/2/13  
 Mandatory reporter training curricula; abuse education review panel, amendments to ch 93  
Notice **ARC 1036C** ..... 10/2/13  
 Vital records—time-limited fee increases, 95.6 Filed **ARC 1074C** ..... 10/2/13  
 Establishing parentage on birth certificates; vital records modifications, amendments to chs  
 96, 99 Filed **ARC 1075C** ..... 10/2/13  
 Trauma care facilities, 134.1, 134.2(3) Filed **ARC 1079C** ..... 10/2/13  
 Out-of-hospital trauma triage destination decision protocols, 135.1, 135.2(1) Filed **ARC 1080C** ..... 10/2/13  
 Initial and continuing trauma education, 137.1 to 137.3 Filed **ARC 1081C** ..... 10/2/13  
 Trauma system evaluation quality improvement committee, rescind ch 138 Notice **ARC 1043C** ..... 10/2/13

**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Nonresident certification by reciprocity, 10.1 Notice **ARC 1035C** ..... 10/2/13

**REGENTS BOARD[681]**

Iowa State University—facilities and grounds, contracting authority, update of titles and  
 contact information, amendments to ch 13 Filed **ARC 1078C** ..... 10/2/13

**REVENUE DEPARTMENT[701]**

Agricultural real estate—algae cultivation and production, 71.1(3) Notice **ARC 1042C** ..... 10/2/13

**SOIL CONSERVATION DIVISION[27]**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Watershed improvement—grants, review board, amendments to chs 101 to 106 Filed **ARC 1053C** ..... 10/2/13

**TRANSPORTATION DEPARTMENT[761]**

Automated traffic enforcement on the primary road system, ch 144 Notice **ARC 1037C** ..... 10/2/13  
 Electronic renewal of driver's licenses and nonoperator's ID cards—vision screen or report,  
 eligibility, 601.2, 604.10, 605.25, 630.2 Filed **ARC 1073C** ..... 10/2/13

## 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 Thomas Courtney  
2609 Clearview  
Burlington, Iowa 52601

Senator Wally Horn  
101 Stoney Point Road, SW  
Cedar Rapids, Iowa 52404

Senator Pam Jochum  
2368 Jackson Street  
Dubuque, Iowa 52001

Senator Roby Smith  
2036 East 48th Street  
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Des Moines, Iowa 50317

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P.O. Box A  
Mt. Auburn, Iowa 52313

Representative Jeff Smith  
1006 Brooks North Lane  
Okoboji, Iowa 51355

Representative Guy Vander Linden  
1610 Carbonado Road  
Oskaloosa, Iowa 52577

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



**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Air quality—nonattainment areas, amendments to chs 20, 22, 31, 33 IAB 9/18/13 <b>ARC 1016C</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	October 21, 2013 1 p.m.
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**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

Prohibition on campaign contributions from corporations, 4.44(1) IAB 9/18/13 <b>ARC 1020C</b>	Board Office, Suite 1A 510 E. 12th St. Des Moines, Iowa	October 17, 2013 1:30 to 2:30 p.m.
Supporting documentation for complaint, 9.1(1) IAB 9/18/13 <b>ARC 1019C</b>	Board Office, Suite 1A 510 E. 12th St. Des Moines, Iowa	October 17, 2013 2:30 to 3:30 p.m.

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Food and consumer safety, ch 30 IAB 9/18/13 <b>ARC 1026C</b>	Room 319 Lucas State Office Bldg. Des Moines, Iowa	October 9, 2013 10 a.m.
Food establishment and food processing plant inspections, ch 31 IAB 9/18/13 <b>ARC 1025C</b>	Room 319 Lucas State Office Bldg. Des Moines, Iowa	October 9, 2013 10 a.m.

**LABOR SERVICES DIVISION[875]**

Boiler inspection schedule, 90.6(2) IAB 9/18/13 <b>ARC 1015C</b>	Capitol View Room 1000 East Grand Ave. Des Moines, Iowa	October 9, 2013 1:30 p.m. (If requested)
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**NATURAL RESOURCE COMMISSION[571]**

Snowmobile registration revenue cost-share program, amend 28.1 to 28.18; adopt 47.30 to 47.47 IAB 9/18/13 <b>ARC 1022C</b>	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 8, 2013 2 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Chiropractors—continuing education hours by presentation type, 44.3(2)“a”(1) IAB 9/18/13 <b>ARC 1012C</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 8, 2013 8:30 to 9 a.m.
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**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Nonresident certification by reciprocity, 10.1 IAB 10/2/13 <b>ARC 1035C</b>	Professional Licensing Small Conf. Room Third Floor 200 E. Grand Ave. Des Moines, Iowa	October 23, 2013 8:30 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Tourist-oriented directional signing, 119.2(2), 119.3, 119.4, 119.5(3) IAB 9/18/13 <b>ARC 1018C</b>	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	October 10, 2013 1 p.m. (If requested)
Private directional signing, 120.1, 120.2, 120.5(3), 120.6(4), 120.7(3), 120.8(3), 120.9 IAB 9/18/13 <b>ARC 1017C</b>	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	October 10, 2013 2 p.m. (If requested)
Automated traffic enforcement on the primary road system, ch 144 IAB 10/2/13 <b>ARC 1037C</b>	Hampton Inn and Suites 6210 SE Convenience Blvd. Ankeny, Iowa	October 30, 2013 1 p.m.

The following list will be updated as changes occur.

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

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

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

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## ARC 1045C

**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 217.6 and 252B.9A(7), the Department of Human Services proposes to amend Chapter 9, “Public Records and Fair Information Practices,” and Chapter 97, “Collection Services Center,” Iowa Administrative Code.

These amendments update rules to conform to Iowa statutory changes and federal regulations regarding the confidentiality of support payment records maintained by the Child Support Recovery Unit (CSRU) and the Collection Services Center (CSC). The statutory changes were adopted in 2012 to conform to federal safeguarding regulations effective December 30, 2010.

Any interested person may make written comments on the proposed amendments on or before October 22, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because federal and state law requires the safeguarding of confidential child support information. However, 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 sections 217.6 and 252B.9A(7).

The following amendments are proposed.

ITEM 1. Amend rule **441—9.11(22)**, chart of department records, entries for “Collection service center payment records” and “Program records – Child support recovery,” as follows:

Abbreviations are used in the chart as follows:

<b>Code</b>	<b>Meaning</b>
O	The records are open for public inspection.
C	The records are confidential and are not open to public inspection.
O/C	The record is partly open and partly confidential.
PI	Personally identifiable information
NA	Not applicable

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

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Collection service center payment records	Θ C	Iowa Code 252B.9(2); 42 U.S.C. §654a(d); 45 CFR §307.13	Yes	Iowa Code 252B.9, 252B.13A, 252B.16
Program records • Child support recovery	Θ/Θ C	Iowa Code 252B.9 and 252G.5; 42 U.S.C. §654(26), 42 U.S.C. §654a(d); 45 CFR §303.21 and 307.13	Yes	Iowa Code 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, and 144.13, 144.26, 232.147, 234.39, 595.4, 598.22B, and 600.16A

ITEM 2. Amend subrule 97.3(3) as follows:

**97.3(3) *Certified payment records.*** The unit shall provide certified copies of the official support payment records as defined in paragraph 97.3(1) “a” ~~to the public, upon request, as a public record in accordance with Iowa Code section 252B.9.~~

**ARC 1046C**

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 217.6 and chapters 135B and 135C, the Department of Human Services proposes to amend Chapter 119, “Record Check Evaluations for Certain Employers and Educational Training Programs,” Iowa Administrative Code.

These amendments allow for conditional employment in a hospital or a health care facility for up to 60 calendar days pending completion of a record check evaluation.

These amendments also allow for conditional participation in a training program for up to 60 days pending completion of a record check evaluation.

These amendments establish that if an evaluation was previously performed by the Department and the Department determined the person’s criminal and abuse background did not warrant prohibition of employment, a person who is or was employed by a hospital and is hired by another hospital may commence employment without further action by the Department if the conditions specified in 2013 Iowa Acts, Senate File 347, are met.

These amendments also establish that if an evaluation was previously performed by the Department and the Department determined the person’s criminal and abuse background did not warrant prohibition of employment, a new employee may commence employment after 30 days without further action by the Department if the conditions specified in 2013 Iowa Acts, Senate File 347, are met.

Any interested person may make written comments on the proposed amendments on or before October 22, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

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

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

These amendments are intended to implement Iowa Code section 217.6 and chapters 135B and 135C and 2013 Iowa Acts, Senate File 347.

The following amendments are proposed.

ITEM 1. Amend rules **441—119.1(135C)** and **441—119.2(135C)**, parenthetical implementation statutes, as follows:

(135B,135C)

ITEM 2. Amend subrule 119.2(1) as follows:

**119.2(1)** *Record check evaluations on prospective employees and students.* A requesting entity shall request a record check evaluation prior to employment or enrollment of a person whose background check indicates a criminal or dependent adult abuse or child abuse record. Criminal, child abuse and dependent adult abuse background checks are required on all prospective employees or students, including employees or students who have terminated employment or participation in a training program for any reason or any length of time and wish to return to the same employment or training program, unless an exemption is provided in these rules.

a. A hospital or licensee of a health care facility may employ a person for up to 60 calendar days pending completion of the evaluation if all of the following criteria are met:

(1) The employment does not involve operation of a motor vehicle; and

(2) The person to be employed has been convicted of a simple misdemeanor offense (under Iowa Code section 123.47 or chapter 321) or a first offense of operating a motor vehicle while intoxicated (under Iowa Code section 321J.2(1)); and

(3) The person to be employed does not have a record of founded child or dependent adult abuse; and

(4) The hospital or licensee has requested an evaluation.

b. A training program in a facility licensed under Iowa Code chapter 135C may allow a student who is applying for, enrolled in, or returning to a certified nurse aide training program to participate in the clinical education component of the training program for up to 60 calendar days pending completion of the evaluation if all of the following criteria are met:

(1) The student's clinical education component of the training program involves children or dependent adults; and

(2) The program does not involve operation of a motor vehicle; and

(3) The student has been convicted of a simple misdemeanor offense (under Iowa Code section 123.47 or chapter 321) or a first offense of operating a motor vehicle while intoxicated (under Iowa Code section 321J.2(1)); and

(4) The student does not have a record of founded child or dependent adult abuse; and

(5) The training program has requested an evaluation.

ITEM 3. Amend subrule 119.2(4) as follows:

**119.2(4)** *Exceptions to record check evaluation requirements for employment under Iowa Code chapter 135B or 135C or participation in a training program in facilities licensed under Iowa Code chapter 135C.* If an evaluation was previously performed by the department and the department determined the person's criminal and abuse background did not warrant prohibition of employment, the person who is or was employed by a hospital licensed under Iowa Code chapter 135B and is hired by another hospital or the person who is or was employed by a facility licensed under Iowa Code section 135C.33 and is hired by another facility licensed under Iowa Code section 135C.33 may commence employment ~~with a different licensed facility covered by Iowa Code section 135C.33~~ without further action by the department subject to the following conditions:

a. to c. No change.

d. The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer, or the previous employer provides the previous

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

evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a ~~current~~ new record check evaluation shall be performed.

e. and f. No change.

ITEM 4. Adopt the following new subrule 119.2(5):

**119.2(5)** *Exceptions to record check evaluation requirements for new employees under Iowa Code chapter 135B or 135C or participants in a training program in facilities licensed under Iowa Code chapter 135C.* If the person approved for employment or participation does not start employment or attend the training program, as defined in subrule 119.4(3), within 30 days from the notice of decision approving the person, the requesting entity must perform a new record check.

a. If the evaluation was previously performed by the department and the department determined the person's criminal and abuse background did not warrant prohibition of employment or participation in a training program, the person being considered for employment may commence employment without further action by the department subject to the following conditions:

(1) The record check performed by the employer does not indicate that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation.

(2) The position with the employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

(3) Any restriction placed on the person's employment in the previous evaluation by the department shall remain applicable in the person's subsequent employment.

(4) The employer or person subject to the record checks has maintained a copy of the previous evaluation. If a physical copy of the previous evaluation is not maintained, a new record check evaluation shall be requested.

(5) Although an authorized new evaluation is not required, the subsequent employer may choose to request a reevaluation of the person's criminal and abuse background and may employ the person while the reevaluation is being performed.

(6) The employer must maintain the previous evaluation in the employee's or student's personnel file for verification of the exception to the requirement for a record check evaluation.

b. If the record check indicates that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation, a new record check evaluation shall be performed.

c. Record check evaluations completed in accordance with paragraph 119.4(3) "c" are valid for 30 days from the date the notice of decision is issued. If the person does not start employment or attend the training program within the 30-day time period, the conditions in subrule 119.2(5) shall apply. "Start employment or attend the training program" means to begin to receive a salary or take classes.

ITEM 5. Amend subrule 119.3(1) as follows:

**119.3(1)** *Required documentation.* The requesting entity and the prospective employee or student shall complete and submit ~~Form 470-2310, Record Check Evaluation~~, the record check evaluation form to the department to request an evaluation. The requesting entity shall submit the form and required documentation to the Department of Human Services, Central Abuse Registry, P.O. Box 4826, Des Moines, Iowa 50305-4826. The department shall not process evaluations that are not signed by the prospective employee or student. The position sought or held must be clearly written on the first page of ~~Form 470-2310, Record Check Evaluation~~ the record check evaluation form. ~~Form 470-2310~~ The form shall be accompanied by the following documents:

a. to d. No change.

ITEM 6. Amend rule ~~441—119.4(135C)~~, parenthetical implementation statute, as follows:  
(~~135B~~, 135C)

ITEM 7. Amend paragraph **119.4(3)"c"** as follows:

c. Record check evaluations are valid for 30 days from the date the notice of decision is issued. If the person does not start employment or attend the training program within the 30-day time period,



HUMAN SERVICES DEPARTMENT[441](cont'd)

~~the requesting entity shall request another evaluation~~ conditions in subrule 119.2(5) shall apply. "Start employment or attend the training program" means to begin to receive a salary or take classes.

ITEM 8. Amend rule ~~441—119.5(135C)~~, parenthetical implementation statute, as follows:  
(135B, 135C)

## ARC 1082C

### 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 54, "Governor's Award for Quality Care," Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," Chapter 64, "Intermediate Care Facilities for the Intellectually Disabled," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

The proposed amendments, which are technical, delete references to the resident advocate committee of a health care facility. Resident advocate committees with oversight by the state office of the long-term care ombudsman are no longer in existence, having been repealed by 2013 Iowa Acts, Senate File 184, and replaced with the certified volunteer long-term care ombudsman program established in Iowa Code section 231.45 as amended by 2013 Iowa Acts, Senate File 184. In addition, the technical amendments remove references to resident advocate committees and the state office of the long-term care ombudsman from Chapters 62, 63, 64 and 65 of the Department's rules. These chapters regulate facilities primarily serving persons with mental illness or intellectual disabilities, which, pursuant to Iowa Code section 231.42(2)(a), the state office of the long-term care ombudsman does not serve.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

The State Board of Health reviewed the proposed amendments at its September 11, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 22, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to [david.werning@dia.iowa.gov](mailto:david.werning@dia.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 section 135C.14 and 2013 Iowa Acts, Senate File 184.

The following amendments are proposed.

ITEM 1. Amend rule ~~481—54.4(135C)~~ as follows:

**~~481—54.4(135C)~~ Applicant eligibility.** Eligible nominations shall be made by a resident, family member of a resident, ~~member of a resident advocacy committee~~, or another health care facility. A health care facility cannot nominate itself for the award; however, this prohibition shall not apply to facilities with common ownership.

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

ITEM 2. Rescind rule 481—57.24(135C) and adopt the following new rule in lieu thereof:

**481—57.24(135C) Certified volunteer long-term care ombudsman program.** A certified volunteer long-term care ombudsman appointed in accordance with Iowa Code section 231.45 as amended by 2013 Iowa Acts, Senate File 184, shall operate within the scope of the rules for volunteer ombudsmen promulgated by the office of long-term care ombudsman and the Iowa department on aging.

ITEM 3. Amend subrule 57.37(3) as follows:

**57.37(3)** The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and ~~resident advocate committee members~~ certified volunteer long-term care ombudsman and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

ITEM 4. Rescind rule 481—58.27(135C) and adopt the following new rule in lieu thereof:

**481—58.27(135C) Certified volunteer long-term care ombudsman program.** A certified volunteer long-term care ombudsman appointed in accordance with Iowa Code section 231.45 as amended by 2013 Iowa Acts, Senate File 184, shall operate within the scope of the rules for volunteer ombudsmen promulgated by the office of long-term care ombudsman and Iowa department on aging.

ITEM 5. Amend subrule 58.41(3) as follows:

**58.41(3)** The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and ~~resident advocate committee members~~ certified volunteer long-term care ombudsman and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

ITEM 6. Amend subrule 62.9(4) as follows:

**62.9(4)** Personnel record.

a. A personnel record shall be kept for each employee. (III)

~~a.~~ b. The record shall include the employee's:

1. to 13. No change.

~~b. The personnel records shall be made available to the long-term care resident's advocate/ombudsman of the department on aging in response to a complaint being investigated.~~

ITEM 7. Amend subparagraph **62.14(4)“b”(3)** as follows:

(3) The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and legal guardian, ~~and Iowa department on aging long-term care resident's advocate/ombudsman of record,~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, ~~or~~ and legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department on aging's long-term care resident's advocate/ombudsman shall have the right to appear at the hearing.~~ (II)

ITEM 8. Amend subparagraph **62.14(4)“b”(5)**, introductory paragraph, as follows:

(5) Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by regular mail to the licensee, resident, and responsible party, ~~and department on aging long-term care ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 9. Amend subparagraph **62.14(4)“b”(6)** as follows:

(6) A copy of the notice required by 62.14(4) shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's legal

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

guardian, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility, ~~and the department on aging's long-term care resident's advocate/ombudsman.~~ (II)

ITEM 10. Rescind and reserve rule **481—62.22(135C)**.

ITEM 11. Amend subrule 62.23(9) as follows:

**62.23(9)** Posting of names. The facility shall post in a prominent area the name, telephone number, and address of the ~~long-term care resident's advocate/ombudsman,~~ survey agency, the local law enforcement agency, ~~care review committee members,~~ Iowa Protection and Advocacy Services, Inc., and the protection and advocacy agency designated pursuant to Iowa Code section 135C.2(4) and the text of Iowa Code section 135C.46; to provide to residents another course of redress. (II)

ITEM 12. Rescind and reserve rule **481—63.22(135C)**.

ITEM 13. Amend paragraph **63.34(1)"f"** as follows:

*f.* The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and responsible party, ~~and Iowa department on aging long-term care ombudsman of record~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident ~~or~~ and responsible party, that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department on aging long-term care ombudsman shall have the right to appear at the hearing.~~

ITEM 14. Amend paragraph **63.34(1)"h,"** introductory paragraph, as follows:

*h.* Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party, ~~and department on aging long-term care ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 15. Amend paragraph **63.34(1)"i"** as follows:

*i.* A copy of the notice required by paragraph "*c*" shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department, the resident's responsible party, physician, and the person or agency responsible for the resident's placement, maintenance, and care in the facility, ~~and the department on aging long-term care ombudsman.~~

ITEM 16. Amend subrule 63.35(3) as follows:

**63.35(3)** The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency; and local law enforcement agency, ~~care review committee members,~~ and the text of Iowa Code section 135C.46, etc., to provide to residents a further course of redress. (II)

ITEM 17. Rescind and reserve rule **481—64.35(135C)**.

ITEM 18. Amend paragraph **64.36(1)"f"** as follows:

*f.* The type of hearing shall be determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the licensee, resident, and responsible party, ~~and Iowa department of elder affairs long-term care ombudsman of record~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident ~~or~~ and responsible party that they have a right to appear at the hearing in person or be represented by their attorneys or other individual. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department of elder affairs long-term care ombudsman shall have the right to appear at the hearing.~~

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

ITEM 19. Amend paragraph **64.36(1)“h,”** introductory paragraph, as follows:

*h.* Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party, ~~and department of elder affairs long-term care ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 20. Amend paragraph **64.36(1)“i”** as follows:

*i.* A copy of the notice required by 64.36(1)“c” shall be personally delivered to the resident and a copy placed in the resident’s record. A copy shall also be transmitted to the department, the resident’s responsible party, physician, and the person or agency responsible for the resident’s placement, maintenance, and care in the facility, ~~and the department of elder affairs long-term care ombudsman~~.

ITEM 21. Amend subrule 65.2(2) as follows:

**65.2(2)** A résumé of care with a narrative which includes the following information shall be submitted:

*a. to c.* No change.

*d.* A description of the human service system available in the area, including, but not limited to, social, public health, visiting nurse, vocational training, employment services, sheltered living arrangements, and services of private agencies; and

*e.* A description of working relationships with the human service agencies when applicable which shall include at least how the facility will coordinate with:

(1) The department of human services to facilitate continuity of care and coordination of services to residents; and

(2) Other agencies to identify unnecessary duplication of services and plan for development and coordination of needed services;

~~*f.* A list of members of the care review committee; and~~

~~*g.* A description of a program of training for the care review committee concerning their role in the ongoing care and treatment of residents.~~

ITEM 22. Rescind subparagraph **65.8(1)“c”(14)**.

ITEM 23. Renumber subparagraph **65.8(1)“c”(15)** as **65.8(1)“c”(14)**.

ITEM 24. Amend subrule 65.9(4) as follows:

**65.9(4)** Personnel record.

*a.* A personnel record shall be kept for each employee. (III)

~~*a. b.*~~ The record shall include the employee’s:

(1) to (13) No change.

~~*b.* The personnel records shall be made available to the long-term care resident’s advocate/ombudsman of the department on aging in response to a complaint being investigated. (III)~~

ITEM 25. Amend paragraph **65.16(6)“a”** as follows:

*a.* The type of hearing determined by a representative of the department. Notice of the date, time, and place of the hearing shall be sent by United States mail or delivered in person to the licensee, resident, and legal guardian, ~~and Iowa department on aging’s long-term care resident’s advocate/ombudsman of record~~ not later than five full business days after receipt of the request. This notice shall also inform the licensee, resident, and legal guardian that they have a right to appear at the hearing in person or be represented by their attorneys or other individuals. The hearing shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. ~~The Iowa department on aging’s long-term care resident’s advocate/ombudsman shall have the right to appear at the hearing. (II)~~

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

ITEM 26. Amend paragraph **65.16(6)“c”** as follows:

c. Based upon all testimony and materials submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact, conclusions of law, and issue a decision and order. This decision shall be mailed by regular mail to the licensee, resident, and legal guardian, ~~and department on aging’s long-term care resident’s advocate/ombudsman~~ within ~~ten~~ 10 working days after the hearing has been concluded. (II)

ITEM 27. Amend paragraph **65.16(6)“d,”** introductory paragraph, as follows:

d. Based upon all testimony and material submitted to the representative of the department, the representative shall issue, in accordance with Iowa Code chapter 17A, written findings of fact and conclusions of law and issue a decision and order in respect to the adverse action. This decision shall be mailed by certified mail to the licensee, resident, and responsible party, ~~and department on aging’s long-term care resident’s advocate/ombudsman~~ within 10 working days after the hearing has been concluded. The representative shall have the power to issue fines and citations against the facility in appropriate circumstances.

ITEM 28. Amend paragraph **65.16(6)“e”** as follows:

e. A copy of the notice required by 65.16(4) shall be personally delivered to the resident by the licensed facility and a copy placed in the resident’s record. A copy shall also be transmitted to the department, the resident’s legal guardian, physician, and the person or agency responsible for the resident’s placement, maintenance, and care in the facility, ~~and the department on aging’s long-term care resident’s advocate/ombudsman~~. (II)

ITEM 29. Rescind and reserve rule **481—65.24(135C)**.

ITEM 30. Rescind subrule 65.25(10) and adopt the following **new** subrule in lieu thereof:

**65.25(10) Posting of names.** The facility shall post in a prominent area the name, telephone number, and address of the survey agency, local law enforcement agency, administrator, members of the board of directors, corporate headquarters, and the protection and advocacy agency designated pursuant to Iowa Code section 135C.2(4) and the text of Iowa Code section 135C.46 to provide to residents another course of redress. (II)

**ARC 1083C****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,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” Chapter 63, “Residential Care Facilities for the Intellectually Disabled,” Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” Iowa Administrative Code.

The amendments make technical changes by removing references to Iowa Code chapter 235B, “Dependent Adult Abuse Services — Information Registry,” and replacing them with references to Iowa Code chapter 235E, “Dependent Adult Abuse in Facilities and Programs,” and to 481—Chapter 52, “Dependent Adult Abuse in Facilities and Programs.” Iowa Code chapter 235E specifically addresses dependent adult abuse in facilities and programs regulated by the Department.

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

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual.

The Board of Health reviewed the proposed amendments at its September 11, 2013, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 22, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to [david.werning@dia.iowa.gov](mailto:david.werning@dia.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 section 135C.14 and Iowa Code chapter 235E.

The following amendments are proposed.

ITEM 1. Amend rule 481—57.39(135C), introductory paragraph, as follows:

**481—57.39(135C) Resident abuse prohibited.** Each resident shall receive kind and considerate care at all times and shall be free from mental, ~~and~~ physical, sexual, and verbal abuse, exploitation, neglect, and physical injury. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to the resident or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person, who shall promptly report the action taken to the physician, and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 2. Rescind subrule 57.39(4) and adopt the following **new** subrule in lieu thereof:

**57.39(4)** Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 3. Rescind and reserve subrule **57.39(5)**.

ITEM 4. Rescind and reserve subrule **57.39(6)**.

ITEM 5. Amend rule 481—58.43(135C), introductory paragraph, as follows:

**481—58.43(135C) Resident abuse prohibited.** Each resident shall receive kind and considerate care at all times and shall be free from mental, ~~and~~ physical, sexual, and verbal abuse, exploitation, neglect, and physical injury. Each resident shall be free from chemical and physical restraints except as follows: when authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to the resident or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of an intellectually disabled individual when ordered in writing by a physician and authorized by a designated qualified intellectual disabilities professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 6. Rescind subrule 58.43(9) and adopt the following **new** subrule in lieu thereof:

**58.43(9)** Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 7. Rescind and reserve subrule **58.43(10)**.

ITEM 8. Rescind and reserve subrule **58.43(11)**.

ITEM 9. Amend rule **481—62.1(135C)** by rescinding the definition of “Abuse” as follows:

~~“Abuse” means any of the following as a result of the willful or negligent acts or omissions of a caretaker:~~

~~1. Physical abuse~~

~~2. Physical injury to or unreasonable confinement or cruel punishment of a resident~~

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

3. ~~Sexual abuse~~
4. ~~Mental abuse~~
5. ~~Verbal abuse~~
6. ~~Exploitation of a resident~~
7. ~~The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a resident's life or health as a result of the acts or omissions of the resident.~~

ITEM 10. Adopt the following new definition of “Dependent adult abuse” in rule **481—62.1(135C)**:

“*Dependent adult abuse*” is as defined in rule 481—52.1(235E).

ITEM 11. Amend subrule 62.23(23) as follows:

**62.23(23)** Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, neglect, and physical injury. (I, II)

ITEM 12. Rescind subrule 62.23(24) and adopt the following new subrule in lieu thereof:

**62.23(24)** Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 13. Rescind and reserve subrule **62.23(25)**.

ITEM 14. Amend rule **481—62.23(135C)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~135C.14(8)~~ 135C.14 and 135C.24 and Iowa Code chapter 235E.

ITEM 15. Amend rule 481—63.37(135C), introductory paragraph, as follows:

**481—63.37(135C) Resident abuse prohibited.** Each resident shall receive kind and considerate care at all times and shall be free from mental, ~~and physical, sexual, and verbal abuse, exploitation, neglect, and physical injury~~. Each resident shall be free from chemical and physical restraints, except in an emergency for the shortest amount of time necessary to protect the resident from injury to the resident or to others, pending the immediate transfer to an appropriate facility. The decision to use restraints on an emergency basis shall be made by the designated charge person, who shall promptly report the action taken to the physician, and the reasons for using restraints shall be documented in the resident's record. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

ITEM 16. Rescind subrule 63.37(4) and adopt the following new subrule in lieu thereof:

**63.37(4)** Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 17. Rescind and reserve subrule **63.37(5)**.

ITEM 18. Rescind and reserve subrule **63.37(6)**.

ITEM 19. Amend rule **481—63.37(135C)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~subsections 235B.3(1) and 235B.3(11)~~ sections 135C.14 and 135C.24 and Iowa Code chapter 235E.

ITEM 20. Rescind rule 481—64.33(235B) and adopt the following new rule in lieu thereof:

**481—64.33(135C) Allegations of dependent adult abuse.**

**64.33(1)** *Allegations of dependent adult abuse.* Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

**64.33(2)** *Separation of accused abuser and victim.* Upon a claim of dependent adult abuse of a resident being reported, the administrator of the facility shall separate the victim and accused abuser

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

immediately and maintain the separation until the department's abuse investigation is completed and an abuse determination is made. (I, II)

ITEM 21. Amend rule **481—65.1(135C)** by rescinding the definition of "Abuse" as follows:

~~"Abuse" means any of the following as a result of the willful or negligent acts or omissions of a caretaker:~~

- ~~1. Physical abuse;~~
- ~~2. Physical injury to or unreasonable confinement or cruel punishment of a resident;~~
- ~~3. Sexual abuse;~~
- ~~4. Mental abuse;~~
- ~~5. Verbal abuse;~~
- ~~6. Exploitation of a resident; or~~
- ~~7. The deprivation of the minimum food, shelter, clothing, supervision, physical and mental health care, and other care necessary to maintain a resident's life or health as a result of the acts or omissions of the caretaker.~~

ITEM 22. Adopt the following **new** definition of "Dependent adult abuse" in rule **481—65.1(135C)**:

*"Dependent adult abuse" is as defined in rule 481—52.1(235E).*

ITEM 23. Amend subrule 65.25(3) as follows:

**65.25(3) Resident abuse prohibited.** Each resident shall receive kind and considerate care at all times and shall be free from physical, sexual, mental and verbal abuse, exploitation, neglect, and physical injury. (I, II)

ITEM 24. Rescind subrule 65.25(4) and adopt the following **new** subrule in lieu thereof:

**65.25(4) Allegations of dependent adult abuse.** Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

ITEM 25. Rescind and reserve subrule **65.25(5)**.

ITEM 26. Adopt the following **new** implementation sentence in rule **481—65.25(135C)**:

This rule is intended to implement Iowa Code section 135C.14 and Iowa Code chapter 235E.

**ARC 1040C**

## **PHARMACY BOARD[657]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 6, "General Pharmacy Practice," and Chapter 7, "Hospital Pharmacy Licenses," Iowa Administrative Code.

The amendments were approved at the August 28, 2013, regular meeting of the Board of Pharmacy.

The proposed amendments clarify that, when the pharmacist is not present, a pharmacy is closed and shall be secured from public access. The amendments further require that if the pharmacist in charge of a pharmacy has authorized one or more pharmacy technicians or pharmacy support persons to be present in the pharmacy when the pharmacy is closed, the technician or support person shall prepare and maintain a log identifying each period the individual worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. The log shall be dated and signed by the individual preparing each entry, and the pharmacist in charge shall periodically review the log. The amendments clarify that a pharmacy technician or pharmacy support person working in



## PHARMACY BOARD[657](cont'd)

a pharmacy when the pharmacy is closed may not dispense or deliver any drug, chemical, device, or prepared prescription to a patient or patient's agent.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 22, 2013. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@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 155A.13 and 155A.33.

The following amendments are proposed.

ITEM 1. Amend subrule 6.7(2) as follows:

**6.7(2) Temporary absence of pharmacist.** In the temporary absence of the pharmacist, only the pharmacist in charge may designate pharmacy technicians or pharmacy support persons who may be present in the prescription department to perform technical or nontechnical functions, respectively, designated by the pharmacist in charge. Activities identified in subrule 6.7(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours.

*a.* In the absence of the pharmacist, the pharmacy shall be secured from public access and the pharmacy shall notify the public that the pharmacist is temporarily absent and that no prescriptions will be dispensed until the pharmacist returns. If the pharmacist in charge has authorized the presence in the pharmacy of a pharmacy technician or a pharmacy support person to perform designated functions when the pharmacy is closed, the pharmacy technician or the pharmacy support person may not dispense or deliver any drug, chemical, device, or prepared prescription to a patient or patient's agent.

*b.* A pharmacy technician or a pharmacy support person who is present in the pharmacy when the pharmacy is closed shall prepare and maintain in the pharmacy a log identifying each period of time that the pharmacy technician or pharmacy support person worked in the pharmacy while the pharmacy was closed and identifying each activity performed during that time period. Each entry shall be dated, and each daily record shall be signed by the pharmacy technician or pharmacy support person who prepared the record. The log shall be periodically reviewed by the pharmacist in charge.

ITEM 2. Amend subrule 7.6(2) as follows:

**7.6(2) Access when pharmacist absent.** When the pharmacist is absent from the facility, the pharmacy is closed and shall be secured from public access. Policies and procedures shall be established that identify who will have access to the pharmacy when the pharmacy is closed and the procedures to be followed for obtaining drugs, devices, and chemicals to fill an emergent need during the pharmacist's absence.

*a. to d.* No change.

**ARC 1041C**

**PHARMACY BOARD[657]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 6, “General Pharmacy Practice,” Iowa Administrative Code.

The amendments were approved at the August 28, 2013, regular meeting of the Board of Pharmacy.

## PHARMACY BOARD[657](cont'd)

The proposed amendments add to the information that must be communicated to the pharmacist receiving a prescription transfer from another pharmacy any special directions, restrictions, or notations included by the prescriber on the original prescription including but not limited to restrictions relating to drug product selection or substitution. The amendments also add new rule 657—6.11(155A) establishing requirements for drug product selection and “do not substitute” restrictions.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 22, 2013. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@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 155A.13, 155A.27, 155A.32, and 155A.34.

The following amendments are proposed.

ITEM 1. Amend paragraph **6.9(8)“b”** as follows:

*b.* Record on or with the transferred prescription drug order the following information:

(1) to (6) No change.

(7) Name of the pharmacist or pharmacist-intern transferring the prescription drug order information; ~~and~~

(8) If transferring a controlled substance prescription from a pharmacy utilizing a shared electronic database system as described in subrule 6.9(9) to a pharmacy outside that shared system, the pharmacy name, location, DEA registration number, and prescription number from which the prescription was originally filled; and

(9) Any special directions, restrictions, or notations of the prescriber including, but not limited to, “dispense as written” or “do not substitute.”

ITEM 2. Adopt the following **new** rule 657—6.11(155A):

**657—6.11(155A) Drug product selection.** Except as provided herein, a pharmacist may exercise professional judgment in the economic interest of a patient by selecting a drug product with the same generic name and demonstrated bioavailability as the drug prescribed for dispensing and sale to the patient. If the pharmacist exercises drug product selection, the pharmacist shall inform the patient of the substitution, the reason for the substitution, and any savings realized by the patient as a result of the substitution.

**6.11(1) Substitution prohibited.** A pharmacist shall not exercise drug product selection described herein if either of the following is true:

*a.* The prescriber specifically indicates, in any manner, that no drug product selection shall be made or that only a specified drug product may be dispensed. Prescriber directions prohibiting substitution may include, but are not limited to, the following:

(1) Manually signing a prescription on a line that indicates substitution is not authorized.

(2) Checking a box on a prescription that indicates substitution is not authorized.

(3) Specifically indicating on the face of the prescription that no substitution is authorized.

(4) Including the phrase “brand name necessary,” “dispense as written,” or “DAW” on the face of the prescription.

(5) Indicating in text on the prescription that only a specific product or a specific manufacturer’s product may be dispensed.

*b.* The patient or patient’s agent presenting the prescription for filling indicates that no substitution shall be made. However, if the cost or any part of the cost of the prescription will be paid by expenditure of public funds authorized under the Iowa Medical Assistance Act (Iowa Code chapter 249A), this paragraph shall not apply.

## PHARMACY BOARD[657](cont'd)

**6.11(2) *Prescriber consultation.*** If a pharmacist is unable to provide the specific drug authorized by a prescriber due to unavailability of the product, and if the prescriber has indicated that substitution is not authorized or has indicated that only a specific product is authorized, the pharmacist shall contact the prescriber to explain the situation and to discuss alternatives. The pharmacist shall note on the prescription record the date of the consultation with the prescriber and the results of that consultation. The pharmacist shall not dispense a substitute product without verbal authorization of the prescriber. The pharmacist may, however, exercise professional judgment by filling a prescription without prescriber authorization if the pharmacist is unable to contact the prescriber after reasonable effort, the pharmacist determines that failure to fill the prescription might result in an interruption of therapeutic regimen or create patient suffering, and the pharmacist informs the patient at the time of dispensing and the prescriber as soon as possible that prescriber reauthorization is required.

**6.11(3) *Record of substitution*** If the pharmacist selects a generically equivalent product pursuant to this rule, the pharmacist shall note that fact, including the name of the manufacturer of the selected product or the national drug code of the specific product dispensed, on or with the prescription dispensing record.

ITEM 3. Amend **657—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 124.301, 124.303, 124.306, 126.10, 126.11, 155A.6, 155A.13, 155A.27, 155A.28, and 155A.31, ~~and 155A.33~~ through 155A.36.

**ARC 1039C**

**PHARMACY BOARD[657]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 11, “Drugs in Emergency Medical Service Programs,” Iowa Administrative Code.

The amendment was approved at the August 28, 2013, regular meeting of the Board of Pharmacy.

The proposed amendment permits a pharmacy that utilizes a decentralized automated medication distribution system (AMDS) to authorize specific members of an emergency medical service program to replenish the service program’s drug supplies from the AMDS. The amendment requires that a pharmacist verify the drugs to be stocked in the AMDS before the drugs are removed from the pharmacy and requires that authorized service program personnel be assigned unique identification and access codes limiting access to specific drugs authorized for use by the service program. The amendment also requires a pharmacist to verify and document verification of the access and removal of drugs by service program personnel within 72 hours of such access.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on October 22, 2013. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@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 chapter 147 and Iowa Code sections 124.301 and 155A.13.

The following amendment is proposed.

## PHARMACY BOARD[657](cont'd)

Amend subrule 11.20(1) as follows:

**11.20(1) Pharmacy-based.** The pharmacist in charge, the medical director, and the service director shall jointly develop a list of drugs to be maintained for administration by the service program. The pharmacy shall maintain an accurate list of all prescription drugs including controlled substances that the pharmacy maintains at the primary program site and at any program substation.

*a.* No change.

*b.* Replenishment using automated medication distribution system (AMDS). A pharmacy utilizing a decentralized automated medication distribution system (AMDS) pursuant to 657—Chapter 9 may authorize replenishment of the service program's drug supplies from the AMDS provided that a pharmacist verifies the drugs stocked in the AMDS component before the drugs are removed from the pharmacy. Service program personnel authorized to remove drugs from the AMDS for restocking the service program's supplies shall be assigned a unique identification and access code for the purpose of accessing the AMDS. Access by authorized service program personnel shall be restricted to specific drug products authorized for use by the service program. A pharmacist shall, within 72 hours, verify the access of and removal of drugs from the AMDS by service program personnel and shall maintain documentation of that verification within the pharmacy records.

~~*b.*~~ *c.* Inspections. The pharmacist in charge shall ensure the completion of a monthly inspection of all prescription drugs maintained by the pharmacy at the primary program site and any program substation. Inspection shall include the removal of outdated or adulterated drugs. All drugs removed from administration stock shall be returned to the pharmacy. Records of inspection shall be maintained for two years at the pharmacy. The pharmacist in charge may delegate the conduct of the monthly inspection to another pharmacist, a pharmacist-intern, a certified pharmacy technician, or the service director.

**ARC 1038C**

**PHARMACY BOARD[657]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 22, “Unit Dose, Alternative Packaging, and Emergency Boxes,” Iowa Administrative Code.

The amendments were approved at the August 28, 2013, regular meeting of the Board of Pharmacy.

The proposed amendments provide that a medication strip pack prepared for a patient utilizing an automated medication distribution system (AMDS) is not a unit dose package. Such a strip pack is a patient med pak and is subject to the requirements regarding patient med paks. The proposed amendments also prohibit the return to pharmacy stock or to the automated dispensing system component of a drug dispensed in a strip pack or other patient med pak unless the drug was dispensed as a single unit and was not commingled with other patient medications in a single package or container.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 22, 2013. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to [terry.witkowski@iowa.gov](mailto:terry.witkowski@iowa.gov).

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

## PHARMACY BOARD[657](cont'd)

These amendments are intended to implement Iowa Code sections 126.9, 126.10, 126.11, 155A.13, 155A.28, 155A.35, and 155A.36.

The following amendments are proposed.

ITEM 1. Amend subrule **22.1(1)**, definition of “Unit dose package,” as follows:

“*Unit dose package*” means a package that contains that particular dose of a drug ordered for the patient for one administration time. A unit dose package is not always a single unit package. “Unit dose package” does not include a strip pack prepared utilizing an automated medication distribution system (AMDS). A strip pack is a patient med pak subject to the requirements of rule 657—22.5(126,155A).

ITEM 2. Amend subrule 22.5(1) as follows:

**22.5(1) Definition.** A patient med pak is a customized patient medication package prepared for a specific patient which comprises a series of immediate containers containing prescribed solid oral dosage forms, each container being labeled with the time or the appropriate period for the patient to take its contents. A patient med pak includes but is not limited to a strip pack prepared utilizing an automated medication distribution system (AMDS).

ITEM 3. Amend subrule 22.5(4) as follows:

**22.5(4) Repackaging of patient med paks.** In the event a drug is added to or discontinued from a patient’s drug regimen, the pharmacist may repackage the patient’s med pak and either add to or remove from the patient’s drugs packaged as ordered by the prescriber. Drugs returned by the patient for repackaging shall may be reused by the pharmacist in the design of the new patient med pak, and any drug removed from the new drug regimen shall either be disposed of in compliance with board rules or returned, properly labeled, to the patient. Under no circumstances shall a drug within a container of a patient med pak be returned to the pharmacy stock or returned to an automated medication distribution system (AMDS) component unless the drug was dispensed as a single dose and was not commingled with other patient medications in a single package or container.

**ARC 1044C**

**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 141A.2(2), the Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 11, “Acquired Immune Deficiency Syndrome (AIDS),” and to adopt new Chapter 11, “Human Immunodeficiency Virus (HIV) Infection and Acquired Immune Deficiency Syndrome (AIDS),” Iowa Administrative Code.

The rules in Chapter 11 describe procedures and programs related to HIV/AIDS, including laboratory certification, training programs, notification and testing of exposed persons, and the AIDS Drug Assistance Program (ADAP). The proposed new Chapter 11 rules implement changes that have been made to Iowa Code chapters 139A and 141A, including removing the laboratory certification procedures; describing reportable events and conditions for HIV/AIDS; defining and describing partner notification services; updating procedures for occupational exposures to blood-borne pathogens; and removing prohibitions on home testing. In addition, the proposed rules clarify and add detail to consent procedures for HIV testing. They also update references and Iowa Code citations and change the method of calculating income for eligibility for ADAP to conform to the methodology used by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

Any interested person may make written comments or suggestions on the proposed rules on or before October 22, 2013. Such written comments should be directed to Randy Mayer, Bureau of HIV, STD and

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Hepatitis, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [Randall.Mayer@idph.iowa.gov](mailto:Randall.Mayer@idph.iowa.gov).

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

These rules are intended to implement Iowa Code chapter 141A and sections 135.11(20) to 135.11(22), 139A.19, 139A.33, and 915.40 to 915.43.

The following amendment is proposed.

Rescind 641—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11  
HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION AND  
ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

**641—11.1(139A,141A) Definitions.** For the purpose of rules 641—11.1(139A,141A) to 641—11.34(915), the following definitions shall apply:

“*AIDS*” means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*AIDS-related condition*” means any condition resulting from HIV infection that meets the definition of AIDS as established by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*Blood bank*” means a facility for the collection, processing, or storage of human blood or blood derivatives, or from which or by means of which human blood or blood derivatives are distributed or otherwise made available.

“*CDC*” means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*CLIA*” means Clinical Laboratory Improvement Amendments as administered by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

“*Clinical laboratory*” means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

“*Confirmed positive test*” means a reactive result or detectable quantity on any HIV-related test, including an antibody test, an antigen test, a culture, a nucleic acid amplification test, or other test or combination of tests, that is considered to be confirmatory according to prevailing medical technology and algorithms or guidance from CDC. When the confirmed positive test involves more than one test, all test results should be included in any reports to the department.

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

“*Director of a plasma center, blood bank, clinical laboratory, or public health laboratory*” means the person responsible for direction and operation of the facility, the medical director, or the person designated by the director or medical director to ensure compliance with applicable regulations and requirements.

“*Emergency medical services personnel*” means “emergency medical care provider” as defined in 641—131.1(147A).

“*Health care facility*” means a health care facility as defined in Iowa Code section 135C.1, an ambulatory surgical center, or a clinic.

“*Health care provider*” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, or optometry, or licensed as a physician assistant, dental hygienist, or acupuncturist.

“*Health facility*” means a hospital, health care facility, clinic, blood bank, blood center, sperm bank, laboratory organ transplant center and procurement agency, or other health care institution.

“*HIV*” means the human immunodeficiency virus identified as the causative agent of AIDS.

“*HIV infection*” means having acquired the human immunodeficiency virus.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*“HIV-related test”* means a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

*“Laboratory”* means a clinical or public health laboratory, a plasma center, or a blood bank inside or outside the boundaries of Iowa.

*“Physician”* means a person currently licensed pursuant to Iowa Code chapter 148.

*“Plasma center”* means a facility that conducts plasmapheresis.

*“Plasmapheresis”* means the removal of blood from a human being to obtain plasma with the subsequent reinfusion of the remaining formed elements into the donor, but excludes such a procedure performed for the purpose of improving the health of the donor.

*“Public health laboratory”* means a laboratory operated by an agency of city, county or state government for the purpose of supporting disease control activities.

*“Sexually transmitted disease or infection”* means “sexually transmitted disease or infection” as defined in 641—1.1(139A).

**641—11.2(141A) HIV testing—obtaining consent—voluntary HIV-related tests for adults who are not pregnant.**

**11.2(1)** Prior to conducting a voluntary HIV-related test on an adult, the health care provider requesting the test shall provide information to the subject of the test concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction.

**11.2(2)** All adults who are able must give consent for an HIV test, but a separate written consent solely for the purpose of HIV testing shall not be required. If an adult signs a general consent form for the performance of medical tests or procedures, the signing of an additional consent form for the purpose of consenting to an HIV-related test is not required during the time in which the general consent form is in effect. If an adult has not signed a general consent form for the performance of medical tests and procedures, or if the consent form is no longer in effect, a health care provider shall obtain oral or written consent prior to performing the HIV-related test.

**11.2(3)** If an adult is unable to give consent, the adult’s legal guardian may provide oral or written consent. If the adult’s legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

**11.2(4)** Once an adult has been informed of a confirmed positive HIV-related test, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of the adult with HIV infection.

**641—11.3(139A,141A) HIV testing—obtaining consent—voluntary HIV-related tests for minors who are not pregnant.**

**11.3(1)** A minor shall have the legal capacity to act and give consent to the provision of medical care or services for the prevention, diagnosis, or treatment of HIV by a hospital, clinic, or health care provider. Consent shall not be subject to later disaffirmance by reason of such minority. The consent of another person, including but not limited to the consent of a spouse, parent, custodian, or guardian, shall not be necessary.

**11.3(2)** Prior to conducting a voluntary HIV-related test on a minor, the health care provider requesting the test shall provide information to the subject of the test concerning HIV testing and where to obtain additional information regarding HIV infection and risk reduction.

**11.3(3)** A minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor’s legal guardian is required to be informed by the health facility conducting the test. Health facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making available the resources necessary to accomplish that goal. However, a health facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification requirement.

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**11.3(4)** Prior to the test, a minor shall give written consent for performance of the HIV-related test and to the notification of the legal guardian should the test be confirmed as positive.

**11.3(5)** If a minor is unable to provide consent for an HIV-related test, the minor's legal guardian may provide oral or written consent for the minor. If the minor's legal guardian cannot be located or is unavailable, a health care provider may authorize the HIV-related test when the test results are necessary for diagnostic purposes to provide appropriate urgent medical care.

**11.3(6)** Once a minor has been informed of a confirmed positive HIV-related test and the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a minor with HIV infection.

**641—11.4(141A) HIV testing—obtaining consent—voluntary HIV-related tests for pregnant women.**

**11.4(1)** All pregnant women, including minors, shall be tested for HIV infection as part of the routine panel of prenatal tests. The health care provider requesting the test shall notify a pregnant woman that HIV screening is recommended for all prenatal patients and that the pregnant woman will receive an HIV test as part of the routine panel of prenatal tests unless the pregnant woman objects to the test. No written or oral consent shall be required.

**11.4(2)** The testing shall occur as early as possible during each pregnancy.

**11.4(3)** The health care provider requesting the test shall make information about HIV prevention, risk reduction, and treatment opportunities to reduce the possible transmission of HIV to a fetus available to all pregnant women.

**11.4(4)** A pregnant woman who is a minor shall be informed prior to testing that, upon confirmation according to prevailing medical technology of a positive HIV-related test result, the minor's legal guardian is required to be informed by the health facility conducting the test. Health facilities where minors are tested shall have available a program to notify the legal guardian of a newly diagnosed minor. The notification process shall emphasize the need for family support and shall assist in making available the resources necessary to accomplish that goal. However, a health facility which is precluded by federal statute, regulation, or CDC guidelines from informing the legal guardian is exempt from the notification requirement.

**11.4(5)** If a pregnant woman objects to and declines the test, the decision shall be documented in the pregnant woman's medical record by the health care provider. A health care provider shall encourage women who decline the test early in prenatal care to be tested at a subsequent visit.

**11.4(6)** Once a pregnant woman has been informed of a confirmed positive HIV-related test and, if the pregnant woman is a minor, the legal guardian has been notified, no HIV-specific consent for medical procedures and tests shall be required for subsequent medical procedures and tests involved in the care or treatment of a pregnant woman with HIV infection.

**641—11.5(141A) HIV test results—post-test counseling.**

**11.5(1)** At any time that the subject of an HIV-related test is informed of a confirmed positive test result, the health care provider who requested the test or other designated personnel shall initiate counseling concerning the emotional and physical health effects of HIV infection. Particular attention shall be given to explaining the need for the precautions necessary to avoid transmitting the virus. The subject of the test shall be given information concerning where to obtain additional counseling. If a legal guardian of the subject of the test provided consent to the test, the counseling shall be given to the legal guardian.

**11.5(2)** Post-test counseling requirements do not apply to any of the following:

*a.* The performance of an HIV-related test by a health care provider or health facility when the health care provider or health facility procures, processes, distributes, or uses a human body part donated for a purpose specified under the revised uniform anatomical gift Act as provided in Iowa Code chapter 142C, or semen provided prior to July 1, 1988, for the purpose of artificial insemination, or donations of blood, and such test is necessary to ensure medical acceptability of such gift or semen for the purposes intended.



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- b.* A person engaged in the business of insurance who is subject to Iowa Code section 505.15.
- c.* The performance of an HIV-related test by a health care provider or health facility when the subject of the test is deceased and a documented significant exposure has occurred.
- d.* The performance of an HIV-related test by a health care provider or health facility when the subject of the test is unable to provide consent and the health care provider or health facility provided consent for the subject of the test.

**641—11.6(141A) Reporting of diagnoses and HIV-related tests, events, and conditions to the department.**

**11.6(1)** The following constitute reportable events related to HIV infection:

- a.* A test result indicating HIV infection, including:
  - (1) Confirmed positive results on any HIV-related test or combination of tests, including antibody tests, antigen tests, cultures, and nucleic acid amplification tests.
  - (2) A positive result or report of a detectable quantity on any other HIV detection (non-antibody) tests, and results of all viral loads, including nondetectable levels.
- b.* AIDS and AIDS-related conditions, including all levels of CD4+ T-lymphocyte counts.
- c.* Birth of an infant to an HIV-infected mother (perinatal exposure) or any (positive, negative, or undetectable) non-antibody detection test (antigen test, viral culture, viral load, or qualitative nucleic acid amplification test) on an infant 18 months of age or younger.
- d.* Death resulting from an AIDS-related condition, or death of a person with HIV infection.

**11.6(2)** Within seven days of the receipt of a person's confirmed positive test result indicating HIV infection, the director of a plasma center, blood bank, clinical laboratory or public health laboratory that performed the test or that requested the confirmatory test shall make a report to the department on a form provided by the department.

**11.6(3)** Within seven days of the receipt of a test result indicating HIV infection, which has been confirmed as positive according to prevailing medical technology, or immediately after the initial examination or treatment of a person infected with HIV, the physician or other health care provider at whose request the test was performed or who performed the initial examination or treatment shall make a report to the department on a form provided by the department.

**11.6(4)** Within seven days of diagnosing a person as having AIDS or an AIDS-related condition, the diagnosing physician shall make a report to the department on a form provided by the department.

**11.6(5)** Within seven days of the death of a person with HIV infection, the attending physician shall make a report to the department on a form provided by the department.

**11.6(6)** Within seven days of the birth of an infant to an HIV-infected mother or a receipt of a laboratory result (positive, negative, or undetectable) of a non-antibody detection test (antigen test, viral culture, viral load, or qualitative nucleic acid amplification test) on an infant 18 months of age or younger, the attending physician shall make a report to the department on a form provided by the department.

**11.6(7)** The report shall include:

- a.* The person's name, address, date of birth, gender, race and ethnicity, marital status, and telephone number.
- b.* The name, address and telephone number of the plasma center, blood bank, clinical laboratory or public health laboratory that performed or requested the test, if a test was performed.
- c.* The address of the physician or other health care provider who requested the test.
- d.* If the person is female, whether the person is pregnant.

**11.6(8)** All persons who experience a reportable event while receiving services in the state, regardless of state of residence, shall be reported.

**641—11.7(141A) Penalties.**

**11.7(1)** A director of a plasma center, blood bank, clinical laboratory or public health laboratory or a physician or other health care provider who repeatedly fails to file the report required pursuant to these rules is subject to a report being made to the licensing board governing the professional activities of the individual. The department shall notify the individual each time the department determines that

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the individual has failed to file a required report. The department shall inform the individual in the notification that the individual may provide information to the department to explain or dispute the failure to report.

**11.7(2)** A public, private, or hospital clinical laboratory that repeatedly fails to make the report required under these rules is subject to a civil penalty of not more than \$1,000 per occurrence. The department shall not impose the penalty without prior written notice and opportunity for hearing.

**641—11.8(141A) Immunity.** An individual who makes a report in good faith pursuant to these rules is immune from any liability, civil or criminal, which might otherwise be incurred or imposed as a result of the report.

Rules 641—11.1(139A,141A) to 641—11.8(141A) are intended to implement Iowa Code sections 139A.35, 141A.4, 141A.6, 141A.7 and 141A.10.

**641—11.9 and 11.10 Reserved.**

## TRAINING PROGRAMS

**641—11.11(135) Purpose.** The purpose of this rule is to describe the required content of AIDS training programs and to identify the groups of personnel involved.

**11.11(1) Nonemergency personnel.** Within six months of their initial employment, all supervisory and patient care personnel of any agency listed below shall complete a minimum of two hours of training concerning AIDS-related conditions and the prevention of HIV infection:

- a. A licensed hospice,
- b. A homemaker-home health aide provider agency which receives state homemaker-home health aide funds, or
- c. An agency which provides respite care services and receives state funds for respite care services.

**11.11(2) Content.** Training programs must address the following topics:

- a. HIV disease processes,
- b. Signs and symptoms,
- c. Transmission,
- d. High-risk activities,
- e. Prevention recommendations, and
- f. Standard precautions as defined by the CDC and the Occupational Safety and Health Administration of the U.S. Department of Labor.

**11.11(3) Emergency and law enforcement personnel.** All emergency medical services personnel, firefighters, and law enforcement personnel shall complete a minimum of two hours of training concerning AIDS-related conditions and the prevention of HIV infection.

**11.11(4) Content.** Training programs must address the following topics:

- a. HIV disease processes,
- b. Signs and symptoms,
- c. Transmission,
- d. High-risk activities,
- e. Prevention recommendations, and
- f. Standard precautions as defined by the CDC and the Occupational Safety and Health Administration of the U.S. Department of Labor.

This rule is intended to implement Iowa Code section 135.11.

**641—11.12 to 11.14 Reserved.**

## PARTNER NOTIFICATION SERVICES AND DIRECT NOTIFICATION OF AN IDENTIFIABLE THIRD PARTY

**641—11.15(139A,141A) Purpose.** The purpose of rules 641—11.15(139A,141A) to 641—11.18(141A) is to establish a voluntary partner notification program, including a procedure to allow a physician or the

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department to notify an identifiable third party of an HIV-infected person directly that the party has been exposed to HIV when the HIV-infected person will not participate in the voluntary partner notification program.

**641—11.16(139A,141A) Definitions.** For the purpose of rules 641—11.15(139A,141A) to 641—11.18(141A), the following definitions shall apply:

*“Identifiable third party”* means a sexual partner of or a person who shares drug injecting equipment with a person who has been diagnosed with HIV infection.

*“Partner notification”* means services provided to a person who has tested positive for a sexually transmitted disease or infection or to the person’s sexual or needle-sharing partners or social contacts. These services include, but are not limited to, counseling about the nature of the disease, modes of transmission, and risk reduction techniques; treatment or linkage to medical care and treatment; assessment for and referral to social or medical services; elicitation of exposed partners’ names and contact information; testing for other diseases or conditions; and provision of or referral to other prevention services.

*“Significant exposure”* means “significant exposure” as defined in 641—11.22(139A).

**641—11.17(139A,141A) Partner notification services by the department.**

**11.17(1)** The department shall maintain a partner notification program for persons known to have tested positive for sexually transmitted diseases or infections. In administering the program, the department shall provide for the following:

*a.* A physician or other health care provider shall encourage a person who tests positive for a sexually transmitted disease or infection to refer for counseling and testing any party with whom the newly diagnosed person has had sexual relations or has shared drug injecting equipment.

*b.* The physician or other health care provider attending the person who tests positive for a sexually transmitted disease or infection may provide to the department any relevant information provided by the tested person regarding any party with whom the tested person has had sexual relations or has shared drug injecting equipment.

**11.17(2)** When making contact with partners of a person with a sexually transmitted disease or infection, the department shall not disclose the identity of the person who provided the names of the partners and shall protect the confidentiality of the partners who are contacted.

**11.17(3)** The department may delegate its partner notification duties under subrule 11.17(1) for persons who have tested positive for HIV infection to a local health authority unless the authority refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

**11.17(4)** The department may delegate its partner notification duties under subrule 11.17(1) for persons who have tested positive for sexually transmitted diseases other than HIV infection to a local health authority or a physician or other health care provider unless the authority or physician or other health care provider refuses or neglects to conduct the partner notification program in a manner deemed to be effective by the department.

**11.17(5)** In addition to the provisions for partner notification provided under these rules and notwithstanding any provision to the contrary, a county medical examiner or deputy medical examiner performing official duties pursuant to Iowa Code sections 331.801 through 331.805 or the state medical examiner or deputy medical examiner performing official duties pursuant to Iowa Code chapter 691 who determines through an investigation that a deceased person was infected with HIV may notify directly, or request that the department notify, the immediate family of the deceased or any person known to have had a significant exposure from the deceased of the finding.

**641—11.18(141A) Direct notification of an identifiable third party by a physician or the department.**

**11.18(1)** Direct notification shall be used when an HIV-infected person is having continuing contact with a sexual or needle-sharing partner who is unaware of the person's infection and when both of the following situations exist:

*a.* A physician for the HIV-infected person is of the good-faith opinion that the nature of the continuing contact through sexual intercourse or the sharing of drug injecting equipment poses an imminent danger of HIV transmission to the third party.

*b.* When the physician believes in good faith that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program.

**11.18(2)** The department or a physician may reveal the identity of an HIV-infected person pursuant to this rule only to the extent necessary to protect a third party from the direct threat of transmission. Notification of a person pursuant to this rule shall be made confidentially. Nothing in this rule shall be interpreted to create a duty to warn third parties of the danger of exposure to HIV through contact with an HIV-infected person.

**11.18(3)** When the physician is of the good-faith opinion and belief that third-party notification should be performed, notification of a person pursuant to this rule shall be made:

*a.* Directly by the physician in accordance with subrules 11.18(4), 11.18(5) and 11.18(7), or

*b.* By the department at the request of the physician in accordance with subrules 11.18(6) and 11.18(7).

**11.18(4)** Notification by the physician. Prior to notification of a third party by an HIV-infected person's physician, the physician shall make reasonable efforts to inform, in writing, the HIV-infected person. The written information shall state that, due to the nature of the person's continuing contact through sexual intercourse or the sharing of drug injecting equipment with the third party and the physician's belief that the HIV-infected person, despite strong encouragement, has not and will not warn the third party and will not participate in the voluntary partner notification program, the physician is forced to take action to provide notification to the third party. The physician, when reasonably possible, shall provide the following information to the HIV-infected person:

*a.* The nature of the disclosure and the reason for the disclosure.

*b.* The anticipated date of disclosure.

*c.* The name of the party or parties to whom disclosure is to be made.

NOTE: Reasonable efforts to inform, in writing, the HIV-infected person shall be deemed satisfied when the physician delivers the written notice in person or directs a written notice to the HIV-infected person's last-known address by restricted certified mail, return receipt requested, at least five days prior to the anticipated date of disclosure to the third party.

**11.18(5)** When performed by the HIV-infected person's physician, notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail, or other electronic means to arrange the meeting with the physician at the earliest opportunity to discuss an important health matter. The nature of the health matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

**11.18(6)** Notification by the department.

*a.* The physician attending the HIV-infected person shall provide by telephone to the department any relevant information provided by the HIV-infected person regarding any party with whom the HIV-infected person has had sexual relations or has shared drug injecting equipment. The information may include the third party's name, address, telephone number, and any other locating information known to the physician. The department shall use the information in accordance with procedures established for the voluntary partner notification program.

*b.* Notification of the third party and any disclosure concerning the purpose of that notification shall be made in person. However, initial contact with the third party may be made by telephone, mail,

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or other electronic means to arrange the meeting with the department representative. The nature of the matter to be discussed shall not be revealed in the telephone call, letter, or other electronic message.

**11.18(7) Confidentiality.** The HIV-infected person's physician and the department shall protect the confidentiality of the third party and the HIV-infected person. The identity of the HIV-infected person shall remain confidential unless it is necessary to reveal it to the third party so that the third party may avoid exposure to HIV. If the identity of the HIV-infected person is revealed, the third party shall be presented with a statement in writing at the time of disclosure which includes the following or substantially similar language: "Confidential information revealing the identity of a person infected with HIV has been disclosed to you. The confidentiality of this information is protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains. Any breach of the required confidential treatment of this information subjects you to legal action and civil liability for monetary damages. A general authorization for the release of medical or other information is not sufficient for this purpose."

**11.18(8) Immunity.** A health care provider attending an HIV-infected person has no duty to disclose to or to warn third parties of the dangers of exposure to HIV through contact with the HIV-infected person and is immune from any liability, civil or criminal, for failure to disclose to or warn third parties of the condition of the HIV-infected person.

Rules 641—11.15(139A,141A) to 641—11.18(141A) are intended to implement Iowa Code sections 139A.33 and 141A.5.

**641—11.19 and 11.20 Reserved.**

CARE PROVIDERS EXPOSED TO CONTAGIOUS OR INFECTIOUS DISEASES

**641—11.21(139A) Purpose.** The purpose of these rules is to implement Iowa Code section 139A.19, relating to care providers who are exposed to contagious or infectious diseases.

**641—11.22(139A) Definitions.** For the purpose of rules 641—11.21(139A) to 641—11.26(139A), the following definitions shall apply:

*"AIDS"* means acquired immune deficiency syndrome as defined by CDC.

*"Blood-borne viral hepatitis"* means hepatitis B or hepatitis C.

*"Care provider"* means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual's official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in Iowa Code section 147A.1, firefighter, or peace officer. "Care provider" also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in Iowa Code section 613.17.

*"CDC"* means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

*"Certification of a significant exposure report"* means the determination by an authorized infection preventionist, occupational health professional, or other personnel trained in infection control or infectious disease medicine and designated by a facility to review significant exposure reports that the incident described by the exposed care provider meets the definition of a significant exposure as defined in this rule.

*"Contagious or infectious disease"* means blood-borne viral hepatitis, meningococcal disease, AIDS or HIV, tuberculosis, and any other disease determined to be life-threatening to a person exposed to the disease as established by the department based upon a determination by the state epidemiologist and in accordance with guidelines from CDC.

*"Department of corrections"* means the Iowa department of corrections.

*"Designated representative"* means a person who is designated by a department, agency, division, or service organization to act on behalf of the exposed care provider as a liaison with the facility that received the source patient when the exposure occurred in the field or during patient transport.

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*“Exposure”* means a specific eye, mouth, other mucous membrane, nonintact skin, or parenteral contact with blood or other potentially infectious bodily fluids.

*“HBV”* means hepatitis B virus.

*“Health care facility”* means a health care facility as defined in Iowa Code section 135C.1, an ambulatory surgical center, or a clinic.

*“Health care provider”* means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, nursing, dentistry, optometry, or as a physician assistant, dental hygienist, or acupuncturist.

*“HIV”* means the human immunodeficiency virus identified as the causative agent of AIDS.

*“Home health services”* means health care services provided by a care provider in a patient’s home or other residence.

*“Infectious bodily fluids”* means bodily fluids capable of transmitting HIV as listed in “Guidelines for Prevention of Transmission of Human Immunodeficiency Virus and Hepatitis B Virus to Health-Care and Public-Safety Workers,” found in Morbidity and Mortality Weekly Report, dated June 23, 1989, Volume 38, Number S-6, published by the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, Atlanta, Georgia 30333, or subsequent CDC statements on this topic. To prevent HIV and blood-borne viral hepatitis disease transmission, this reference indicates that standard precautions should be followed for exposure to the following infectious bodily fluids: blood, amniotic fluid, pericardial fluid, peritoneal fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen, vaginal secretions, and saliva contaminated with blood. HIV and blood-borne viral hepatitis disease transmission has not occurred from feces, nasal secretions, sputum, sweat, tears, urine, vomitus, and saliva when it is not contaminated with blood.

*“Respite care services”* means health care services provided by a care provider in a patient’s home or other residence on a short-term, temporary basis as relief to those who are caring for family members.

*“Significant exposure”* means a situation in which there is a risk of contracting disease through exposure to a patient’s infectious bodily fluids in a manner capable of transmitting an infectious agent as determined by CDC. Exposure includes contact with blood or other infectious bodily fluids to which standard precautions apply through percutaneous inoculation or contact with an open wound, nonintact skin, or mucous membranes during the performance of normal job duties. Significant exposures include:

1. Transmission of blood, bloody fluids, or other infectious bodily fluids of the source patient onto a mucous membrane (mouth, nose, or eyes) of the care provider.
2. Transmission of blood, bloody fluids, or other infectious bodily fluids of the source patient onto an open wound or lesion with significant breakdown in the skin barrier, including a needle puncture with a needle contaminated with blood, bloody fluids, or other infectious bodily fluids.

*“Significant exposure report”* means the Report of Exposure to HIV or Other Infectious Disease form provided by the department. This is the only form authorized to be used to document a significant exposure to infectious bodily fluids such that the source patient is deemed to consent to a test to determine if the patient has a contagious or infectious disease, and is deemed to consent to notification of the care provider of the results of the test, pursuant to Iowa Code section 139A.19.

**641—11.23(139A,141A) Exposures in non-clinical settings.**

**11.23(1)** If a care provider sustains a significant exposure from a patient while rendering health care or other services, other than home-health or respite care services, outside of a health care facility or hospital, the care provider shall file a significant exposure report as soon as reasonably possible following the exposure. When the exposure occurred outside a clinical setting, a care provider who has sustained a significant exposure should file this report with the infection control, occupational health, or other designated office of the facility to which the patient was transported.

**11.23(2)** The source patient to whom the care provider was exposed is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission of a significant exposure report and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease

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control. No further consent from the source patient is required. However, the source patient shall be notified that an exposure has occurred and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source patient is a minor, the minor shall be informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code section 141A.7(3).

**11.23(3)** Hospitals, clinics, or other health care facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to the source patient when the source patient is delivered to the facility and the exposure occurred prior to the delivery. The policies and procedures shall include the possibility for the care provider to designate a representative to whom notification shall be provided and who shall, in turn, notify the care provider. The identity of the designated representative of the care provider shall not be revealed to the source patient. The designated representative shall inform the hospital, clinic, or other health care facility, institution administered by the department of corrections, or jail of those parties who received the notification and, following receipt of this information and upon request of the source patient, the hospital, clinic, or other health care facility, institution administered by the department of corrections, or jail shall inform the source patient of the parties to whom notification was provided.

**11.23(4)** The hospital, clinic, or other health care facility to whom the source patient is delivered shall conduct the test. If the source patient is delivered to an institution administered by the department of corrections, the test shall be conducted by the staff physician of the institution. If the source patient is delivered to a jail, the test shall be conducted by the attending physician of the jail or the county medical examiner. If the source patient was deemed to consent upon certification of a significant exposure report, the sample and test results shall only be identified by a number.

**11.23(5)** If a test result is positive, the hospital, clinic, or other health care facility, or other person performing the test shall notify the source patient and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The report to the department shall include the name of the source patient.

**11.23(6)** If a source patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health care facility, or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the source patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health facility, or other person performing the test shall notify the legal guardian of the minor.

**11.23(7)** The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the source patient has a contagious or infectious disease. The notification shall not include the name of the source patient unless the patient consents. If the care provider who sustained a significant exposure determines the identity of a source patient who has been diagnosed or confirmed as having a contagious or infectious disease, the identity of the source patient shall be confidential information and shall not be disclosed by the care provider to any other person unless a specific written release is obtained from the source patient.

**11.23(8)** This rule does not preclude a hospital, clinic, other health care facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health care facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health care facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a source patient's name, unless the patient consents.

**11.23(9)** The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

**11.23(10)** The report form “Report of Exposure to HIV or Other Infectious Disease” is a confidential record pursuant to Iowa Code section 141A.9.

**11.23(11)** The employer of a care provider who sustained a significant exposure shall pay the cost of testing for the source patient and for the testing of the care provider, if the significant exposure was sustained during the course of employment. However, the department shall assist a source patient and an exposed care provider in finding resources to pay for the costs of the testing when a care provider was exposed while rendering direct aid without compensation.

**11.23(12)** A hospital’s, clinic’s, other health care facility’s, or health care provider’s duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to a patient who was the source of the significant exposure.

**11.23(13)** Notwithstanding subrule 11.23(12), the hospital, clinic, or other health care facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health care facility, the patient who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed care provider, wishes to provide information regarding the source patient’s contagious or infectious disease status to the exposed care provider.

**11.23(14)** Notwithstanding any other provision of law to the contrary, a care provider may transmit cautions regarding contagious or infectious disease information, with the exception of AIDS or HIV pursuant to Iowa Code section 80.9B, in the course of the care provider’s duties over the police radio broadcasting system under Iowa Code chapter 693 or any other radio-based communications system if the information transmitted does not personally identify an individual.

#### **641—11.24(139A,141A) Exposures in clinical settings.**

**11.24(1)** If a care provider sustains a significant exposure from a patient while rendering health care services or other services within a hospital, clinic, or other health care facility, or while delivering home-health or respite care services, the care provider shall file a report as soon as reasonably possible following the exposure. A care provider who has sustained a significant exposure should file the report with the infection control, occupational health, or other office designated by the facility in which the exposure occurred, or by the facility which has oversight for the delivery of home-health or respite care services.

*a.* If a general consent form was signed and in effect at the time of the significant exposure and the source patient is an adult, a significant exposure report form shall not be required to document the significant exposure. The health care facility or hospital may use an employee incident report or other similar form for this purpose. The source patient to whom the care provider was exposed is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test, upon submission and review of an employee incident report and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. No further consent from the source patient is required. However, a source patient shall be notified that an exposure has occurred and shall be told which specific tests are being performed. Prior to conducting an HIV-related test, the health care facility or hospital shall provide information to the source patient concerning testing and a means of obtaining additional information regarding HIV infection and risk reduction pursuant to Iowa Code section 141A.6.

*b.* If no consent form was signed or in effect at the time of the exposure, or if the source patient is a minor, the source patient is deemed to consent to a test to determine if the patient has a contagious or infectious disease and is deemed to consent to notification of the care provider or the designated representative of the results of the test upon submission of a significant exposure report form and certification of the significant exposure by an authorized infection preventionist, occupational health professional, or other professional trained in infectious disease control. Source patients shall be notified that an exposure has occurred and shall be told which specific tests are being performed to determine the presence of contagious or infectious diseases. If the source patient is a minor, the minor shall be



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informed prior to an HIV-related test that, upon positive confirmation of an HIV-related test result, the minor's legal guardian shall be informed of the positive result, pursuant to Iowa Code section 141A.7(3).

**11.24(2)** Hospitals, clinics, or other health care facilities, institutions administered by the department of corrections, and jails shall have written policies and procedures for reviewing and certifying significant exposure report forms or other employee incident report forms, testing a source patient, and notifying a care provider who sustained a significant exposure while rendering health care services or other services to a patient during the admission, care, or treatment of the patient at the facility, or while delivering home-health or respite care services.

**11.24(3)** The hospital, clinic, or other health care facility where exposure occurred or which has oversight for the delivery of home-health or respite care services shall conduct the test. If a general consent form was signed and in effect and the source patient is an adult, the sample and test results shall be identified by name. If the source patient was deemed to consent to a test and to notification of the care provider upon certification of a significant exposure report pursuant to subrule 11.24(1) because no general consent was signed and in effect at the time of the exposure or because the source patient is a minor, the sample and test results shall be identified only by a number.

**11.24(4)** If a test result is positive, the hospital, clinic, or other health care facility or other person performing the test shall notify the source patient and make any required reports to the department pursuant to Iowa Code sections 139A.3 and 141A.6. The reports to the department shall include the name of the source patient.

**11.24(5)** If a source patient is diagnosed or confirmed as having a contagious or infectious disease, the hospital, clinic, or other health care facility or other person performing the test shall notify the care provider or the designated representative of the care provider who shall then notify the care provider. If the source patient is a minor and is diagnosed with HIV infection, the hospital, clinic, or other health care facility or other person performing the test shall notify the legal guardian of the minor.

**11.24(6)** The notification shall advise the care provider of possible exposure to a particular contagious or infectious disease and recommend that the provider seek medical attention. The notification shall be provided as soon as reasonably possible following determination that the source patient has a contagious or infectious disease.

**11.24(7)** This rule does not preclude a hospital, clinic, other health care facility, or a health care provider from providing notification to a care provider under circumstances in which the hospital's, clinic's, other health care facility's, or health care provider's policy provides for notification of the hospital's, clinic's, other health care facility's, or health care provider's own employees of exposure to a contagious or infectious disease that is not life-threatening if the notice does not reveal a source patient's name, unless the patient consents.

**11.24(8)** The infection control, occupational health, or other designated office of the facility shall maintain a record of all significant exposure reports it receives and shall retain each report for a period of five years.

**11.24(9)** The report form "Report of Exposure to HIV or Other Infectious Disease" is a confidential record pursuant to Iowa Code section 141A.9.

**11.24(10)** The employer of a care provider who sustained a significant exposure shall pay the cost of testing for the source patient and for the testing of the care provider, if the significant exposure was sustained during the course of employment.

**11.24(11)** A hospital's, clinic's, other health care facility's, or health care provider's duty to notify under these rules is not continuing. It is limited to the diagnosis of a contagious or infectious disease made in the course of admission, care, and treatment following the rendering of health care services or other services to the patient who was the source of the significant exposure.

**11.24(12)** Notwithstanding subrule 11.24(11), the hospital, clinic, or other health care facility may notify the exposed care provider if, following discharge from or completion of care or treatment by the hospital, clinic, or other health care facility, the patient who was the source of the significant exposure, and for whom a significant exposure report was submitted that did not result in notification of the exposed

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care provider, wishes to provide information regarding the source patient's contagious or infectious disease status to the exposed care provider.

**641—11.25(139A) Immunity.** Hospitals, clinics, health care providers, or other persons participating in good faith in complying with provisions authorized or required under these rules are immune from any liability, civil or criminal, which may otherwise be incurred or imposed.

**641—11.26(139A) Duty to test.** A hospital, clinic, other health care facility, health care provider, or other person who is authorized to perform a test under these rules has no duty to perform the test authorized.

Rules 641—11.21(139A) to 641—11.26(139A) are intended to implement Iowa Code section 139A.19.

**641—11.27 to 11.29 Reserved.**

## HIV-RELATED TEST FOR CONVICTED OR ALLEGED SEXUAL-ASSAULT OFFENDERS AND VICTIMS

**641—11.30(915) Purpose.** The purpose of these rules is to describe procedures to follow for testing of a convicted or alleged offender for HIV pursuant to Iowa Code chapter 915, and to establish procedures to follow for providing counseling, health care, and support services to the victim.

**641—11.31(915) Definitions.** For the purpose of rules 641—11.30(915) to 641—11.34(915), the following definitions shall apply:

*"AIDS"* means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

*"Alleged offender"* means a person who has been charged with the commission of a sexual assault or a juvenile who has been charged in juvenile court with being a delinquent as a result of actions that would constitute a sexual assault.

*"Authorized representative"* means an individual who is authorized by the victim to request an HIV-related test of a convicted or alleged offender and who is any of the following:

1. The parent, guardian, or custodian of the victim if the victim is a minor.
2. The physician of the victim.
3. The victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results.
4. The victim's spouse.
5. The victim's legal counsel.

*"Convicted offender"* means a person convicted of a sexual assault or a juvenile who has been adjudicated delinquent for an act of sexual assault.

*"Department"* means the Iowa department of public health.

*"Department of corrections"* means the Iowa department of corrections.

*"Division"* means the crime victim assistance division of the office of the attorney general.

*"HIV"* means the human immunodeficiency virus identified as the causative agent of AIDS.

*"HIV-related test"* means a diagnostic test conducted by a laboratory approved pursuant to CLIA for determining the presence of HIV or antibodies to HIV.

*"Petitioner"* means a person who is the victim of a sexual assault which resulted in alleged significant exposure, or the parent, guardian, or custodian of a victim if the victim is a minor, for whom the county attorney files a petition with the district court to require the convicted offender to undergo an HIV-related test.

*"Sexual assault"* means sexual abuse as defined in Iowa Code section 709.1, or any other sexual offense by which a victim has allegedly had sufficient contact with a convicted or an alleged offender to be deemed a significant exposure.

*"Significant exposure"* means contact of the victim's ruptured or broken skin or mucous membranes with the blood or bodily fluids, other than tears, saliva, or perspiration, of the convicted or alleged

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offender. “Significant exposure” is presumed to have occurred when there is a showing that there was penetration of the convicted or alleged offender’s penis into the victim’s vagina or anus, contact between the mouth and genitalia, or contact between the genitalia of the convicted or alleged offender and the genitalia or anus of the victim.

“*Victim*” means a petitioner or a person who is the victim of a sexual assault which resulted in significant exposure, or the parent, guardian, or custodian of such a victim if the victim is a minor, for whom the victim or the peace officer files an application for a search warrant to require the alleged offender to undergo an HIV-related test. “Victim” includes an alleged victim.

“*Victim counselor*” means a person who is engaged by a crime victim center as defined in Iowa Code section 915.20A, who is certified as a counselor by the crime victim center, and who has completed at least 20 hours of training provided by the Iowa coalition against sexual assault or a similar agency.

**641—11.32(915) HIV-related test—convicted or alleged sexual assault offender.**

**11.32(1)** Unless a petitioner chooses to be represented by private counsel, the county attorney shall represent the victim’s interest in all proceedings under Iowa Code chapter 915.

**11.32(2)** If a person is convicted of sexual assault or adjudicated delinquent for an act of sexual assault, the county attorney, if requested by the petitioner, shall petition the court for an order requiring the convicted offender to submit to an HIV-related test, provided that all of the following conditions are met:

*a.* The sexual assault for which the offender was convicted or adjudicated delinquent included sufficient contact between the victim and the convicted offender to be deemed a significant exposure pursuant to 641—11.31(915).

*b.* The authorized representative of the petitioner, the county attorney, or the court sought to obtain written informed consent to the testing from the convicted offender.

*c.* Written informed consent was not provided by the convicted offender.

**11.32(3)** If a person is an alleged offender, the county attorney, if requested by the victim, shall make application to the court for the issuance of a search warrant, in accordance with Iowa Code chapter 808, for the purpose of requiring the alleged offender to submit to an HIV-related test, if all of the following conditions are met:

*a.* The application states that the victim believes that the sexual assault for which the alleged offender is charged included sufficient contact between the victim and the alleged offender to be deemed a significant exposure pursuant to 641—11.31(915) and states the factual basis for the belief that a significant exposure exists.

*b.* The authorized representative of the victim, the county attorney, or the court sought to obtain written informed consent to the testing from the alleged offender.

*c.* Written informed consent was not provided by the alleged offender.

**11.32(4)** Upon receipt of the petition or application, the court shall:

*a.* Prior to the scheduling of a hearing, refer the victim for counseling by a victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the nature, reliability and significance of the HIV-related test and of any test results of the convicted or alleged offender.

*b.* Schedule a hearing to be held as soon as is practicable.

*c.* Cause written notice to be served on the convicted or alleged offender who is the subject of the proceeding, in accordance with the Iowa Rules of Civil Procedure relating to the service of original notice, or if the convicted or alleged offender is represented by legal counsel, provide written notice to the convicted or alleged offender and the convicted or alleged offender’s legal counsel.

*d.* Provide for the appointment of legal counsel for a convicted or alleged offender if the convicted or alleged offender desires but is financially unable to employ counsel.

*e.* Furnish legal counsel with copies of the petition or application, written informed consent, if obtained, and copies of all other documents related to the petition or application, including, but not limited to, the charges and orders.

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**11.32(5)** A hearing under this rule shall be conducted in an informal manner consistent with orderly procedure and in accordance with the Iowa Rules of Evidence.

*a.* The hearing shall be limited in scope to the review of questions of fact only as to the issue of whether the sexual assault for which the offender was convicted or adjudicated delinquent or for which the alleged offender was charged provided sufficient contact between the victim and the convicted or alleged offender to be deemed a significant exposure, and to questions of law.

*b.* In determining whether the contact should be deemed a significant exposure for a convicted offender, the court shall base the determination on the testimony presented during the proceedings on the sexual assault charge, the minutes of the testimony or other evidence included in the court record, or if a plea of guilty was entered, based upon the complaint or upon testimony provided during the hearing. In determining whether the contact should be deemed a significant exposure for an alleged offender, the court shall base the determination on the application and the factual basis provided in the application for the belief of the applicant that a significant exposure exists.

*c.* The victim may testify at the hearing, but shall not be compelled to testify. The court shall not consider the refusal of a victim to testify at the hearing as material to the court's decision regarding issuance of an order or search warrant requiring testing.

*d.* The hearing shall be in camera unless the convicted or alleged offender and the petitioner or victim agree to a hearing in open court and the court approves. The report of the hearing proceedings shall be sealed and no report of the proceeding shall be released to the public, except with the permission of all parties and the approval of the court.

*e.* Stenographic notes or electronic or mechanical recording shall be taken of all court hearings unless waived by the parties.

**11.32(6)** Following the hearing, the court shall require a convicted or alleged offender to undergo an HIV-related test only if the petitioner or victim proves all of the following by a preponderance of evidence.

*a.* The sexual assault constituted a significant exposure.

*b.* An authorized representative of the petitioner or victim, the county attorney, or the court sought to obtain written informed consent from the convicted or alleged offender.

*c.* Written informed consent was not provided by the convicted or alleged offender.

**11.32(7)** A convicted or alleged offender who is required to undergo an HIV-related test may appeal to the court for review of questions of law only, but may appeal questions of fact if the findings of fact are clearly erroneous.

**641—11.33(915) Medical examination costs.** The cost of a medical examination for the purpose of gathering evidence and the cost of treatment for the purpose of preventing venereal disease shall be paid from the victim compensation fund as established in Iowa Code chapter 915. Information is available from the department of justice, crime victim assistance program, telephone (515)281-5044.

**641—11.34(915) Testing, reporting, and counseling—penalties.**

**11.34(1)** The physician or other practitioner who orders the testing for HIV of a convicted or alleged offender under Iowa Code chapter 915 shall disclose the results of the test to the convicted or alleged offender and to the victim counselor or a person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner.

**11.34(2)** Prior to ordering an HIV-related test on a convicted or alleged offender, the physician or practitioner shall provide information to the subject of the test concerning testing and where to obtain additional information on HIV transmission and risk reduction, pursuant to Iowa Code section 141A.6. The department may be contacted for brochures that may assist in meeting the requirements of Iowa Code section 141A.6.

**11.34(3)** At any time that the subject of an HIV-related test is informed of confirmed positive test results, the physician or other practitioner who ordered the test shall initiate counseling concerning the emotional and physical health effects of HIV infection, as required under Iowa Code section 141A.7, and shall make any required reports to the department pursuant to Iowa Code section 141A.6.

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*a.* The physician or other practitioner shall encourage an HIV-infected person to participate in the voluntary partner notification program pursuant to rule 641—11.17(139A,141A).

*b.* The physician or other practitioner may provide to the department any relevant information provided by the HIV-infected person regarding any party with whom the HIV-infected person has had sexual relations or has shared drug injecting equipment.

**11.34(4)** Subsequent testing arising out of the same incident of exposure shall be conducted in accordance with the procedural and confidentiality requirements of 641—11.30(915) to 641—11.34(915).

**11.34(5)** Results of a test performed under 641—11.30(915) to 641—11.34(915), except as provided in subrule 11.34(6), shall be disclosed only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim, the victim counselor or person requested by the victim who is authorized to provide the counseling regarding the HIV-related test and results; the physician of the victim if requested by the victim; the parent, guardian, or custodian of the victim, if the victim is a minor; and the county attorney who filed the petition for the HIV-related testing under 641—11.30(915) to 641—11.34(915), who may use the results to file charges of criminal transmission of HIV. Results of a test performed under these rules shall not be disclosed to any other person without the written informed consent of the convicted or alleged offender. A person to whom the results of a test have been disclosed under 641—11.30(915) to 641—11.34(915) is subject to the confidentiality provision of Iowa Code section 141A.9, and shall not disclose the results to another person except as authorized by Iowa Code section 141A.9.

**11.34(6)** If HIV-related testing is ordered under 641—11.30(915) to 641—11.34(915), the court shall also order periodic testing of the convicted offender during the period of incarceration, probation, or parole or of the alleged offender during a period of six months following the initial test if the physician or other practitioner who ordered the initial test of the convicted or alleged offender certifies that, based upon prevailing scientific opinion regarding the maximum period during which the results of an HIV-related test may be negative for a person after being HIV-infected, additional testing is necessary to determine whether the convicted or alleged offender was HIV-infected at the time the sexual assault or alleged sexual assault was perpetrated. The results of the subsequent periodic tests conducted pursuant to subrule 11.34(6) shall be released only to the physician or other practitioner who ordered the test of the convicted or alleged offender; the convicted or alleged offender; the victim counselor or person requested by the victim to provide the counseling regarding the HIV-related test and results, who shall disclose the results to the petitioner; the physician of the victim if requested by the victim; and the county attorney, who may use the results as evidence in the prosecution of the sexual assault or in the prosecution of the offense of criminal transmission of HIV.

**11.34(7)** The court shall not consider the disclosure of an alleged offender's serologic status to an alleged victim, prior to conviction, as a basis for a reduced plea or reduced sentence.

**11.34(8)** The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be included in the convicted offender's medical or criminal record unless otherwise included in department of corrections records.

**11.34(9)** The fact that HIV-related tests were performed under 641—11.30(915) to 641—11.34(915) and the results of the tests shall not be used as a basis for further prosecution of a convicted offender in relation to the incident which is the subject of the testing, to enhance punishments, or to influence sentencing.

**11.34(10)** If the serologic status of a convicted offender, which is conveyed to the victim, is based upon an HIV-related test other than a test which is authorized as a result of the procedures established in 641—11.30(915) to 641—11.34(915), legal protections which attach to such testing shall be the same as those which attach to an initial test under 641—11.30(915) to 641—11.34(915), and the rights to a predisclosure hearing and to appeal provided under Iowa Code chapter 915 shall apply.

**11.34(11)** HIV-related testing required under 641—11.30(915) to 641—11.34(915) shall be conducted by the state hygienic laboratory.

**11.34(12)** Notwithstanding the provision of these rules requiring initial testing, if a petition is filed with the court under Iowa Code section 915.42 requesting an order for testing and the order is granted,

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and if a test has previously been performed on the convicted offender while under the control of the department of corrections, the test results shall be provided in lieu of the performance of an initial test of the convicted offender, in accordance with 641—11.30(915) to 641—11.34(915).

**11.34(13)** Test results shall not be disclosed to a convicted offender who elects against disclosure.

**11.34(14)** In addition to the counseling received by a victim, referral to appropriate health care and support services shall be provided.

**11.34(15)** In addition to persons to whom disclosure of the results of a convicted or alleged offender's HIV-related test results is authorized under these rules, the victim may also disclose the results to the victim's spouse, persons with whom the victim has engaged in vaginal, anal, or oral intercourse subsequent to the sexual assault, or members of the victim's family within the third degree of consanguinity.

**11.34(16)** A person to whom disclosure of a convicted offender's HIV-related test results is authorized under these rules shall not disclose the results to any other person for whom disclosure is not authorized under these rules. A person who intentionally or recklessly makes an unauthorized disclosure in violation of this subrule is subject to a civil penalty of \$1,000. The attorney general or the attorney general's designee may maintain a civil action to enforce these rules. Proceedings maintained under this subrule shall provide for the anonymity of the tested subject, and all documentation shall be maintained in a confidential manner.

Rules 641—11.30(915) to 641—11.34(915) are intended to implement Iowa Code sections 915.40 to 915.43.

**641—11.35 to 11.39 Reserved.**

AIDS DRUG ASSISTANCE PROGRAM (ADAP)

**641—11.40(141A) Definitions.** For purposes of rules 641—11.40(141A) to 641—11.49(141A), the following definitions shall apply:

*"ADAP advisory committee"* means the committee appointed by the bureau of HIV, STD, and hepatitis to provide advice and technical assistance to the department regarding ADAP.

*"ADAP formulary"* means the list of drugs approved for use in ADAP by the bureau upon recommendation of the ADAP advisory committee.

*"AIDS"* means acquired immune deficiency syndrome as defined by the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

*"AIDS drug assistance program"* or *"ADAP"* means the Iowa AIDS drug assistance program administered by the bureau of HIV, STD, and hepatitis within the department and includes two components, the medication assistance program and the health insurance assistance program.

*"Bureau"* means the bureau of HIV, STD, and hepatitis within the department.

*"Deductible"* means an amount of money that an insured person must pay out of pocket before any benefits from the health insurance policy can be used.

*"Department"* means the Iowa department of public health.

*"Director"* means the director of the Iowa department of public health.

*"Health insurance assistance program"* means a component of ADAP that purchases health insurance and pays insurance premiums, copayments for medications, and deductibles for eligible enrollees in ADAP.

*"HIV"* means the human immunodeficiency virus identified as the causative agent of AIDS.

*"Household"* means a group of individuals residing together who are related by birth, marriage, or adoption; or an individual who does not reside with any other individual to whom the individual is related by birth, marriage, or adoption.

*"Medication assistance program"* means a component of ADAP that provides medications directly to eligible enrollees in ADAP.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*“Modified adjusted gross income”* or *“MAGI”* means the calculation of income based upon applicable Internal Revenue Code and regulations of the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

*“Payer of last resort”* means a requirement to coordinate services and seek payment from all other sources before Ryan White funds are used.

**641—11.41(141A) Purpose.** The AIDS drug assistance program is a state-administered program that provides certain HIV/AIDS medications to eligible low-income individuals diagnosed with HIV if adequate funding is available for administration of the program. There are two components to the Iowa AIDS drug assistance program: the medication assistance program and the health insurance assistance program. The AIDS drug assistance program is authorized under Part B of Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009 (Public Law 111-87). This legislation requires that the Ryan White program, including the AIDS drug assistance program, be the payer of last resort for HIV-related services. ADAP is not an entitlement program and does not create a right to assistance. In the event that funding is exhausted or terminated or there are changes in state or federal guidelines, programs, or regulations that impact funding available to ADAP, the department reserves the right to close enrollment, cease to provide medication assistance or health insurance assistance, or alter eligibility criteria until such time that funding is again sufficient.

**641—11.42(141A) Ensuring payer of last resort.** To ensure that ADAP is the payer of last resort, the Iowa Medicaid enterprise shall grant the department access to client information for persons enrolled in Medicaid.

**641—11.43(141A) Eligibility requirements.**

**11.43(1)** An applicant is eligible to participate in the ADAP medication assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has no health insurance to cover the cost of the drugs that are or may become available from ADAP;
- c. Is currently being prescribed a drug on the ADAP formulary;
- d. Has an annual MAGI that is less than or equal to 200 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the U.S. Department of Health and Human Services for the size of the household (this income shall be determined after a \$500 work-related allowance is deducted from the monthly salary of an employed person with HIV/AIDS);
- e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and
- f. Is a resident of Iowa.

**11.43(2)** An applicant is eligible to participate in the ADAP health insurance assistance program if the applicant:

- a. Applies for enrollment in ADAP on a form provided by the department;
- b. Has creditable health insurance coverage;
- c. Is currently being prescribed a drug on the ADAP formulary;
- d. Has an annual MAGI that is less than or equal to 400 percent of the poverty level as determined by the most recent federal poverty guidelines published annually by the U.S. Department of Health and Human Services for the size of the household;
- e. Has a medical diagnosis of HIV infection or AIDS or is an unborn infant or an infant under 18 months of age who has an HIV-infected mother; and
- f. Is a resident of Iowa.

**641—11.44(141A) Enrollment process.**

**11.44(1)** The department shall review each completed application and shall determine enrollment based upon applicant eligibility, the date on which the application was completed, and the availability of

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

funds. When the department determines that an applicant is eligible for enrollment, the applicant may be enrolled for six months commencing with the date of the determination or may be enrolled for a shorter time period at the discretion of the department.

**11.44(2)** An applicant shall provide the department with all requested information and shall execute any consent forms or releases of information necessary for the department to verify eligibility.

**641—11.45(141A) Discontinuation of services.**

**11.45(1)** The department shall review eligibility semiannually after enrollment unless one of the following events occurs within the six-month period to end eligibility:

- a.* The enrolled individual dies;
- b.* The enrolled individual is determined eligible and enrolled to fully receive medical services through a third-party payer and is able to fully pay the insurance deductibles and copayments;
- c.* The enrolled individual's annual MAGI increases to an amount above the respective ADAP component's income guidelines;
- d.* The enrolled individual establishes residency outside the state of Iowa;
- e.* The enrolled individual does not request drugs over a 90-day period; or
- f.* The enrolled individual is placed in an institution such as a nursing home, state prison, or jail for more than 30 days.

**11.45(2)** An applicant must submit renewal documentation on a semiannual basis, accompanied by all information requested by the department.

**641—11.46(141A) Distribution requirements.**

**11.46(1)** Enrolled individuals shall be eligible to receive financial assistance only for drugs that:

- a.* Have received Food and Drug Administration approval to treat HIV or prevent the deterioration of health due to HIV, coinfections, or opportunistic infections; and
- b.* Are on the ADAP formulary.

**11.46(2)** The primary care provider shall write each drug prescription for an applicant or enrolled individual.

**11.46(3)** The enrolled individual must obtain the approved drug from the department's contracted pharmacy unless an exception to this requirement is granted by the department.

**641—11.47(141A) ADAP waiting list.**

**11.47(1)** If an applicant is eligible for ADAP and sufficient funds are available to provide services to the applicant, the department shall enroll the applicant. If the applicant is eligible for ADAP and sufficient funds are not available to provide services to the applicant, the department shall place the applicant's name on the ADAP waiting list in the order provided for in this rule.

**11.47(2)** The department shall place names on the waiting list in chronological order based upon the date of receipt of a completed application by the department.

**11.47(3)** To verify that applicants on the waiting list continue to meet ADAP eligibility requirements, the department shall require applicants on the waiting list to submit reapplication forms semiannually.

**11.47(4)** The department shall remove applicants from the waiting list in the chronological order in which their completed applications were approved, provided all updates were received by the department.

**641—11.48(141A) Appeals.** The department shall cause an applicant to be notified of the department's decision to approve or deny an application or to place an applicant on the ADAP waiting list. In the event an applicant is dissatisfied with the department's decision, the applicant may submit a formal appeal in writing to the ADAP advisory committee. Such request shall be delivered in person or shall be mailed by certified mail, return receipt requested, to ADAP Advisory Committee, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Upon receipt of such an appeal, the ADAP advisory committee shall review the case and issue a written determination within 15 days of receipt of the request. The decision shall refer to the applicant by initials or other



## PUBLIC HEALTH DEPARTMENT[641](cont'd)

nonidentifying means. The ADAP advisory committee's decision shall be final and binding. This appeal process does not constitute a contested case proceeding as defined in Iowa Code chapter 17A.

**641—11.49(141A) Confidentiality.** The ADAP application and all information received or maintained by the department in connection with ADAP shall be considered confidential information in accordance with Iowa Code section 141A.9.

Rules 641—11.40(141A) to 641—11.49(141A) are intended to implement Iowa Code section 141A.3.

**ARC 1077C****PUBLIC HEALTH DEPARTMENT[641]****Notice of Termination**

Pursuant to the authority of 2013 Iowa Acts, Senate File 427, section 35, the Department of Public Health terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0935C**, proposing to amend Chapter 28, "Plumbing and Mechanical Systems Board—Licensure Fees," Iowa Administrative Code.

The Notice proposed to amend Chapter 28 by identifying the fees associated with apprentice, journey and master licenses; medical gas piping certificates; inactive licenses; contractor licenses; and specialty licenses. In addition, the Notice proposed all licenses be issued for a period of three years, and until June 29, 2017, those renewing for less than three years would have their license fees prorated using a one-sixth deduction for each six-month period. Late fees and requirements for lapsed licenses were also included. A fee for converting an HVAC-refrigeration or hydronics license to a mechanical license was also included.

The Department is terminating the rule making commenced in **ARC 0935C** and will renote the proposed amendments to incorporate different fee amounts and further clarify language related to the fees.

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

**ARC 1036C****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 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 93, "Abuse Education Review Panel," Iowa Administrative Code.

These proposed amendments are necessary to implement 2013 Iowa Acts, Senate File 396, section 49, which strikes the language that established an abuse education review panel and which makes the review and approval of mandatory reporter training curricula a duty of the Department.

Any interested person may make written comments or suggestions on the proposed amendments on or before October 22, 2013. Such written comments should be directed to Diana Nicholls Blomme, Division of Behavioral Health, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [diana.nicholls-blomme@idph.iowa.gov](mailto:diana.nicholls-blomme@idph.iowa.gov).

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

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

These amendments are intended to implement Iowa Code section 135.11(24) as amended by 2013 Iowa Acts, Senate File 396, section 49.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 93**, title, as follows:  
~~ABUSE EDUCATION REVIEW PANEL~~ MANDATORY REPORTER TRAINING CURRICULA

ITEM 2. Amend rule 641—93.1(135) as follows:

**641—93.1(135) Purpose.** The purpose of the ~~abuse education review panel~~ mandatory reporter training curricula process is to provide an objective method by which curricula for child and dependent adult abuse mandatory reporter training are reviewed and approved. Approved curricula are to be taught to persons who work in a position classification that under law makes the persons mandatory reporters of child or dependent adult abuse and the position classification does not have a mandatory reporter training curriculum approved by a licensing or examining board.

ITEM 3. Rescind and reserve rules **641—93.2(135)** and **641—93.3(135)**.

ITEM 4. Strike “panel” wherever it appears in rules **641—93.4(135)** to **641—93.7(135)** and insert “department” in lieu thereof.

ITEM 5. Strike “panel’s” wherever it appears in subrule **93.6(1)** and insert “department’s” in lieu thereof.

ITEM 6. Strike “chairperson” wherever it appears in rule **641—93.7(135)** and insert “department” in lieu thereof.

ITEM 7. Amend **641—Chapter 93**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~135.11~~ 135.11(24) as amended by ~~2001~~ 2013 Iowa Acts, ~~chapter 122, section 1~~ Senate File 396, section 49.

**ARC 1043C**

**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 147A.27, the Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 138, “Trauma System Evaluation Quality Improvement Committee,” Iowa Administrative Code.

The rules in Chapter 138 describe the make-up and duties of the trauma system evaluation quality improvement committee. 2013 Iowa Acts, Senate File 396, was signed by the Governor on June 20, 2013. One of the provisions of this bill was to repeal the statute establishing the system evaluation quality improvement committee or SEQIC. This proposed amendment rescinds the Iowa Administrative Code chapter that pertains to SEQIC. The duties of SEQIC will be assigned to the trauma system advisory council or TSAC.

Any interested person may make written comments or suggestions on the proposed amendment on or before October 22, 2013. Such written comments should be directed to Rebecca Curtiss, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [Rebecca.Curtiss@idph.iowa.gov](mailto:Rebecca.Curtiss@idph.iowa.gov).

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

This amendment is intended to implement 2013 Iowa Acts, Senate File 396, section 57.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The following amendment is proposed.

Rescind and reserve **641—Chapter 138.**

## **ARC 1035C**

### **REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

#### **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 543D.5, the Real Estate Appraiser Examining Board hereby gives Notice of Intended Action to amend Chapter 10, “Reciprocity,” Iowa Administrative Code.

The proposed rescission of subrule 10.1(5) would create a 100 percent open-door policy for certified appraisers in other states to become certified in Iowa. This change would also allow Iowa to stay in compliance with the Appraisal Subcommittee’s policy statements that went into effect July 1, 2013. The Board has never used this subrule to request work product from a reciprocal appraiser.

Consideration will be given to all written suggestions or comments on the proposed amendment received no later than 4:30 p.m. on October 23, 2013. Comments should be addressed to Toni Bright, Iowa Real Estate Appraiser Examining Board, 200 E. Grand Ave., Third Floor, Des Moines, Iowa 50309. E-mail may be sent to [toni.bright@iowa.gov](mailto:toni.bright@iowa.gov).

A public hearing will be held on October 23, 2013, at 8:30 a.m. in the Third Floor Professional Licensing Small Conference Room, Professional Licensing and Regulation Bureau, 200 E. Grand Ave., Des Moines, Iowa, at which time persons may present their views on the proposed amendment either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendment.

This amendment is not subject to waiver.

After analysis and review of this rule making, a positive impact on jobs could exist by reducing the regulatory burden for job entry in the state of Iowa for qualified real estate appraisers.

This amendment is intended to implement Iowa Code section 543D.11.

The following amendment is proposed.

Amend rule 193F—10.1(543D) as follows:

#### **193F—10.1(543D) Nonresident certification by reciprocity.**

**10.1(1) to 10.1(4)** No change.

~~**10.1(5)** The board may, at its discretion, request work product from an applicant for certification by reciprocity for good cause shown, such as an applicant’s having a prior history in Iowa that includes a disciplinary investigation or disciplinary action. If work product is requested, the appraiser shall be subject to the process set forth in 193F—subrule 3.5(2) and shall pay the appropriate fee as required in 193F—12.1(543D).~~

**ARC 1042C****REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68 and 2013 Iowa Acts, House File 632, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 71, “Assessment Practices and Equalization,” Iowa Administrative Code.

The subject matter of subrule 71.1(3) is the valuation of agricultural real estate. The proposed amendment to this subrule implements the amendments to Iowa Code sections 427A.1(4) and 441.21(12) pursuant to 2013 Iowa Acts, House File 632, which add real estate used directly in the cultivation and production of algae for harvesting as a crop for animal feed, food, nutritionals, or biofuel production to the definition of “agricultural property.”

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

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

The Department has determined that this proposed amendment may have an impact on small business. 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 4, 2013, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before October 23, 2013. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 23, 2013.

After analysis and review of this rule making, no adverse impact on jobs has been found. The expansion of the definition of “agricultural property” may positively impact job and economic growth for businesses and individuals in the state of Iowa.

This amendment is intended to implement Iowa Code sections 427A.1(4) and 441.21(12) as amended by 2013 Iowa Acts, House File 632.

The following amendment is proposed.

Amend subrule 71.1(3) as follows:

**71.1(3) *Agricultural real estate.***

*a. Generally.* Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or

## REVENUE DEPARTMENT[701](cont'd)

forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this paragraph "a."

b. Vineyards. ~~Vineyards~~ Beginning with valuations established on or after January 1, 2002, vineyards and any buildings located on a vineyard and used in connection with the vineyard shall be classified as agricultural real estate if the primary use of the land and buildings is an activity related to the production or sale of wine.

~~Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.~~

c. Algae cultivation and production. Beginning with valuations established on or after January 1, 2013, real estate used directly in the cultivation and production of algae for harvesting as a crop for animal feed, food, nutritionals, or biofuel production shall be classified as agricultural real estate if the real estate is an enclosed pond or land which contains a photobioreactor. Pursuant to 2013 Iowa Acts, House File 632, section 1, a photobioreactor is not attached to land upon which it sits and shall not be assessed and taxed as real property.

(1) Determining direct usage. To determine if real estate is used "directly" in the cultivation and production of algae, one must first ensure that the real estate is used to perform activities that cultivate and produce algae and is not used for activities that occur before or after the cultivation and production of algae. If the real estate is used to perform activities for the cultivation and production of algae, to be "directly" so used, the real estate must be used to perform activities that are integral and essential to the cultivation and production, as distinguished from activities that are incidental, merely convenient to, or remote from cultivation and production. The fact that real estate is used for activities that are essential or necessary to the cultivation and production of algae does not mean that the real estate is also "directly" used in production. Even if the real estate is used for activities that are essential or necessary to the cultivation and production of algae, if the activities are far enough removed from the cultivation or production of algae, the real estate would not qualify for the agricultural designation.

(2) Examples. The following are nonexclusive examples of real estate which would not be directly used in the cultivation and production of algae:

1. Real estate that is used to store, assemble, or repair machinery and equipment that is used for cultivation and production of algae.
2. Real estate that is used in the management, administration, advertising, or selling of algae.
3. Real estate that is used in the management, administration, or planning of the cultivation and production of algae.
4. Real estate that is used for packaging of the algae which has been produced and cultivated.

**ARC 1037C**

## TRANSPORTATION DEPARTMENT[761]

### Notice of Intended Action

**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 307.10 and 307.12, the Iowa Department of Transportation hereby gives Notice of Intended Action to adopt new Chapter 144, "Automated Traffic Enforcement on the Primary Road System," Iowa Administrative Code.

This proposed new chapter establishes the requirements, procedures, and responsibilities in the use of automated traffic enforcement systems, for fixed and mobile automated enforcement, on the primary road system and will ensure consistency statewide in the use of these systems.

Any interested person may submit written comments or suggestions on the proposed rules before 4:30 p.m. on October 31, 2013. Written comments and suggestions should be addressed to Tracy George,

## TRANSPORTATION DEPARTMENT[761](cont'd)

Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; or sent by e-mail to [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held on Wednesday, October 30, 2013, at 1 p.m. at the Hampton Inn and Suites, 6210 SE Convenience Boulevard, Ankeny, Iowa 50021.

At the public hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules. Persons who wish to make oral presentations at the public hearing may contact Tracy George at (515)239-1358 or by e-mail at [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov) prior to the date of the hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as those relating to hearing or mobility impairments, should contact Tracy George.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

After analysis and review of this rule making, it has been determined that a positive impact on private sector jobs is possible but not able to be determined, as it is not known how many jurisdictions may apply for automated traffic enforcement systems or how many will decide to have the reports completed by consultants. The impact on private sector jobs will be minimal.

These rules are intended to implement Iowa Code chapter 318 and sections 306.4, 307.12, 321.348 and 321.366.

The following amendment is proposed.

Adopt the following **new** 761—Chapter 144:

## CHAPTER 144

## AUTOMATED TRAFFIC ENFORCEMENT ON THE PRIMARY ROAD SYSTEM

**761—144.1(307) Purpose.** The purpose of this chapter is to establish requirements, procedures, and responsibilities in the use of automated traffic enforcement systems on the primary road system. This chapter ensures consistency statewide in the use of automated traffic enforcement systems on the primary road system and pertains to fixed and mobile automated enforcement.

**761—144.2(307) Contact information.** Information relating to this chapter may be obtained from the Office of Traffic and Safety, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

**761—144.3(307) Definitions.** As used in this chapter:

*“Automated enforcement”* means the use of automated traffic enforcement systems for enforcement of laws regulating vehicular traffic.

*“Automated traffic enforcement system”* means a system that operates in conjunction with an official traffic-control signal, as described in Iowa Code section 321.257, or a speed measuring device to produce recorded images of vehicles being operated in violation of traffic or speed laws.

*“High-crash location”* means a location where data indicates a greater frequency or higher rate of crashes when compared with other similar locations within the local jurisdiction, other like jurisdictions, or larger metropolitan area.

*“High-risk location”* means a location where the safety of citizens or law enforcement officers would be at higher risk through conventional enforcement methods.

*“Interstate roads”* means the same as defined in Iowa Code section 306.3.

*“Local jurisdiction”* means a city or county.

*“Primary road system”* means the same as defined in Iowa Code section 306.3.

## TRANSPORTATION DEPARTMENT[761](cont'd)

**761—144.4(307) Overview.****144.4(1) General.**

*a.* Automated enforcement shall only be considered after other engineering and enforcement solutions have been explored and implemented.

*b.* An automated traffic enforcement system should not be used as a long-term solution for speeding or red-light running.

*c.* Automated enforcement should only be considered in extremely limited situations on interstate roads because they are the safest class of any roadway in the state and they typically carry a significant amount of non-familiar motorists.

*d.* Automated enforcement shall only be considered in areas with a documented high-crash or high-risk location in any of the following:

(1) An area or intersection with a significant history of crashes, which can be attributed to red-light running or speeding.

(2) A school zone.

**144.4(2) Applicability.**

*a.* These rules apply only to local jurisdictions using or planning to use automated enforcement on the primary road system.

*b.* The department does not have the authority to own or operate any automated traffic enforcement system.

*c.* The department shall not receive any financial payment from any automated traffic enforcement system owned or operated by a local jurisdiction.

**144.4(3) Department approval.** A local jurisdiction must obtain approval from the department prior to using an automated traffic enforcement system on the primary road system.

**761—144.5(307) Automated traffic enforcement system request.**

**144.5(1) Justification report.** A local jurisdiction requesting to use an automated traffic enforcement system on the primary road system shall provide the department a justification report. A licensed, professional engineer knowledgeable in traffic safety shall sign the justification report.

*a.* The justification report shall provide all necessary information and documentation to clearly define the area, provide evidence documenting why the area is a high-crash or high-risk location, and describe the process used to justify the automated traffic enforcement request.

*b.* At a minimum, the justification report shall:

(1) Document existing traffic speeds, posted speed limits, traffic volumes, and intersection or roadway geometry. Provide assurance that existing speed limits and traffic signal timings are appropriate and describe how they were established.

(2) Document applicable crash history, the primary crash types, crash causes, crash severity, and traffic violations. Only crashes attributable to speeding or the running of a red light shall be included in this report. Compare crash data with other similar locations within the local jurisdiction, other like jurisdictions, or larger metropolitan area.

(3) Identify the critical traffic safety issue(s) from the data in subparagraphs 144.5(1) “*b*”(1) and (2) above and provide a comprehensive list of countermeasures that may address the critical traffic safety issue(s).

(4) Document solutions or safety countermeasures that have been implemented along with those that have been considered but not implemented. These may include law enforcement, engineering, public education campaigns, and other safety countermeasures.

(5) Document discussions held and actions taken with partnering agencies that have resources which could aid in the reduction of crashes attributable to speeding or the running of a red light.

(6) Document why the local jurisdiction believes automated enforcement is the best solution to address the critical traffic safety issue(s).

*c.* If the request is for a mobile automated enforcement system, the justification report shall also:

(1) Include a description of the mobile unit.

## TRANSPORTATION DEPARTMENT[761](cont'd)

(2) Include the proposed duration of use at each location and indicate where the unit will be physically placed relative to the curb, shoulder, median, etc.

**144.5(2) Request to department.** The local jurisdiction shall submit a request and a justification report to the appropriate district engineer.

**144.5(3) Department review.** Within 90 days of receipt of the request and a complete justification report, the department will either approve or deny specific automated enforcement locations. The department may need additional response time if collection of data is needed, such as conducting a speed study. Incomplete justification reports will be returned to the local jurisdiction. The department will review the request and justification report, evaluate the process used, and determine if the proposed automated traffic enforcement system is needed and warranted. If approval to proceed is granted to the local jurisdiction, the department shall prepare an agreement which will be signed by the department and the local jurisdiction.

**144.5(4) Public notice.** Once the department receives a request and a complete justification report from a local jurisdiction, the department may notify the public and include information on the department's Web site.

**761—144.6(306,307,318,321) Minimum requirements for automated traffic enforcement systems.** The following minimum requirements must be met for each automated traffic enforcement system.

**144.6(1) Safe environment for motorists.**

*a.* Any fixed or mobile automated traffic enforcement system must not create a potentially unsafe environment for motorists.

*b.* The system shall:

(1) Be installed and maintained in a safe manner.

(2) Be located where it does not impede, oppose or interfere with free passage along the primary highway right-of-way.

(3) Be located where it does not create a visual obstruction to passing motorists.

(4) Not be placed or parked on any shoulder or median of any interstate highway.

(5) Not be placed or parked within 15 feet of the outside traffic lane of any interstate highway, unless shielded by a crashworthy barrier.

(6) Not be placed or parked on the outside shoulder of any other primary highway for longer than 48 hours unless shielded by a crashworthy barrier.

(7) Not be placed or parked within 2 feet of the back of the curb of a municipal extension of any primary road.

(8) Be placed in a manner to avoid creating traffic backups or delays.

(9) Not be placed nor operational within the defined limits of any construction or maintenance work zone.

*c.* Mobile automated traffic enforcement systems in a vehicle shall be owned and operated by a law enforcement agency, be marked with official decals, and have an "official" license plate affixed to the vehicle.

**144.6(2) Signage.**

*a.* Permanent signs may be posted on primary access roads entering local jurisdictions that use automated enforcement technology.

*b.* For all fixed automated traffic enforcement systems, permanent signs shall be posted in advance of the locations where enforcement systems are in use to advise drivers that cameras are in place.

*c.* For mobile automated traffic enforcement systems, temporary or permanent signs advising that speed is monitored by automated traffic technology shall be posted in advance of the enforcement area as agreed to by the department and the local jurisdiction.

*d.* All signing shall be in accordance with the "Manual on Uniform Traffic Control Devices," as adopted in 761—Chapter 130.

**144.6(3) Enforcement.** If used, automated enforcement technology shall be used in conjunction with conventional law enforcement methods, not as a replacement for law enforcement officer contact.



## TRANSPORTATION DEPARTMENT[761](cont'd)

**144.6(4) Calibration.** Automated traffic enforcement systems require periodic calibration to ensure accuracy and reliability. Calibration shall be conducted by a local law enforcement officer, trained in the use and calibration of the system, at least quarterly for fixed systems and prior to being used at any new location for mobile systems.

**761—144.7(307) Evaluation and reporting.**

**144.7(1) Annual evaluation.** Annually, each local jurisdiction with active automated enforcement on Iowa's primary highway system shall evaluate the effectiveness of its use.

*a.* At a minimum, the evaluation shall:

(1) Address the impact of automated enforcement technology on reducing speeds or the number of red-light running violations for those sites being monitored.

(2) Identify the number and type of collisions at the sites being monitored, listing comparison data for before-and-after years. If the system includes intersection enforcement, only the monitored approaches should be included in the evaluation.

(3) Evaluate and document the automated traffic enforcement system's impact on addressing the critical traffic safety issue(s) listed in the justification report if a justification report was part of the system's initial approval process.

(4) Provide the total number of citations issued for each calendar year the system has been in operation.

(5) Certify that the calibration requirements of subrule 144.6(4) have been met.

*b.* Reserved.

**144.7(2) Reporting requirements.** The annual evaluation shall be reported to the department's office of traffic and safety at the address listed in rule 761—144.2(307) by May 1 each year following a full calendar year of operation and shall be based on performance for the previous year.

**761—144.8(307) Continued use of automated traffic enforcement system.**

**144.8(1) Reevaluation.** The department will utilize information collected from the annual evaluation reports from local jurisdictions to assist in evaluating the continued need for such systems at each location. Continued use will be contingent on the effectiveness of the system, appropriate administration of it by the local jurisdiction, the continued compliance with these rules, changes in traffic patterns, infrastructure improvements, and implementation of other identified safety countermeasures.

**144.8(2) Reserve the right.** The department reserves the right to require removal or modification of a system in a particular location, as deemed appropriate.

**761—144.9(307) Appeal process.** A local jurisdiction may appeal a decision made by the department as part of this chapter by submitting a written explanation of the issue and any supporting information to the director of transportation. Once the director receives the appeal, the director shall have 30 days to respond. The director's decision is final agency action.

These rules are intended to implement Iowa Code chapter 318 and sections 306.4, 307.12, 321.348 and 321.366.

## USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 2012 — October 31, 2012	3.75%
November 1, 2012 — November 30, 2012	3.75%
December 1, 2012 — December 31, 2012	3.75%

## USURY(cont'd)

January 1, 2013 — January 31, 2013	3.75%
February 1, 2013 — February 28, 2013	3.75%
March 1, 2013 — March 31, 2013	4.00%
April 1, 2013 — April 30, 2013	4.00%
May 1, 2013 — May 31, 2013	4.00%
June 1, 2013 — June 30, 2013	3.75%
July 1, 2013 — July 31, 2013	4.00%
August 1, 2013 — August 31, 2013	4.25%
September 1, 2013 — September 30, 2013	4.50%
October 1, 2013 — October 31, 2013	4.75%

## ARC 1069C

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 7(6), the Department of Human Services rescinds Chapter 76, “Application and Investigation,” Iowa Administrative Code, and adopts a new Chapter 76, “Enrollment and Reenrollment,” in lieu thereof.

This amendment rescinds existing Chapter 76 and adopts a new Chapter 76 because Chapter 76 as written required a complete revision due to medical assistance changes required by the Affordable Care Act.

The Affordable Care Act implemented significantly changed policy about medical assistance application, enrollment and reenrollment requirements. These changes are effective October 1, 2013, for determining eligibility effective January 1, 2014.

The new Eligibility Integrated Application Solution (ELIAS), which will be implemented at the same time that the Affordable Care Act changes are implemented, also required modification of Chapter 76.

This amendment is required by the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) and 42 CFR Part 435, as amended.

This amendment is adopted simultaneously with an Adopted and Filed Emergency After Notice amendment published herein as **ARC 1070C**. The amendment in **ARC 1070C** adopts new rule 441—80.7(249A) whose content is identical to that in existing rule 441—76.13(249A), which is rescinded herein as part of the rescission of Chapter 76.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin as **ARC 0908C** on August 7, 2013. The Department received no comments from the public concerning the Notice.

In the course of an internal review, it was determined that subrule 76.7(2) provided the incorrect form name and numbers. The subrule has been revised to reflect the correct form name and numbers and now reads as follows:

**“76.7(2) For eligibility effective on or after January 1, 2014. Applicants for presumptive eligibility will complete Application for Health Coverage and Help Paying Costs, Form 470-5170 or 470-5170(S).”**

The Council on Human Services adopted this amendment on September 11, 2013.

Pursuant to Iowa Code section 17A.5(2)“b”(1), the Department finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective October 1, 2013. The normal effective date can be waived since legislation permits emergency rule making. The Legislature provided in 2013 Iowa Acts, Senate File 446, section 7(6), that the Department may adopt emergency rules for the medical assistance program as necessary to comply with federal requirements.

These rules do not provide for waivers in specified situations because there are no waivers applicable to these provisions of the Affordable Care Act. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

This amendment is intended to implement Iowa Code section 249A.4.

This amendment became effective October 1, 2013.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 76] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 0908C**, IAB 8/7/13.

[Filed Emergency After Notice 9/11/13, effective 10/1/13]

[Published 10/2/13]

[For replacement pages for IAC, see IAC Supplement 10/2/13.]

## ARC 1071C

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 13, the Department of Human Services (DHS) amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments require Home- and Community-Based Services (HCBS) transportation payments to be the same as the payments negotiated by the Medicaid nonemergency medical transportation broker. For those providers that do not have a contracted rate, the rate paid would be the average broker rate paid per trip or per mile for the member’s DHS region.

Current HCBS transportation rates may be paid at a different amount than the nonemergency medical transportation broker. The rates are difficult to determine due to different methodologies within current rules. Rules currently state that the rate paid is the fee schedule or county contract rate. Therefore, this change provides consistency for the provider, the member and the state.

Notice of Intended Action on these amendments was published as **ARC 0887C** in the Iowa Administrative Bulletin on July 24, 2013.

The Department received comments from two respondents on these amendments.

**Comment 1:** With this proposed rule change, individuals living in a 24-hour HCBS supported community living (SCL) program would not be able to access transportation to a day habilitation program or an employment program during the day since it would be simultaneous with the supported community living program. Individuals living in the community need to use transportation to access community-based services. It is not always feasible for the staff of the 24-hour program to transport everyone all the time. This proposed change is not consistent with the goals of mental health system redesign to increase employment and community integration of individuals with intellectual disabilities. The commenter proposed that subrule 78.41(11) in **ARC 0887C** not be changed.

**Department response:** A provider may include in the provider’s reimbursement rate the costs of transportation that are directly associated with the provision of SCL services. Transportation is also a stand-alone service in the intellectual disability (ID) and brain injury (BI) waiver programs that provide payment for transporting a member to conduct business errands and essential shopping, to receive medical services, to and from work or day programs, and to reduce social isolation. This is the same criterion for transportation when it is provided as part of the SCL service. The intent of this amendment was to clarify that a provider may not simultaneously bill for SCL services and transportation (the service) when the provider is including the cost of transportation in the SCL rate. Doing so would be considered double-billing Medicaid for the same service. The Department has changed the proposed amendments in Items 6 and 7, and subrules 78.41(11) and 78.43(7) now read as follows:

**“78.41(11) Transportation.** Transportation services may be provided for members to conduct business errands and essential shopping, to receive medical services when not reimbursed through nonemergency medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip. Transportation may not be reimbursed simultaneously with HCBS intellectual disability waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.”

**“78.43(7) Transportation.** Transportation services may be provided for members to conduct business errands and essential shopping, to receive medical services when not reimbursed through nonemergency medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation or one one-way trip. Transportation may not be reimbursed simultaneously with HCBS brain injury waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.”

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

**Comment 2:** The second comment was from the Des Moines Area Regional Transit Authority (DART). For many years, DART and the county have endeavored to ensure the county contract rate (i.e., the current applicable rate for HCBS waiver service providers) is equitable. In order to continually attain this objective, a great deal of information sharing and mutual understanding has been and will continue to be required.

**Department response:** The Department has no influence on the rates that counties negotiate to pay transportation providers that are transporting non-Medicaid individuals on behalf of the county. The counties may choose to continue to contract with transportation providers using the counties' current methodology of reimbursement; however, a transportation provider may not charge Medicaid members more for transportation than it charges the general public, including county-funded transportation services. Counties will continue to contract with transportation providers as outlined in the counties' regional management plans. The Department anticipates that, by utilizing the nonemergency medical transportation contracted rates to reimburse providers for HCBS waiver transportation services, providers will have a consistent and predictable reimbursement rate based on the negotiated costs of providing the service.

The Council on Human Services adopted these amendments on September 11, 2013.

Pursuant to Iowa Code section 17A.5(2)"b"(1), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments should be made effective October 1, 2013. In 2013 Iowa Acts, Senate File 446, section 7(6), the Legislature provided that the Department may adopt emergency rules for the medical assistance program as necessary to comply with federal requirements.

These amendments do not provide for waiver in specified situations 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.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective October 1, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** paragraph **77.33(11)"f"**:

*f.* Transportation providers contracting with the nonemergency medical transportation contractor.

ITEM 2. Adopt the following **new** paragraph **77.37(24)"g"**:

*g.* Transportation providers contracting with the nonemergency medical transportation contractor.

ITEM 3. Adopt the following **new** paragraph **77.39(18)"f"**:

*f.* Transportation providers contracting with the nonemergency medical transportation contractor.

ITEM 4. Adopt the following **new** paragraph **77.41(6)"e"**:

*e.* Transportation providers contracting with the nonemergency medical transportation contractor.

ITEM 5. Amend subrule 78.37(11) as follows:

**78.37(11) Transportation.** Transportation services may be provided for members to conduct business errands and essential shopping, to receive medical services when not reimbursed through nonemergency medical transportation, and to reduce social isolation. A unit of service is one mile of transportation; or one one-way trip; ~~or a unit established by an area agency on aging.~~

ITEM 6. Amend subrule 78.41(11) as follows:

**78.41(11) Transportation.** Transportation services may be provided for members to conduct business errands and essential shopping, to receive medical services when not reimbursed through nonemergency medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation; or one one-way trip; ~~or a unit established by an area agency on aging.~~ Transportation may not be reimbursed simultaneously with HCBS intellectual disability waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.

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

ITEM 7. Amend subrule 78.43(7) as follows:

**78.43(7) *Transportation.*** Transportation services may be provided for members to conduct business errands and essential shopping, to receive medical services when not reimbursed through nonemergency medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation, or one one-way trip, ~~or a unit established by an area agency on aging.~~ Transportation may not be reimbursed simultaneously with HCBS brain injury waiver supported community living service when the transportation costs are included within the supported community living reimbursement rate.

ITEM 8. Amend subrule 78.46(5) as follows:

**78.46(5) *Transportation.*** Transportation services may be provided for members to conduct business errands and essential shopping, to receive medical services when not reimbursed through Medicaid as nonemergency medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is one mile of transportation, or one one-way trip, ~~or a unit established by an area agency on aging.~~

ITEM 9. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” numbered paragraph “11,” as follows:

Provider category	Basis of reimbursement	Upper limit
11. Transportation	Fee schedule	Effective <del>7/1/13</del> <u>10/1/13</u> : <u>County contract rate</u> <u>The provider's nonemergency medical transportation contract rate</u> or, in the absence of a <u>nonemergency medical transportation contract rate</u> , <u>provider's rate in effect 6/30/13 plus 3%, converted to a mile or one-way trip unit rate the median nonemergency medical transportation contract rate paid per mile or per trip within the member's DHS region.</u>

[Filed Emergency After Notice 9/11/13, effective 10/1/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1070C**

## **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 80, “Procedure and Method of Payment,” Iowa Administrative Code.

This amendment, which adopts new rule 441—80.7(249A), is a technical change that in effect relocates the content of rule 441—76.13(249A), health care data match program, to the more applicable Chapter 80.

This amendment is adopted simultaneously with the Adopted and Filed Emergency After Notice amendment published herein as **ARC 1069C**. The amendment in **ARC 1069C** rescinds Chapter 76, “Application and Investigation,” including rule 441—76.13(249A), and adopts a new Chapter 76 in lieu thereof.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin as **ARC 0909C** on August 7, 2013. The Department received no comments from the public concerning the Notice. This amendment is identical to that published under Notice of Intended Action.

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

The Council on Human Services adopted this amendment on September 11, 2013.

Pursuant to Iowa Code section 17A.5(2)“b”(1), the Department finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective October 1, 2013. The normal effective date can be waived since legislation permits emergency rule making. The Legislature provided in 2013 Iowa Acts, Senate File 446, section 7(6), that the Department may adopt emergency rules for the medical assistance program as necessary to comply with federal requirements.

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.

This amendment became effective October 1, 2013.

The following amendment is adopted.

Adopt the following new rule 441—80.7(249A):

**441—80.7(249A) Health care data match program.** As a condition of doing business in Iowa, health insurers shall provide, upon the request of the state, information with respect to individuals who are eligible for or are provided medical assistance under the state’s medical assistance state plan to determine (1) during what period the member or the member’s spouse or dependents may be or may have been covered by a health insurer and (2) the nature of the coverage that is or was provided by the health insurer. This requirement applies to self-insured plans, group health plans as defined in the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406), service benefit plans, managed care organizations, pharmacy benefits managers, and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

**80.7(1) Agreement required.** The parties shall sign a data use agreement for the purposes of this rule. The agreement shall prescribe the manner in which information shall be provided to the department of human services and the acceptable uses of the information provided.

*a.* The initial provision of data shall include the data necessary to enable the department to match covered persons and identify third-party payers for the two-year period before the initial provision of the data. The data shall include the name, address, and identifying number of the plan.

*b.* Ongoing monthly matches may be limited to changes in the data previously provided, including additional covered persons, with the effective dates of the changes.

**80.7(2) Agreement form.**

*a.* An agreement with the department shall be in substantially the same form as Form 470-4415, Agreement for Use of Data.

*b.* An agreement with the department’s designee shall be in a form approved by the designee, which shall include privacy protections equivalent to those provided in Form 470-4415, Agreement for Use of Data.

**80.7(3) Confidentiality of data.** The exchange of information carried out under this rule shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to:

*a.* The federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and

*b.* Regulations promulgated in accordance with that Act and published in 45 CFR Parts 160 through 164.

[Filed Emergency After Notice 9/11/13, effective 10/1/13]

[Published 10/2/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1072C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 217.6 and 2013 Iowa Acts, Senate File 446, section 29, the Department of Human Services amends Chapter 92, "IowaCare," Iowa Administrative Code.

These amendments reflect the change in the payment methodology for federally qualified health centers (FQHCs) from fee for service to an encounter payment and eliminate the FQHC funding pool for laboratory and radiology services in accordance with the Department's appropriation bill (2013 Iowa Acts, Senate File 446). These services will now be included in the encounter payment. These amendments will address a shortfall in the funding pool for laboratory and radiology services by making funding more flexible.

Notice of Intended Action on these amendments was published as **ARC 0886C** in the Iowa Administrative Bulletin on July 24, 2013. The Department received no comments from the public concerning the Notice. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 11, 2013.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective October 1, 2013. The normal effective date can be waived since these amendments confer a benefit on the public. New benefits relating to laboratory and radiology services will be allowed as an encounter for IowaCare members assigned to FQHC medical homes.

These amendments do not provide for waiver in specified situations because the same payment methodology should apply to all FQHCs and because the amendments provide a benefit by not limiting coverage of laboratory and radiology services to the former funding pool. 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.

These amendments are intended to implement Iowa Code section 217.6 and chapter 249J.

These amendments became effective October 1, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 92.8(1), introductory paragraph, as follows:

**92.8(1) Provider network.** Except as provided in subrules 92.8(3) through ~~92.8(5)~~ 92.8(7), IowaCare members shall have medical assistance only for services provided to the member by:

ITEM 2. Amend subrule 92.8(7) as follows:

**92.8(7) Services from nonparticipating providers.**

a. to c. No change.

d. ~~Laboratory test tests and radiology pool services. A funding pool is established to provide payment~~ Payment will be made to federally qualified health centers, as part of the per-IowaCare-patient-encounter payment made pursuant to 92.9(3)"b," for medically necessary laboratory tests and radiology services provided to enrolled IowaCare members when authorized by a the federally qualified health center ~~that has been designated by the department as part of the IowaCare regional provider network. Payment from the pool shall be subject to the following conditions and limitations:~~

(1) ~~Payment may be made only for laboratory tests or radiology services which the participating federally qualified health center does not otherwise have the means to provide on site.~~

(2) ~~Each participating federally qualified health center shall designate no more than four laboratory testing facilities and no more than four radiology facilities to which the center will refer IowaCare patients for these services. The designated providers must participate in the Iowa medical assistance program. Payment shall be made only to the designated providers.~~

(3) ~~The designated provider must obtain a referral from the participating federally qualified health center for the services and must include information regarding the referral on the claim form.~~



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

~~(4) All other medical assistance policies for coverage of laboratory and radiology services shall apply, including requirements for prior authorization.~~

~~(5) Payment is limited to the amount of available funds designated for the laboratory test and radiology pool. If the amount appropriated for the pool is exhausted, laboratory tests and radiology services ordered by a participating federally qualified health center shall be provided or coordinated by the center.~~

ITEM 3. Amend subrule 92.9(3) as follows:

**92.9(3)** *Payment for nonhospital services provided by IowaCare network.* Effective ~~July 1, 2010~~ January 1, 2013, IowaCare network providers shall be paid for nonhospital services at the Medicaid fee schedule amounts ~~in effect on November 30, 2009~~, which are posted on the department's Web site at [http://www.ime.state.ia.us/Reports\\_Publications/FeeSchedules.html](http://www.ime.state.ia.us/Reports_Publications/FeeSchedules.html), with the following exceptions:

a. No change.

b. ~~Physician services~~ Services provided to IowaCare members ~~in~~ by a federally qualified health center, including any medically necessary laboratory tests and radiology services authorized by the ~~federally qualified health center~~, shall be reimbursed ~~based on the Medicaid physician fee schedule in effect on the date of service, limited to the amount appropriated for the fiscal year.~~ on the basis of a per-IowaCare-patient-encounter payment calculated for each participating federally qualified health center as follows:

(1) The initial encounter rates will be based on the total fees paid to the federally qualified health center under the IowaCare program for dates of service from July 1, 2012, through December 31, 2012 (the "initial rate period"), plus the total fees paid to third parties for laboratory and diagnostic services referred out from the particular federally qualified health center during the initial rate period. The rates shall exclude any fees charged by or through the University of Iowa Hospitals and Clinics or Broadlawns Medical Center or through any other federally qualified health center.

(2) The initial encounter rates will be reevaluated on or after April 15, 2013. If the reevaluation results in changes in the initial encounter rate, the department will mass-adjust all of the federally qualified health center's claims submitted for dates of service from January 1, 2013, through March 31, 2013.

(3) After the first quarter of calendar year 2013, the department shall establish a new encounter rate for the federally qualified health center following the end of the prior quarter, based on claims submitted for the prior quarter.

(4) The department shall reevaluate each new encounter rate 45 days after the start of each quarter to consider adjustments based on laboratory and diagnostic claims received with dates of service from the prior quarter submitted within the prior 45 days. If the reevaluation results in changes in the current encounter rate, the department will change the current encounter rate retroactively for the quarter and mass-adjust any claims submitted for the current quarter.

(5) Upon expiration or termination of the IowaCare medical home agreement, the department will reevaluate the encounter rate paid to the federally qualified health center in the final whole or partial quarter by taking into consideration any laboratory and diagnostic claims submitted within 45 days of the expiration or termination of the agreement with dates of service from that final quarter. If the reevaluation results in changes in that final quarter's encounter rate, the department will change the encounter rate for the final quarter and mass-adjust any prior claims submitted for that final quarter.

c. No change.

[Filed Emergency After Notice 9/11/13, effective 10/1/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1084C****ENGINEERING AND LAND SURVEYING  
EXAMINING BOARD[193C]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 8, “Professional Conduct of Licensees,” Iowa Administrative Code.

The amendment to Chapter 8 clarifies the rules pertaining to unethical or illegal conduct.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0928C**. A public hearing was held on Wednesday, August 28, 2013, from 9 to 11 a.m. at the offices of the Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa. One comment was received via e-mail. The Board took the comment into consideration at the September 12, 2013, Board meeting. A task force is being assembled to address all of the rules in Chapter 8, including the concerns of the individual providing written comments.

This amendment is identical to the one published under Notice of Intended Action.

This amendment was adopted by the Board on September 12, 2013.

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

After analysis and review of this rule making, no adverse impact on jobs has been found. Although there should be no impact on jobs, the Board will continue to work with stakeholders to minimize any negative impact and maximize any positive impact toward jobs.

This amendment is intended to implement Iowa Code section 542B.21.

This amendment will become effective November 6, 2013.

The following amendment is adopted.

Amend subparagraph **8.2(6)“a”(7)** as follows:

(7) When a licensee’s organization or a principal, officer, other member, or employee of the licensee’s organization has review authority over the engineering or land surveying projects performed by private contractors within the jurisdiction of a governmental body, the licensee shall not solicit or accept a private engineering or land surveying contract that falls under the review services performed for that governmental body. The purpose of this paragraph is to avoid a circumstance in which a licensee may be called upon to review on behalf of a governmental body the engineering or land surveying services performed by the licensee’s own organization.

However, if the licensee exercising review authority does so as a member of a multimembered body with review authority, the conflict of interest may be addressed by the disqualification or recusal of the licensee when engineering or land surveying services of the licensee’s organization are under review. In that circumstance, the solicitation or acceptance of a private engineering or land surveying contract by the licensee’s organization would not be in violation of this rule.

[Filed 9/13/13, effective 11/6/13]

[Published 10/2/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1051C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 12, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 88, “Managed Health Care Providers,” Iowa Administrative Code.

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

These amendments transfer administrative responsibility for Medicaid habilitation to the contractor for the Iowa Plan for Behavioral Health and integrate targeted case management into integrated health homes for members with chronic mental illness. Additionally, these amendments change the reimbursement method for case management services under habilitation waivers.

Habilitation services are currently administered separately from all other behavioral health care. As a result, the amount, scope, and duration of these services are not effectively aligned with other behavioral and physical health care services. On average, individuals with serious mental illness die 25 years earlier than the general public (based on a 16-state pilot study on mental health performance measures). Providing coordinated physical and behavioral health care should improve access to all services to achieve the best outcomes for individuals. In addition, expenditures for habilitation services have increased 120 percent in the past five years, with no definitive improvement in overall quality of life outcomes.

The transitions implemented by these amendments will not affect individuals who need habilitation services. Individuals served will still receive their habilitation services. They may experience a change in their care coordination with the shift of habilitation case management to integrated health homes. The goal is to improve measurable outcomes for individuals and their families.

A portion of habilitation case management services are currently managed by Magellan. Other case management for habilitation is managed by the Iowa Medicaid Enterprise (IME). Habilitation case management managed by IME will be transitioned to Magellan as a result of these amendments. Habilitation case management will continue with little change until the transition of case management to care coordination through integrated health homes is complete.

As a result of these amendments, habilitation service providers will see little change:

- Magellan will be contracting with habilitation providers, using the same provider requirements in place today. Providers should contact Magellan for information about contracting.
- Magellan will use the current rates set for habilitation providers until standardized rates are developed for habilitation services. Similar to what was done with behavioral health intervention services, Magellan will create a workgroup to collaborate with providers during the next six months to develop a standardized reimbursement rate for habilitation services.
- Magellan will honor all prior authorizations approved before July 1, 2013. After that date, authorizations will be submitted to and approved by Magellan.
- IME will continue to implement habilitation HCBS quality assurance requirements, such as the provider self-assessment and incident reporting.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0847C** on July 24, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0848C** on the same date and became effective July 1, 2013. The Department received no comments. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on September 11, 2013.

These amendments do not provide for waiver in specified situations because the legislative directive does not allow for waivers and because cost containment would not be achieved with waivers. Further, the Department and the Iowa Plan for Behavioral Health contractor have established procedures for considering exceptions to policy. Requests for waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments will have an impact on private sector jobs. Case management for habilitation members will be phased out as integrated health homes are phased in. However, the integrated health home will be responsible for the care coordination for the member and will be hiring individuals to fulfill that role.

These amendments are intended to implement Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 12(19)“a”(1) and (9).

These amendments will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

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

ITEM 1. Amend rule 441—77.25(249A), introductory paragraph, as follows:

**441—77.25(249A) Home- and community-based habilitation services.** To be eligible to participate in the Medicaid program as an approved provider of home- and community-based habilitation services, a provider shall be an enrolled provider of habilitation with the Iowa Plan for Behavioral Health and meet the general requirements in subrules 77.25(2), 77.25(3), and 77.25(4) and shall meet the requirements in the subrules applicable to the individual services being provided.

ITEM 2. Amend subrule 77.25(10) as follows:

**77.25(10) Provider enrollment.** A prospective provider that meets the criteria in this rule ~~shall be enrolled and the provider criteria of the Iowa Plan for Behavioral Health contractor must be enrolled through the Iowa Plan for Behavioral Health contractor as an approved provider of a specific component of home- and community-based habilitation services. Enrollment carries no assurance that the approved provider will receive funding. The Iowa Medicaid enterprise will enroll providers with Medicaid only when the provider is enrolled in the Iowa Plan for Behavioral Health.~~ Payment for services will be made to a provider only ~~upon department approval of the provider and of the service the provider is authorized to provide~~ when the provider is enrolled in the Iowa Plan for Behavioral Health and the provider is authorized to provide the services. This includes payments made by the Iowa Medicaid enterprise for services provided to members who are not eligible to enroll in the Iowa Plan for Behavioral Health.

a. ~~The Iowa Medicaid enterprise~~ Iowa Plan for Behavioral Health contractor shall review compliance with standards for initial enrollment. Review of a provider may occur at any time.

b. The department or the Iowa Plan for Behavioral Health contractor may request any information from the prospective service provider that is pertinent to arriving at an enrollment decision. This information may include:

- (1) Current accreditations.
- (2) Evaluations.
- (3) Inspection reports.
- (4) Reviews by regulatory and licensing agencies and associations.

ITEM 3. Amend rule 441—78.27(249A), introductory paragraph, as follows:

**441—78.27(249A) Home- and community-based habilitation services.** Payment for habilitation services will only be made to providers enrolled to provide habilitation through the Iowa Plan for Behavioral Health.

ITEM 4. Adopt the following new definitions of “Care coordinator” and “Integrated health home” in subrule **78.27(1)**:

“*Care coordinator*” means the professional who assists members in care coordination as described in paragraph 78.53(1)“b.”

“*Integrated health home*” means the provision of services to enrolled members as described in subrule 78.53(1).

ITEM 5. Amend subrule 78.27(2) as follows:

**78.27(2) Member eligibility.** To be eligible to receive home- and community-based habilitation services, a member shall meet the following criteria:

a. to c. No change.

d. *Needs assessment.* The member’s case manager or integrated health home care coordinator has completed an assessment of the member’s need for service, and, based on that assessment, the Iowa Medicaid enterprise medical services unit or the Iowa Plan for Behavioral Health contractor has determined that the member is in need of home- and community-based habilitation services. A member who is not eligible for ~~Medicaid case management services under 441—Chapter 90 integrated health home services~~ shall receive Medicaid case management under 441—Chapter 90 as a home- and community-based habilitation service. The designated case manager or integrated health home care coordinator shall:

- (1) and (2) No change.

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

*e. Plan for service.* The department or the Iowa Plan for Behavioral Health contractor has approved the member's plan for home- and community-based habilitation services. A Home- and community-based habilitation services included in a comprehensive service plan or treatment plan that has been validated through ISIS or in a treatment plan that has been authorized by the Iowa Plan for Behavioral Health contractor shall be considered approved by the department. Home- and community-based habilitation services provided before department approval of a member's eligibility for the program cannot be reimbursed.

(1) to (3) No change.

*f. Iowa Plan for Behavioral Health eligibility.* Members eligible to enroll in the Iowa Plan for Behavioral Health shall be eligible to receive home- and community-based habilitation services only through the Iowa Plan for Behavioral Health.

ITEM 6. Amend subrule 78.27(3) as follows:

**78.27(3) Application for services.** The member, case manager or integrated health home care coordinator shall apply for habilitation services on behalf of a member by contacting the Iowa Plan for Behavioral Health contractor or by entering a program request for habilitation services in ISIS for members who are not eligible to enroll in the Iowa Plan for Behavioral Health for any reason. The department or the Iowa Plan for Behavioral Health contractor shall issue a notice of decision to the applicant when financial eligibility, determination of needs-based eligibility, and approval of the comprehensive service plan or treatment plan have been completed.

ITEM 7. Amend subrule 78.27(4) as follows:

**78.27(4) Comprehensive service plan.** Individualized, planned, and appropriate services shall be guided by a member-specific comprehensive service plan or treatment plan developed with the member in collaboration with an interdisciplinary team, as appropriate. Medically necessary services shall be planned for and provided at the locations where the member lives, learns, works, and socializes.

*a. Development.* A comprehensive service plan or treatment plan shall be developed for each member receiving home- and community-based habilitation services based on the member's current assessment and shall be reviewed on an annual basis.

(1) The case manager or the integrated health home care coordinator shall establish an interdisciplinary team for the member. The team shall include the case manager or integrated health home care coordinator and the member and, if applicable, the member's legal representative, the member's family, the member's service providers, and others directly involved.

(2) With the interdisciplinary team, the case manager or integrated health home care coordinator shall identify the member's services based on the member's needs, the availability of services, and the member's choice of services and providers.

(3) to (8) No change.

(9) The initial comprehensive service plan or treatment plan and annual updates to the comprehensive service plan or treatment plan must be approved by the Iowa Plan for Behavioral Health contractor, or by the Iowa Medicaid enterprise for members who are not eligible to enroll in the Iowa Plan for Behavioral Health, in the individualized services information system before services are implemented. Services provided before the approval date are not payable. The written case comprehensive service plan or treatment plan must be completed, signed and dated by the case manager, integrated health home care coordinator, or service worker within 30 calendar days after plan approval.

(10) Any changes to the comprehensive service plan or treatment plan must be approved by the Iowa Plan for Behavioral Health contractor, or by the Iowa Medicaid enterprise for members not eligible to enroll in the Iowa Plan for Behavioral Health, in the individualized services information system before the implementation of services. Services provided before the approval date are not payable.

*b.* No change.

*c. Rights restrictions.* Any rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The comprehensive service plan or treatment plan shall include documentation of:

(1) to (3) No change.

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

*d. Emergency plan.* The comprehensive service plan or treatment plan shall include a plan for emergencies and identification of the supports available to the member in an emergency. Emergency plans shall be developed as follows:

(1) The member's interdisciplinary team shall identify in the comprehensive service plan or treatment plan any health and safety issues applicable to the individual member based on information gathered before the team meeting, including a risk assessment.

(2) and (3) No change.

*e. Plan approval.*

(1) A treatment plan that has been validated and authorized by the Iowa Plan for Behavioral Health contractor shall be considered approved.

(2) Services For members who are not Iowa Plan-eligible, services shall be entered into ISIS based on the comprehensive service plan. A comprehensive service plan or treatment plan that has been validated and authorized through ISIS shall be considered approved by the department. Services must be authorized in ISIS as specified in paragraph 78.27(2) "e."

ITEM 8. Amend paragraph **78.27(6)"b"** as follows:

*b. ~~Exclusion~~ Exclusions.*

(1) Payment shall not be made for case management provided to a member who is enrolled for integrated health home services under rule 441—78.53(249A) except during the transition to the integrated health homes.

(2) Payment shall not be made for case management provided to a member who is eligible for case management services under 441—Chapter 90.

ITEM 9. Amend subrule 78.27(11) as follows:

**78.27(11) Adverse service actions.**

*a. Denial.* Services shall be denied when the department or the Iowa Plan for Behavioral Health contractor determines that:

~~(1) Rescinded IAB 12/29/10, effective 1/1/11.~~

(2) (1) The member is not eligible for or in need of home- and community-based habilitation services.

~~(3) (2)~~ (2) The service is not identified in the member's comprehensive service plan or treatment plan.

~~(4) (3)~~ (3) Needed services are not available or received from qualifying providers, or no qualifying providers are available.

~~(5) (4)~~ (4) The member's service needs exceed the unit or reimbursement maximums for a service as set forth in 441—subrule 79.1(2).

~~(6) (5)~~ (5) Completion or receipt of required documents for the program has not occurred.

*b. Reduction.* A particular home- and community-based habilitation service may be reduced when the department or the Iowa Plan for Behavioral Health contractor determines that continued provision of service at its current level is not necessary.

*c. Termination.* A particular home- and community-based habilitation service may be terminated when the department or the Iowa Plan for Behavioral Health contractor determines that:

(1) to (4) No change.

(5) The member has received care in a medical institution for 30 consecutive days in any one stay. When a member has been an inpatient in a medical institution for 30 consecutive days, the department or the Iowa Plan for Behavioral Health contractor will issue a notice of decision to inform the member of the service termination. If the member returns home before the effective date of the notice of decision and the member's condition has not substantially changed, the decision shall be rescinded, and eligibility for home- and community-based habilitation services shall continue.

(6) to (9) No change.

*d. Appeal rights.*

(1) The Iowa Plan for Behavioral Health contractor shall give notice of any adverse action and the right to appeal in accordance with 441—Chapter 7.

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

(2) The department shall give notice of any adverse action and the right to appeal in accordance with 441—Chapter 7. The member is entitled to have a review of the determination of needs-based eligibility by the Iowa Medicaid enterprise medical services unit by sending a letter requesting a review to the medical services unit. If dissatisfied with that decision, the member may file an appeal with the department.

ITEM 10. Amend rule 441—78.33(249A) as follows:

**441—78.33(249A) Case management services.**

**78.33(1)** Payment will be approved for targeted case management services that are provided pursuant to 441—Chapter 90 to:

1. a. Members who are 18 years of age or over and have a primary diagnosis of mental retardation, developmental disabilities, or chronic mental illness as defined in rule 441—90.1(249A).

2. b. Members who are under 18 years of age and are receiving services under the HCBS intellectual disability waiver or children's mental health waiver.

**78.33(2)** Notwithstanding subrule 78.33(1), payment shall not be made for targeted case management services for members who are enrolled in the Iowa Plan for Behavioral Health to receive habilitation pursuant to rule 441—78.27(249A) and are enrolled in an integrated health home as described in rule 441—78.53(249A). Members enrolled in the Iowa Plan for Behavioral Health for habilitation and an integrated health home shall receive care coordination in lieu of case management.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 11. Amend subrule **79.1(2)**, provider category "Home- and community-based habilitation services," as follows:

Provider category	Basis of reimbursement	Upper limit
Home- and community-based habilitation services:		
1. Case management	<del>Fee schedule with cost settlement. See 79.1(1) "d."</del> <u>See 79.1(24) "d"</u>	Retrospective cost-settled rate.
2. Home-based habilitation	<del>Retrospective cost-related. See 79.1(24) "d"</del>	Effective 7/1/13: \$11.68 per 15-minute unit, not to exceed \$6,083 per month, or \$200 per day.
3. Day habilitation	<del>Retrospective cost-related. See 79.1(24) "d"</del>	Effective 7/1/13: \$3.30 per 15-minute unit or \$64.29 per day.
4. Prevocational habilitation	<del>Retrospective cost-related. See 79.1(24) "d"</del>	Effective 7/1/13: \$13.47 per hour or \$48.22 per day.

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

## 5. Supported employment:

## Activities to obtain a job:

Job development	<del>Fee schedule</del> <u>See 79.1(24) "d"</u>	\$909 per unit (job placement). Maximum of two units per 12 months.
Employer development	<del>Fee schedule</del> <u>See 79.1(24) "d"</u>	\$909 per unit (job placement). Maximum of two units per 12 months.
Enhanced job search	<del>Retrospective cost-related</del> <u>See 79.1(24) "d"</u>	Effective 7/1/13: Maximum of \$8.75 per 15-minute unit and 104 units per 12 months.
Supports to maintain employment	<del>Retrospective cost-related</del> <u>See 79.1(24) "d"</u>	Effective 7/1/13: \$1.55 per 15-minute unit for services in an enclave setting; \$4.95 per 15-minute unit for personal care; and \$8.75 per 15-minute unit for all other services. Total not to exceed \$2,883.71 per month. Maximum of 160 units per week.

## ITEM 12. Amend subrule 79.1(24) as follows:

**79.1(24) *Reimbursement for home- and community-based habilitation services.*** Reimbursement for case management, job development, and employer development services provided prior to July 1, 2013, is based on a fee schedule developed using the methodology described in paragraph 79.1(1) "d." Reimbursement for home-based habilitation, day habilitation, prevocational habilitation, enhanced job search and supports to maintain employment services provided prior to July 1, 2013, is based on a retrospective cost-related rate calculated using the methodology in this subrule, paragraphs 79.1(24) "b" and "c." Reimbursement for all home- and community-based habilitation services provided on or after July 1, 2013, shall be as provided in paragraph 79.1(24) "d." All rates are subject to the upper limits established in subrule 79.1(2).

a. No change.

b. *Submission of cost reports.* ~~The~~ For services provided prior to July 1, 2013, the department shall determine reasonable and proper costs of operation for home-based habilitation, day habilitation, prevocational habilitation, and supported employment based on cost reports submitted by the provider on Form 470-4425, Financial and Statistical Report for HCBS Habilitation Services.

(1) to (5) No change.

(6) If a provider fails to submit a cost report for services provided through June 30, 2013, that meets the requirement requirements of this paragraph, 79.1(24) "b," the department Iowa Medicaid enterprise or the Iowa Plan for Behavioral Health contractor shall reduce payment the provider's rate to 76 percent of the current rate. The reduced rate shall be paid until the provider's cost report has been received by the Iowa Medicaid enterprise's provider cost audit and rate setting unit pursuant to subparagraph 79.1(24) "b"(4) but for not longer than three months, after which time no further payments will be made.

(7) No change.

c. *Rate determination based on cost reports.* ~~Reimbursement~~ For services provided prior to July 1, 2013, reimbursement shall be made using a unit rate that is calculated retrospectively for each provider, considering reasonable and proper costs of operation.

(1) to (3) No change.

d. *Reimbursement for services provided on or after July 1, 2013.*

(1) For dates of services July 1, 2013, through December 31, 2013, providers shall be reimbursed by the Iowa Plan for Behavioral Health contractor at the fee schedule or interim rate for the service and the provider in effect on June 30, 2013, with no retrospective adjustment or cost settlement. However, if a provider fails to submit a cost report for services provided prior to July 1, 2013, that meets the requirements of paragraph 79.1(24) "b," the Iowa Plan for Behavioral Health contractor shall reduce the



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

provider's reimbursement rate to 76 percent of the rate in effect on June 30, 2013. The reduced rate shall be paid until acceptable cost reports for all services provided prior to July 1, 2013, have been received.

(2) For dates of services on or after January 1, 2014, providers shall be reimbursed by the Iowa Plan for Behavioral Health contractor at the rate negotiated by the provider and the contractor. However, if a provider fails to submit a cost report for services provided prior to July 1, 2013, that meets the requirements of paragraph 79.1(24) "b," the Iowa Plan for Behavioral Health contractor shall reduce the provider's reimbursement rate to 76 percent of the negotiated rate. The reduced rate shall be paid until acceptable cost reports for all services provided prior to July 1, 2013, have been received.

ITEM 13. Adopt the following new subparagraph **88.65(3)"a"(18)**:

(18) Home- and community-based habilitation services as described at rule 441—78.27(249A).

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1052C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 12, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment excludes coverage of and payment for elective, non-medically necessary cesarean section (C-section) deliveries.

The Iowa Medicaid Enterprise (IME) currently reimburses hospitals and physicians for C-section deliveries, regardless of the medical necessity. This amendment eliminates reimbursement to hospitals and physicians for C-sections that are not medically necessary. This amendment aligns with similar initiatives undertaken by the Iowa HealthCare Collaborative, as well as by various individual hospitals and hospital systems.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0845C** on July 24, 2013. The amendment was also Adopted and Filed Emergency and published as **ARC 0846C** on the same date and became effective July 1, 2013. The Department received no comments. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on September 11, 2013.

This amendment does not provide for waiver in specified situations 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 6, 2013, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Adopt the following new paragraph **78.1(1)"h"**:

*h.* Elective, non-medically necessary cesarean section (C-section) deliveries.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1054C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 12, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

This amendment requires prior authorization (PA) for initial admission to or continued stay in a certified hospital “swing bed” for a member who no longer requires acute (inpatient) hospital care and who would otherwise meet a nursing facility or skilled level of care (LOC).

This amendment will reduce the number of swing-bed admissions, which are considerably more costly than comparable admissions in a freestanding skilled nursing facility. Freestanding skilled nursing facilities would experience a potential corresponding increase in admissions for members who previously would have been admitted to a hospital swing bed.

As part of the hospital’s discharge planning process for members requiring ongoing skilled nursing care, the hospital must complete and return to the Iowa Medicaid Enterprise (IME) an LOC determination form describing the member’s LOC needs. The hospital must also contact skilled nursing facilities within a 30-mile radius of the hospital to determine if any of those facilities have available beds and are otherwise able to meet the member’s LOC needs. Initial or ongoing swing-bed admissions will only be approved if the hospital certifies that there are no available skilled nursing beds in a freestanding facility to meet the member’s LOC needs within the 30-mile radius of the hospital. For the purpose of this requirement, an “appropriate” nursing facility bed is a bed in a Medicaid-participating freestanding nursing facility that provides the LOC required for the member’s medical condition and corresponding LOC needs. A Medicaid member who has been admitted to a swing bed must be discharged to an appropriate nursing facility bed within 72 hours of an appropriate nursing facility bed becoming available. Preadmission screening and resident review (PASRR) rules still apply for members being transferred to a nursing facility. There will be some members, such as those with ventilators or other comparable care needs, whose LOC needs cannot be met in freestanding skilled nursing facilities. In such cases, the swing-bed stay would be appropriate.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0843C** on July 24, 2013. This amendment was also Adopted and Filed Emergency and published as **ARC 0844C** on the same date and became effective July 1, 2013.

The Department received comments from 15 respondents regarding this amendment. The majority of comments were from hospitals and the Iowa Hospital Association. The comments were similar in nature and as a result are compiled by topic as follows:

**Comment topic 1:** Respondents requested that the amendment be changed to require prior authorization (PA) only for swing-bed care exceeding 14 days.

**Department response:** The Department agreed to this change from the amendment that was Adopted and Filed Emergency and changed subparagraphs 78.3(16)“b”(5) and (6) to reflect the request. The subparagraphs now read as follows:

“(5) Swing-bed stays beyond 14 days will only be approved when there is no appropriate freestanding nursing facility bed available within a 30-mile radius and home-based care for the member is not available or appropriate, as documented by the hospital seeking the swing-bed admission. For the purpose of these criteria, an ‘appropriate’ nursing facility bed is a bed in a Medicaid-participating freestanding nursing facility that provides the LOC required for the member’s medical condition and corresponding LOC needs.

“(6) A Medicaid member who has been in a swing bed beyond 14 days must be discharged to an appropriate nursing facility bed within a 30-mile radius of the swing-bed hospital or to appropriate home-based care within 72 hours of an appropriate nursing facility bed becoming available.”

**Comment topic 2:** Respondents requested that implementation of this amendment be delayed until an impact study and hospital-specific analysis can be done.

HUMAN SERVICES DEPARTMENT[441](cont'd)

**Department response:** In light of the legislative mandate to implement this cost-savings initiative effective July 1, 2013, the Department does not believe it can delay implementation of this amendment. Additionally, to the extent this comment relates to the Adopted and Filed Emergency amendment and was received prior to discussions/negotiations with the Iowa Hospital Association (IHA) and agreement to only apply the prior authorization (PA) requirement to swing-bed admissions greater than 14 days, the Department believes delay of this amendment's implementation is no longer an issue.

**Comment topic 3:** The Adopted and Filed Emergency amendment does not take into consideration the current challenges hospitals are facing during the discharge process and the complexities with regard to swing-bed use and transition of care.

**Department response:** The Department has added provisions in the same subparagraphs as the prior authorization language (78.3(16)"b"(5) and (6)) to allow home-based care when home-based care would be appropriate for a given member. As such, the discharge and care transition concern noted in this comment has been greatly mitigated by virtue of affording another discharge and transition of care option.

**Comment topic 4:** Hospitals are concerned about the administrative burdens and increased costs this rule making places on hospitals and staff who will be required to canvas a 30-mile radius to find available nursing facility beds; the promptness of receiving a written notice of preauthorization potentially leading to an increased inpatient length of stay (LOS) for which the hospital may not be reimbursed; ongoing issues with delays regarding the preadmission screening and resident review (PASRR) process that has already led to increased LOS and kept patients in hospitals well beyond the time the patients were ready for transfer to an accepting nursing facility; and finally, ensuring adequate payment for the potential delays and added inpatient days resulting from existing PASRR delays and the new preauthorization requirement from Iowa Medicaid.

**Department response:** This rule making will greatly reduce the number of Iowa Medicaid members for whom swing-bed admissions beyond 14 days will need to occur.

With regard to the 30-mile radius issue, this amendment would continue to apply to swing-bed admissions greater than 14 days. However, given the greatly reduced number of Iowa Medicaid members who would require more than 14 days of swing-bed care, the requirement for hospitals to canvas freestanding skilled facilities within a 30-mile radius will not be a significant burden. Additionally, by virtue of adding the provisions for home-based care, as noted in the response to comment topic 3, the Department believes that the administrative burden to hospitals related to canvassing nursing facilities within a 30-mile radius has been reduced.

The IME Medical Services Prior Authorization Unit has a track record of prompt responses on PA requests generally, which are well within and considerably less than review/response time standards. Further, IME Medical Services has made the swing-bed PAs a top priority and is able to approve most (with complete documentation) within 1 business day. The IME is confident that this will extend to any needed PAs for swing-bed admissions greater than 14 days. As such, swing-bed hospitals that need to request PAs for such admissions should not experience increased lengths of stay. Hospitals anticipating such admissions should initiate the PA process at least a couple of days before reaching the 14-day threshold. This should virtually eliminate any issues in this regard. Furthermore, if any increased LOS occurs in an acute bed facility where such LOS was due in part to any delay by the IME in processing the PA, then the IME would pay for those additional acute days.

**Comment topic 5:** Hospitals are concerned with the timeliness of the written notice of decision (NOD) and the 72-hour provision in the rule. It is likely, taking into consideration the continuous operation of hospitals, that the preauthorization approval/denial may not be received in time, leaving a patient in the inpatient unit. This raises concerns for hospitals as it is unclear if the hospital will receive reimbursement for the care provided during that time. Further, hospitals questioned whether they would be denied payment for the full stay or only for subsequent swing-bed days that result after the 72-hour time frame has expired. This should be clarified in the rule to ensure appropriate requirements are in place with regard to availability and responsiveness in approving/denying preauthorization requests both during and outside regular business hours.

**Department response:** The Department does not believe there are serious issues with the timeliness of the PA approval process and issuance of the NOD for swing-bed care greater than 14 days.

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

Additionally, given that there will be relatively few Medicaid members requiring swing-bed care in excess of 14 days, there will not be a substantial volume of PA requests requiring review and action.

**Comment topic 6:** Several of the respondents had concerns about payment denials for transfers occurring beyond 72 hours. The average length of stay for skilled/swing-bed days in Iowa is 8 days. There have been many instances in which other regulatory requirements such as preadmission screening and resident review (PASRR) have resulted in increased LOS due to delays in Level II (PASRR) screenings conducted by an outside third-party contractor. Hospitals are concerned that these unexpected delays could cause the patient to cross over the 72-hour limit and cause the hospital to be denied reimbursement due to the PASRR process or other complicating factors resulting in delayed discharge. The IHA believes that preauthorizations should be required only after 14 days of swing-bed care.

**Department response:** As described in the response to comment topic 1, the Department has agreed to change the amendment to reflect the need for PA only after 14 days of swing-bed care.

The Council on Human Services adopted this amendment September 11, 2013.

This amendment does not provide for waiver in specified situations 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 6, 2013, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subrule 78.3(16) as follows:

**78.3(16) Skilled nursing care in "swing beds."**

a. Payment will be made for medically necessary skilled nursing care when provided by a hospital participating in the swing-bed program certified by the department of inspections and appeals and approved by the U.S. Department of Health and Human Services. Payment shall be at an amount equal to the sum of the direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16) "f"(3) and the non-direct care rate component limit for Medicare-certified hospital-based nursing facilities pursuant to 441—subparagraph 81.6(16) "f"(3), with the rate component limits being revised July 1, 2001, and every second year thereafter. Swing-bed placement is only intended to be short-term in nature.

b. Any payment for skilled nursing care provided in a hospital with a certified swing-bed program, for either initial admission or continued stay, will require prior authorization, subject to the following requirements:

(1) The hospital has fewer than 100 beds, excluding beds for newborns and intensive care.

(2) The hospital has an existing certification for a swing-bed program, pursuant to paragraph 78.3(16) "a."

(3) The member is being admitted for nursing facility or skilled level of care (if the member has Medicare and skilled coverage has been exhausted).

(4) As part of the discharge planning process for a member requiring ongoing skilled nursing care, the hospital must:

1. Complete a level of care (LOC) determination describing a member's LOC needs, using Form 470-5156, Swing Bed Certification.

2. Contact skilled nursing facilities within a 30-mile radius of the hospital regarding available beds to meet the member's LOC needs.

3. Certify that no freestanding skilled nursing facility beds are available for the member within a 30-mile radius of the hospital, which will be able to appropriately meet the member's needs and that home-based care for the member is not available or appropriate.

(5) Swing-bed stays beyond 14 days will only be approved when there is no appropriate freestanding nursing facility bed available within a 30-mile radius and home-based care for the member is not available or appropriate, as documented by the hospital seeking the swing-bed admission. For

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

the purpose of these criteria, an “appropriate” nursing facility bed is a bed in a Medicaid-participating freestanding nursing facility that provides the LOC required for the member’s medical condition and corresponding LOC needs.

(6) A Medicaid member who has been in a swing bed beyond 14 days must be discharged to an appropriate nursing facility bed within a 30-mile radius of the swing-bed hospital or to appropriate home-based care within 72 hours of an appropriate nursing facility bed becoming available.

Preadmission screening and resident review (PASRR) rules still apply for members being transferred to a nursing facility.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1056C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 29, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 83, “Medicaid Waiver Services,” Iowa Administrative Code.

These amendments implement Medicaid provider reimbursement rate increases in accordance with 2013 Iowa Acts, Senate File 446, section 29.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0841C** on July 24, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0842C** on the same date and became effective July 1, 2013.

The Department received no comments from the public on these amendments. However, as the result of an internal Department review of this rule making combined with a comparison to other ongoing simultaneous rule-making efforts, changes to the language in subrule 79.1(2) were necessary to accurately reflect legislative intent. Specifically, changes were made to the language in the HCBS transportation, physical therapists, occupational therapists, and rehabilitation agencies provider categories to reflect language in other rule makings.

Pursuant to changes adopted in **ARC 0994C** and published in the September 4, 2013, Iowa Administrative Bulletin, the following sentence was added in the “Basis of reimbursement” column in the occupational therapists, physical therapists, and rehabilitation agencies provider categories: “For members residing in a nursing facility, see 441—paragraph 81.6(11) ‘r.’” The entries for the provider categories now read as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Occupational therapists	Fee schedule. For members residing in a nursing facility, see 441—paragraph 81.6(11) “r.”	Fee schedule in effect 6/30/13 plus 1%.
Physical therapists	Fee schedule. For members residing in a nursing facility, see 441—paragraph 81.6(11) “r.”	Fee schedule in effect 6/30/13 plus 1%.
Rehabilitation agencies	Fee schedule. For members residing in a nursing facility, see 441—paragraph 81.6(11) “r.”	Medicare fee schedule 6/30/13 plus 1%; refer to 79.1(21).

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In the HCBS transportation provider category, the entry reflects the amendment Adopted and Filed Emergency After Notice in **ARC 1071C** published herein and now reads as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
11. Transportation	Fee schedule	Effective 10/1/13: The provider's nonemergency medical transportation contract rate or, in the absence of a nonemergency medical transportation contract rate, the median nonemergency medical transportation contract rate paid per mile or per trip within the member's DHS region.

In the provider category for intermediate care facilities for the mentally retarded, the category name was changed to reflect current terminology. The provider category now reads "intermediate care facilities for persons with an intellectual disability."

In addition, new rule 441—79.17(249A) that was Adopted and Filed Emergency in **ARC 0842C** (Item 12) is rescinded as the result of a Gubernatorial veto of legislation, thereby making the language unnecessary.

The Council on Human Services adopted these amendments on September 11, 2013.

These amendments do not provide for waiver in specified situations 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.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 78, 79, 83] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0841C** and Adopted and Filed Emergency as **ARC 0842C**, IAB 7/24/13.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

[For replacement pages for IAC, see IAC Supplement 10/2/13.]

**ARC 1057C**

## HUMAN SERVICES DEPARTMENT[441]

### Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 12, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments change the reimbursement method for case management services under the Medicaid state plan, habilitation, and home- and community-based services for individuals with a brain injury and for the elderly.

Case management is currently cost-based reimbursed. Since FY 2012 and annualized for FY 2013, the reimbursement has increased by 15.8 percent. Due to the requirement in legislation for cost containment

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

strategies, the Department is limiting the administrative costs to 23 percent of direct service costs for FY 2014. During FY 2014, the Department will work with stakeholders to determine the rate methodology for FY 2015.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0839C** on July 24, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0840C** on the same date and became effective July 1, 2013.

The Department received comments from four respondents regarding these amendments.

**Comment 1:** The first respondent presented four concerns about the amendments:

1. There is a need for clarity on how the 15.8 percent increase in targeted case management (TCM) costs was determined. This will be helpful in guiding providers toward the areas on which to focus.

2. Cost settlement for FY 2012 has not yet occurred. Case management programs have submitted FY 2012 actual cost reports, but no action has been taken by IME.

3. The timing in which case management programs have been notified about this significant change. Most programs had already submitted FY 2014 projected cost reports prior to the notification of the methodology change. These reports were due June 1, 2013, so budgeted revenues and expenditures have already been established.

4. The need for a long-term solution versus a band-aid approach.

**Department response:** The Department's responses to those four concerns are as follows:

1. Initially, the Iowa Medicaid Enterprise (IME) calculated the increase in reimbursement upon the increase in provider rates over the last several years, which resulted in the 15.8 percent increase. Due to feedback from the provider community, the IME then settled upon using the "per member per month" (PMPM) calculation. The 15.8 percent increase used the PMPM for each member for case management and targeted case management as an aggregate and was not based on individual provider information. The calculation determined the increase for FY 2010 was 10 percent and the increase for FY 2013 was 14 percent (through May 2013).

2. During this summer, the IME Provider Cost Audit and Rate Setting Unit has been finalizing the outstanding 2012 cost reports. In accordance with DHS rules, the IME has 12 months from the submission date of the 2012 reports to settle those reports. At this time, the IME is focusing on the 2013 projected cost reports. The projected cost reports must be finalized in order to create a payment rate for services provided on and after July 1, 2013; without this rate, there would be no payment or an incorrect payment made to TCM organizations.

3. The Department understands the issues related to the short time span from announcement of the implementation strategy to the implementation date. The timing of the notification to trading partners was driven by the date the legislation was signed, which was in June. Until such time as legislation is signed, the Department can begin to devise implementation strategies but cannot communicate that information. The IME allowed all case management agencies to submit amended projected FY 2014 cost reports once the implementation strategy was finalized. The Department has given priority to these cost reports.

4. In compliance with 2013 Iowa Acts, Senate File 446, the Iowa Medicaid Enterprise and the Mental Health and Disability Services Division has established a workgroup with case management providers to meet during the Fall of 2013 to develop future rate methodologies that will include concepts such as administrative cost limits, overall rate maximums, and productivity standards. The workgroup will meet three times in September and October; a finalized plan for reimbursement methodology is anticipated during the final meeting.

**Comment 2:** The second respondent provided the following comments: The amendments require the targeted case management agency to revert back to finalized cost-settled rates from 2012 with an inflation factor adjustment of 4.7 percent for FY 2014 rates. The amendments also will not allow rates to be cost-settled.

Targeted case management agencies, which serve individuals with intellectual disabilities and chronic mental illness, became aware of the Adopted and Filed Emergency amendments and the July 1, 2013, implementation date via a statewide telephone call on June 6, 2013. The fiscal impact to the program calls into question the program's ability to meet expenses, particularly staff payroll, with the adjusted

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

2012 rates at the level of staff required to be able to serve the number of individuals in the program today. It appears DHS had ample notice of the need for cost containment but did not choose to partner with the entities that provide case management to discuss the realities of the amendments.

Establishing a rate methodology for FY 2014 by using a mixed formula from FY 2012 and FY 2013 is not acceptable or a fair way to determine the payment structure from which a program can operate.

In 2012, TCM agencies were billing a unit of service using a 1- to 15-minute contact as one billable unit. Agencies had discretion as to whether they billed for paperwork or not, and due to this agencies across the state were able to choose their practices. As a result, the option impacted an agency's units and rates. If an agency billed for paperwork, it provided more units, and its rate was lowered by volume. If an agency did not bill for paperwork, it provided fewer units, and the rate was higher. In both scenarios, the expenses to operate the program would be the same; what the agencies chose to bill impacted the units and the rates, not an increase in expenses.

In 2013, TCM agencies are billing a unit of service by utilizing a rounding rule in which a case manager could bill only contacts that exceeded 8 minutes as one unit. Any contacts under 8 minutes are not billable. Some agencies expected to lose over 150 units per month that were billable in the 2012 methodology because the contact is less than 7 minutes.

For FY 2014, the amendments change the methodology once again. The state is directing the agencies to use the 2012 rate, plus an inflation factor, and utilize rounding rules. One provider of case management services stated that this method will go well beyond cost containment; it could result in a reduction in the agency's capacity to serve.

The FY 2014 methodology's impact on one of the respondents is that the unit rate will reduce from \$76.15 to \$57.63, a loss of -\$18.62 per unit. If the respondent serves an average of 1712 units per month, monthly revenue reduction will be -\$31,877. Annualized, one program will have a loss of -\$382,529.28. The state has said that units cannot be increased to offset cuts. In this scenario, the cuts will force a reduction of 11 staff and 275 individuals receiving intellectual disabilities case management that cannot be absorbed by remaining staff at the quality expected by the standards for targeted case management set forth in Iowa Administrative Code, 441—Chapters 24 and 90.

It is critical that this rate methodology be reconsidered using definitions that applied to the fiscal year identified as the rate on which to base the cost containment. It is also essential that DHS join with case management providers in creating a solution that is realistic to implement without financially closing programs.

**Department response:** The Department's responses to these concerns are as follows:

1. The initial strategy to cost-settle at FY 2012 rates with a 4.7 percent inflation factor is not the strategy currently in the amendments. Based upon feedback and further review of legislation, the Department developed an alternative proposal to the 4.7 percent strategy. The amendments contained in **ARCs 0839C** and **0840C** reflect a different implementation strategy than what is mentioned in this comment.

2. The Department well understands the issues related to the short time span from announcement of the implementation strategy to the implementation date. The timing of the notification to trading partners was driven by the date the legislation was signed, which was in June. Until such time as legislation is signed, the Department can begin to devise implementation strategies but cannot communicate that information.

3. Because 2013 Iowa Acts, Senate File 446, required a cost savings in FY 2014, which began July 1, 2013, immediate changes were needed in order to realize the required savings in the fiscal year. To delay implementation of a strategy would cause the savings to not be realized.

4. As described above in the response to Comment 1, a workgroup with case management providers has been convened to develop future rate methodologies.

**Comment 3:** The third respondent echoed concerns of the other respondents relating to the impact that the amendments will have on targeted case management firms. The respondent also shared that costs for services in the area of case management continue to climb. The respondent expressed concern that case management agencies eventually may have no choice but to stop providing the service because of



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

high loss in cost to the program and expressed uncertainty regarding who will provide case management to the individuals that will be affected.

**Department response:** The initial strategy to cost-settle at FY 2012 rates with a 4.7 percent inflation factor is not the strategy currently in the amendments. Based upon feedback and further review of legislation, the Department developed an alternative proposal to the 4.7 percent strategy. The amendments contained in **ARCs 0839C** and **0840C** reflect a different implementation strategy than what is mentioned in this comment.

Each Iowa Medicaid provider must determine whether or not Medicaid reimbursement policies can allow that provider to continue to participate with Medicaid. The intention of the legislation was to rein in quickly growing reimbursement rates that are funded by taxpayer moneys. The Department is charged with using taxpayer moneys carefully and judiciously.

The revised implementation strategy does allow for cost settlement for FY 2014. The amendments allow for cost settlement while limiting administrative costs.

Initially, the IME calculated the increase in reimbursement upon the increase in provider rates over the last several years, which resulted in the 15.8 percent increase. Due to feedback from the provider community, the IME then settled upon using the “per member per month” (PMPM) calculation. This calculation used the PMPM for each member for case management and targeted case management as an aggregate and was not based on individual provider information. The calculation determined the increase for FY 2010 was 10 percent and the increase for FY 2013 was 14 percent (through May 2013).

As described above in the response to Comment 1, a workgroup with case management providers has been convened to develop future rate methodologies.

**Comment 4:** The fourth respondent stated that IME staff would like the case management methodology to be similar to how the waiver calculates indirect costs, but the respondent pointed out that case management is not like any waiver service. Targeted case managers are not allowed to provide direct service, which is an integral component of other Medicaid-funded services, so the activities that make up the direct costs are different from other waiver services. Unlike other community-based services such as supported community living, case management is mainly an office job—case management has become so paperwork-intensive that case managers spend 84 percent of their time in an office completing paperwork. Case management duties include making numerous telephone calls for referral, monitoring and follow up; completing substantial documents (social history, 35-page assessment, and care plan) which have to be copied and mailed to all interdisciplinary team members; data entry in the State ISIS system; and documenting all this activity. This rule making, as written, limits other costs to certain lines on the cost report. Telephone costs, office supplies, computers/management information systems, and the like were not included in other costs but targeted case management duties require all of those items. Some agencies have implemented efficiencies by hiring clerical staff to complete the ISIS data entry, but clerical staff are also not considered other costs. In order to come closer to the 23 percent limit, agencies could lower caseloads and hire more case managers to perform required duties that clerical staff are currently performing. The respondent recommended that the following lines be included as other costs rather than indirect administrative costs: professional staff-direct salaries, other-direct salaries, clerical staff-direct salaries, benefits, and payroll taxes associated with direct salaries from those three lines; office supplies; telephone and Internet; postage and shipping; occupancy expense; mileage and automobile rental; agency vehicle expense; automobile insurance; and other related transportation.

The respondent also suggested changing the term “indirect administrative costs” to “administrative costs.” It has been very confusing to the accountants completing the cost report to use the term “indirect” to refer to any costs that are directly attributed to the case management program. “Indirect” has always referred to costs that are allocated across all programs.

**Department response:** Each service under Medicaid, including targeted case management, has unique features and purposes. Each service has unique tasks to be performed and unique goals. But all other Medicaid services are bound by rate limits or a set payable fee, neither of which exist for targeted case management. The legislation has charged the IME as follows: “The department shall develop a new reimbursement methodology for medical assistance targeted case management that

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applies appropriate cost limits.” 2013 Iowa Acts, Senate File 446, also directed the Department to establish emergency rules to effectuate those cost limits. The short time frame in which to determine and effectuate these rules is why the Department also immediately indicated that a workgroup would be convened to formulate a sustainable plan for the future.

The IME will take all suggestions to the workgroup that has been established and began meeting in September 2013. As described above in the response to Comment 1, a workgroup with case management providers has been convened to develop future rate methodologies.

Pursuant to past legislation, the IME has been working to formulate a uniform cost report to be used for all services requiring a cost report. This uniform cost report will utilize commonly accepted cost reporting terms.

These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on September 11, 2013.

These amendments do not provide for waiver in specified situations 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.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend paragraph **79.1(1)“d”** as follows:

*d. Fee for service with cost settlement.* Providers of case management services shall be reimbursed on the basis of a payment rate for a 15-minute unit of service based on reasonable and proper costs for service provision. The fee will be determined by the department with advice and consultation from the appropriate professional group and will reflect the amount of resources involved in service provision.

(1) Providers are reimbursed throughout each fiscal year on the basis of a projected unit rate for each participating provider. The projected rate is based on reasonable and proper costs of operation, pursuant to federally accepted reimbursement principles (generally Medicare or OMB A-87 principles).

(2) Payments are subject to annual retrospective cost settlement based on submission of actual costs of operation and service utilization data by the provider on Form 470-0664, Financial and Statistical Report. The cost settlement represents the difference between the amount received by the provider during the year for covered services and the amount supported by the actual costs of doing business, determined in accordance with an accepted method of cost appointment.

(3) The methodology for determining the reasonable and proper cost for service provision assumes the following:

1. The indirect administrative costs shall be limited to ~~20~~ 23 percent of other costs. Other costs include: professional staff – direct salaries, other – direct salaries, benefits and payroll taxes associated with direct salaries, mileage and automobile rental, agency vehicle expense, automobile insurance, and other related transportation.

2. Mileage shall be reimbursed at a rate no greater than the state employee rate.

3. The rates a provider may charge are subject to limits established at 79.1(2).

4. Costs of operation shall include only those costs that pertain to the provision of services which are authorized under rule 441—90.3(249A).

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

ITEM 2. Amend subrule **79.1(2)**, provider category “HCBS waiver services,” paragraph “17,” as follows:

Provider category	Basis of reimbursement	Upper limit
17. Case management	Fee <del>schedule</del> for service with cost settlement. See 79.1(1) “d.”	For brain injury <del>waiver and</del> elderly waivers: Retrospective cost-settled rate. <del>For elderly waiver: Quarterly revision of reimbursement rate as necessary to maintain projected expenditures within the amounts budgeted under the appropriations made for the medical assistance program for the fiscal year.</del>

[Filed 9/11/13, effective 11/6/13]

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**ARC 1058C**

## HUMAN SERVICES DEPARTMENT[441]

### Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 29, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments change the payment methodology for the home health services program to the Medicare low utilization payment amount (LUPA) methodology, with state geographic wage adjustments. The Department will update the rates every two years. The rates for the private duty nursing and personal cares program will be based on interim rates subject to cost settlement and subject to a limit calculated by the Department and approved by the Centers for Medicare and Medicaid Services (CMS).

Payments to Medicaid home health services providers and private duty nursing and personal cares providers will be impacted for services provided to Medicaid members. Home health services will be reimbursed according to the LUPA visit schedule of reimbursement determined by Medicare. These amendments will not require any additional costing information. Private duty nursing and the personal cares program will require a change to the rate for the private duty nursing service. The private duty nursing service will change to a 15-minute unit. Personal cares service shall remain at an hourly rate. The interim rates will be cost-settled up to a cap established by the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0863C** on July 24, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0864C** on the same date and became effective July 1, 2013.

The Department received no public comments on these amendments. However, in the course of a departmental review of these amendments, the initial percentage determined for actual and allowable cost (110 percent) for private duty nursing and personal cares for persons aged 20 or under was found to be incorrect. The percentage rate has been corrected to 133 percent. This change is found in numbered paragraph “2” of Item 1.

In addition, pursuant to amendments to subrule 79.1(2) adopted in **ARC 0994C** and published in the September 4, 2013, Iowa Administrative Bulletin, the following sentence was added in numbered paragraph “1” of the “Home health agencies” provider category: “For members residing in a nursing facility, see 441—paragraph 81.6(11)‘r.’”

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

As a result of these changes and in order to accurately convey the result of the amendments, in Item 1, the provider category “Home health agencies” is rescinded and a new entry for the category is adopted, which incorporates amendments adopted in **ARC 0994C** and incorporates the change from 110 percent to 133 percent.

The amendments were also modified to reflect a shift in language from personal care services to the personal cares program in order to clarify the difference between personal cares provided through state plan Home Health Services and the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program. In addition, the amendments were modified to reflect a requirement from Medicaid to use a billing unit size of 15 minutes for specified services. These changes are reflected throughout Item 3.

The Council on Human Services adopted these amendments on September 11, 2013.

These amendments do not provide for waiver in specified situations 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 specific impact on private sector jobs has been found. These amendments will allow more agencies the ability to continue to provide services rather than discontinue being providers of the home health services and private duty nursing and personal cares programs. These amendments should maintain current employment in the state.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)** by rescinding provider category “Home health agencies” and adopting the following **new** provider category in lieu thereof:

Provider category	Basis of reimbursement	Upper limit
Home health agencies		
1. Skilled nursing, physical therapy, occupational therapy, speech therapy, home health aide, and medical social services; home health care for maternity patients and children	Fee schedule. See 79.1(26). For members living in a nursing facility, see 441—paragraph 81.6(11)“r.”	Effective 7/1/13: Medicare LUPA rates in effect on July 1, 2013, updated July 1 every two years.
2. Private-duty nursing and personal cares for members aged 20 or under	Retrospective cost-related. See 79.1(27)	Effective 7/1/13: Actual and allowable cost not to exceed a maximum of 133% of statewide average.
3. Administration of vaccines	Physician fee schedule	Physician fee schedule rate.

ITEM 2. Adopt the following **new** subrule 79.1(26):

**79.1(26) Home health services.**

*a.* Services included under the home health services program are reimbursed on the low utilization payment amount (LUPA) methodology, with state geographic adjustments.

*b.* Medicare LUPA per-visit rates in effect on July 1, 2013, are the basis for establishing the LUPA methodology for the initial reimbursement schedule.

*c.* Medicare LUPA per-visit rates shall be increased July 1 every two years to reflect the most recent Medicare LUPA rates.

*d.* Home health services subject to this methodology are skilled nursing, home health aide, physical therapy, occupational therapy, speech therapy, and medical social services provided by Medicare-certified home health agencies.

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

ITEM 3. Adopt the following **new** subrule 79.1(27):

**79.1(27)** *Reimbursement for early periodic screening, diagnosis, and treatment private duty nursing and personal cares program.*

*a. Rate determination based on cost reports.* Reimbursement shall be made using an hourly rate that is calculated retrospectively for each provider, considering reasonable and proper costs of operation not to exceed the upper limit as provided in subrule 79.1(2).

(1) Interim rates. Providers shall be reimbursed through a prospective interim rate equal to the previous year's retrospectively calculated 15-minute and hourly rate. Pending determination of private duty nursing and personal cares program costs, the provider may bill for and shall be reimbursed at an hourly rate that the provider and the Iowa Medicaid enterprise (IME) may reasonably expect to produce total payments to the provider for the provider's fiscal year that are consistent with Medicaid's obligation to reimburse that provider's reasonable costs.

(2) Audit of cost reports. Cost reports as filed shall be subject to review or audit or both by the Iowa Medicaid enterprise to determine the actual cost of services in accordance with generally accepted accounting principles, Medicare cost principles published in Centers for Medicare and Medicaid Services Publication §15-1, and the Office of Management and Budget Circular A-87, Attachment B, subject to the exceptions and limitations in the department's administrative rules.

(3) Retroactive adjustment. When the reasonable and proper costs of operation are determined, a retroactive adjustment shall be made. The retroactive adjustment represents the difference between the amount that the provider received during the year for covered services through interim rates and the reasonable and proper costs of operation determined in accordance with this subrule.

*b. Financial and statistical report submission and reporting requirements.*

(1) The provider shall submit the complete Financial and Statistical Report, Form 1728-94, in an electronic format approved by the department to the IME provider cost audit and rate setting unit within five months of the end of the provider's fiscal year.

(2) The submission of the financial and statistical report must include a working trial balance that corresponds to the data contained on the financial and statistical report and the Medicare cost report. Financial and statistical reports submitted without a working trial balance and the Medicare cost report will be considered incomplete.

(3) A provider may obtain a 30-day extension for submitting the financial and statistical report by sending a letter to the IME provider cost audit and rate setting unit. The extension request must be received by the IME provider cost audit and rate setting unit before the original due date. No extensions will be granted beyond 30 days.

(4) Providers shall submit a completed financial and statistical report to the IME provider cost audit and rate setting unit in an electronic format that can be opened using the extension .xls or .xlsx. The supplemental documentation shall be submitted in a generally accepted business format. The report and required supplemental information shall be e-mailed to [costaudit@dhs.state.ia.us](mailto:costaudit@dhs.state.ia.us) on or before the last day of the fifth month after the end of the provider's fiscal year. One signed copy of the certification page of the Medicaid and Medicare cost reports shall be mailed to the IME Provider Cost Audit and Rate Setting Unit, P.O. Box 36450, Des Moines, Iowa 50315, no later than the due date of the required electronic submissions.

(5) If a provider fails to submit a cost report that meets the requirement of subparagraph 79.1(27) "b"(4), the department shall reduce payment to 75 percent of the current rate(s).

1. The reduced rate(s) shall be effective the first day of the sixth month following the provider's fiscal year end and shall remain in effect until the first day of the month after the delinquent report is received by the IME provider cost audit and rate setting unit.

2. The reduced rate(s) shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the IME provider cost audit and rate setting unit.

(6) Financial information shall be based on the provider's financial records. When the records are not kept on an accrual basis of accounting, the provider shall make the adjustments necessary to convert

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

the information to an accrual basis for reporting and provide documentation detailing these adjustments. Failure to maintain records to support the cost report may result in the following, but not limited to:

1. Recoupment of Medicaid payments.
2. Penalties.
3. Sanctions pursuant to rule 441—79.3(249A).

(7) The department, in its sole discretion, may on its own initiative reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or to submit an amended financial and statistical report for review by the department, after the provider is notified of its reimbursement rates following review of a financial and statistical report.

(8) A projected cost report shall be submitted when a home health agency enters the program or adds private duty nursing and the personal cares program. Prospective interim rates shall be established using the projected cost report. The effective date of the rate shall be the day the provider becomes certified as a Medicaid provider or the day the new program is added.

(9) A provider of services under multiple programs shall submit a cost allocation schedule that was used during the preparation of the financial and statistical report.

(10) Costs reported under private duty nursing and the personal cares program shall not be reported as reimbursable costs under any other funding source. Costs incurred for other services shall not be reported as reimbursable costs under private duty nursing and the personal cares program.

(11) When a provider continues to include as an item of cost an item or items which had in a prior period been removed by an adjustment by the department or its contractor, in the total program costs, the contractor shall recommend to the department that the reimbursement rates be reduced to 75 percent of the current reimbursement rate for the entire quarter beginning the first day of the sixth month after the provider's fiscal year end. The department may, after considering the seriousness of the exception, make the reduction.

(12) Nothing in this subrule relieves a provider of its obligation to immediately inform the department that it has retained Medicaid funds to which it is not entitled as a result of any cost report process. A provider must notify the Iowa Medicaid enterprise when the provider notes that funds are incorrectly paid or when an overpayment has been detected.

*c. Terminated home health agencies.*

(1) A participating home health agency contemplating termination of private duty nursing and the personal cares program shall provide the department of human services with at least 60 days' prior notice. The person responsible for the termination is responsible for submission of a final financial and statistical report through the date of the termination. The final home health cost report shall meet the reporting requirements in paragraph 79.1(27) "b."

(2) For facilities that terminate activity with the Iowa Medicaid enterprise, a financial and statistical report from the beginning of the fiscal year to the date of termination will be required, regardless if termination is voluntary, involuntary or due to a change in ownership. All documentation in paragraph 79.1(27) "a" shall be submitted 45 days after the date of termination, by the terminated (closed) entity. If no report is received within 45 days, the Iowa Medicaid enterprise will begin the process to recoup all funds for dates of service beginning from the last filed cost report to the date of termination.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1059C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 92, "IowaCare," Iowa Administrative Code.

These amendments codify policies regarding a suspension of enrollment in IowaCare implemented on July 1, 2013, based on funding for state fiscal year 2013-2014 and pursuant to the amended terms of the waiver of Title XIX requirements allowing federal funding for the IowaCare program.

The IowaCare program has experienced steady growth in enrollment since the implementation of the statewide expansion of the provider network on January 1, 2012. IowaCare providers are concerned about having the capacity to meet future enrollment growth and have expressed the need to cap enrollment in order to maintain quality of care. In addition, enrollment growth exhausted initially appropriated funding and required supplemental appropriations in state fiscal years 2011-2012 and 2012-2013. An enrollment cap will also assist in the phasing out of IowaCare, which is scheduled to sunset on December 31, 2013, and in transitioning current enrollees into the new health care coverage structure that will be effective January 1, 2014. For these reasons, the Department submitted a request to the federal Centers for Medicare and Medicaid Services (CMS) to amend the IowaCare 1115 waiver to cap program enrollment as of July 1, 2013. Public notice of the intent to submit the waiver amendment was published in September 2012, and the waiver amendment request was submitted to CMS in October 2012. The Department's budget request and state appropriation for the 2013-2014 state fiscal year were based on the cap.

CMS notified the Department of its approval of the amendment on June 17, 2013. Therefore, these rules are being amended to implement the enrollment cap in accordance with the waiver amendment and the Department's state appropriation for 2013-2014.

These amendments codify the limit set by the amended waiver on the number of members allowed to participate in the program and specify how new members will be added within the enrollment cap. The program accepted applications through June 30, 2013. The enrollment cap will be established at the number of enrolled members in the program when all applications filed prior to July 1, 2013, have been processed. Enrolled members will be allowed to renew coverage if their enrollment period expires after July 1, 2013.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0861C** on July 24, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0862C** on the same date and became effective July 1, 2013.

The Department received no comments. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on September 11, 2013.

These amendments do not provide for waivers in specified situations because the federal waiver does not provide for exceptions to the enrollment cap and because waivers would cause state expenditures to exceed the funding appropriated. 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.

These amendments are intended to implement Iowa Code section 217.6 and chapter 249J.

These amendments will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 92.5(6) as follows:

**92.5(6) *Disregard of changes.***

a. A person found to be income-eligible upon application or recertification of eligibility shall remain income-eligible for 12 months regardless of any change in income or household size.

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

b. Persons income-eligible on June 30, 2013, shall remain income-eligible through December 31, 2013, regardless of any change in income or household size.

ITEM 2. Adopt the following **new** subrule 92.6(5):

**92.6(5)** *Extension of certifications from June 30, 2013.* Any certification period in effect June 30, 2013, shall continue until December 31, 2013.

ITEM 3. Amend subrule 92.14(1) as follows:

**92.14(1)** *Suspension of enrollment.*

a. To ensure equitable treatment, applications shall be approved on a first-come, first-served basis and enrollment will be suspended when the likely costs of caring for those already enrolled will exhaust the available funding during the year. "First-come, first-served" status is determined by the date the application is approved for eligibility and entered into the computer system.

b. As required by the waiver of Title XIX requirements allowing for federal funding of the IowaCare program, and based on available funding for the 2013-2014 state fiscal year, enrollment of new members in IowaCare will be suspended for applications filed on or after July 1, 2013.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1060C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6 and 2013 Iowa Acts, Senate File 446, section 29, the Department of Human Services amends Chapter 150, "Purchase of Service," Iowa Administrative Code.

This amendment changes how supervised apartment living (SAL) rates are established. SAL rates will no longer be established by purchase of service but will instead be established by competitive performance-based contracts. Contractors with the Department that provide child welfare emergency services (CWES) juvenile shelter care will have their state fiscal year 2013 rates increased by 5 percent for state fiscal year 2014.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0859C** on July 24, 2013. The amendment was also Adopted and Filed Emergency and published as **ARC 0860C** on the same date and became effective July 1, 2013.

The Department received no comments. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on September 11, 2013.

This amendment does not provide for waivers in specified situations because the legislation does not specifically allow for waivers. 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 234.6.

This amendment will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend paragraph **150.3(5)"p"** as follows:

*p. Rate limits.* Interruptions in service programs will not affect the rate. If an agency assumes the delivery of service from another agency, the rate shall remain the same as for the former agency.

(1) The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. For the fiscal year beginning



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

July 1, 2008 2013, the maximum reimbursement rate shall be ~~\$92.36~~ \$96.98 per day, based on a 365-day year. If the department reimburses the provider at less than the maximum rate, the department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost plus the inflation factor or to the maximum reimbursement rate, whichever is less.

~~(2) For the fiscal year beginning July 1, 2010, the reimbursement rates for supervised apartment living service providers shall be increased by 1.31 percent over the rates in effect on June 30, 2010.~~

(3) (2) The initial reimbursement rate for any new service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

1. For shelter care, if the provider is currently offering shelter care under social services contract, the only time the provider shall be considered to be offering a new service is if the provider adds a service other than shelter care.

2. For supervised apartment living, the only time a provider shall be considered to be offering a new service is when the agency adds a cluster site or a scattered site for the first time. If, for example, the agency has a supervised apartment living cluster site, the addition of a new site does not constitute a new service.

3. If the department defines, in administrative rule, a new service as a social service that may be purchased, this shall constitute a new service for purposes of establishment of a rate. Once the rate for the new service is established for a provider, the rate will be subject to any limitations established by administrative rule or law.

(4) (3) If a social service provider loses a source of income used to determine the reimbursement rate for the provider, the provider's reimbursement rate may be adjusted to reflect the loss of income, provided that the lost income was used to support actual and allowable costs of a service purchased under a purchase of service contract.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1061C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6 and 2013 Iowa Acts, Senate File 446, sections 18, 19 and 185, the Department of Human Services amends Chapter 156, "Payments for Foster Care," Iowa Administrative Code.

These amendments provide an increase to the foster family daily reimbursement and adoption subsidy daily maintenance rates effective July 1, 2013.

These changes ensure that foster parents and adoptive parents receive the financial support that is required for the children placed in their care. Many of the children in family foster care and the children that are adopted have numerous special needs that require a variety of supportive services.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0857C** on July 24, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0858C** on the same date and became effective July 1, 2013.

The Department received no comments. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on September 11, 2013.

These amendments do not provide for waivers in specified situations because the legislation does not specifically allow for waivers. 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.

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

These amendments are intended to implement Iowa Code section 234.6 and 2013 Iowa Acts, Senate File 446, sections 18 and 19.

These amendments will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule 156.6(1) as follows:

**156.6(1) Basic rate.** ~~Effective July 1, 2012, a~~ A monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

Age of child	Daily rate
0 through 5	<del>\$15.98</del> <u>\$16.78</u>
6 through 11	<del>\$16.62</del> <u>\$17.45</u>
12 through 15	<del>\$18.19</del> <u>\$19.10</u>
16 or over	<del>\$18.43</del> <u>\$19.35</u>

ITEM 2. Amend rule ~~441—156.6(234)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 234.38 and ~~2012 Iowa Acts, Senate File 2336, section 34~~ 2013 Iowa Acts, Senate File 446, sections 18 and 19.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1062C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6 and 2013 Iowa Acts, Senate File 446, section 29, the Department of Human Services amends Chapter 156, "Payments for Foster Care," Iowa Administrative Code.

These amendments increase by 5 percent the monthly maintenance rate and initial allowance for youth placed in the supervised apartment living (SAL) program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0855C** on July 24, 2013. The amendments were also Adopted and Filed Emergency and published as **ARC 0856C** on the same date and became effective July 1, 2013.

The Department received no comments. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on September 11, 2013.

These amendments do not provide for waivers in specified situations because the legislation does not specifically allow for waivers. 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.

These amendments are intended to implement Iowa Code section 234.6 and 2013 Iowa Acts, Senate File 446, section 29.

These amendments will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

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

ITEM 1. Amend subrule 156.8(2) as follows:

**156.8(2) *Supervised apartment living.*** Effective July 1, ~~2011~~ 2013, when a child is initially placed in supervised apartment living, the service area manager or designee may authorize an allowance not to exceed ~~\$600~~ \$630 if the child does not have sufficient resources to cover initial costs.

ITEM 2. Amend subrule 156.12(1) as follows:

**156.12(1) *Maintenance.*** Effective July 1, ~~2011~~ 2013, when a child at least aged 16½ but under the age of 20 is living in a supervised apartment living situation, the monthly maintenance payment for the child shall be ~~\$750~~ \$787.50. This payment may be paid to the child or another payee, other than a department employee, for the child's living expenses.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1063C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6 and 2013 Iowa Acts, Senate File 446, section 29, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

This amendment increases the provider rate ceilings for child care assistance to reflect a 4 percent increase over current rates as directed by the Legislature.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0852C** on July 24, 2013. The amendment was also Adopted and Filed Emergency and published as **ARC 0854C** on the same date and became effective July 1, 2013.

The Department received no comments. The amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on September 11, 2013.

This amendment does not provide for waivers in specified situations because the legislation does not specifically allow for waivers. 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 234.6 and 2013 Iowa Acts, Senate File 446, section 29.

This amendment will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend paragraph **170.4(7)"a"** as follows:

*a. Rate of payment.* The rate of payment for child care services, except for in-home care which shall be paid in accordance with 170.4(7)"d," shall be the actual rate charged by the provider for a private individual, not to exceed the maximum rates shown below. When a provider does not have a half-day rate in effect, a rate is established by dividing the provider's declared full-day rate by 2. When a provider has neither a half-day nor a full-day rate, a rate is established by multiplying the provider's declared hourly rate by 4.5. Payment shall not exceed the rate applicable to the provider and age group in Table I, except for special needs care which shall not exceed the rate applicable to the provider and age group in Table II. To be eligible for the special needs rate, the provider must submit documentation to the child's service worker that the child needing services has been assessed by a qualified professional and meets the definition for "child with special needs," and a description of the child's special needs, including, but not limited to, adaptive equipment, more careful supervision, or special staff training.

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

Table I Half-Day Rate Ceilings for Basic Care				
Age Group	Child Care Center	Child Development Home Category A or B	Child Development Home Category C	Nonregistered Family Home
Infant and Toddler	<del>\$16.13</del> <u>\$16.78</u>	<del>\$12.48</del> <u>\$12.98</u>	<del>\$11.96</del> <u>\$12.44</u>	\$8.19
Preschool	<del>\$13.01</del> <u>\$13.53</u>	<del>\$11.71</del> <u>\$12.18</u>	<del>\$11.71</del> <u>\$12.18</u>	\$7.19
School Age	<del>\$11.71</del> <u>\$12.18</u>	<del>\$10.40</del> <u>\$10.82</u>	<del>\$10.40</del> <u>\$10.82</u>	\$7.36

Table II Half-Day Rate Ceilings for Special Needs Care				
Age Group	Child Care Center	Child Development Home Category A or B	Child Development Home Category C	Nonregistered Family Home
Infant and Toddler	<del>\$49.94</del> <u>\$51.94</u>	<del>\$16.39</del> <u>\$17.05</u>	<del>\$12.88</del> <u>\$13.40</u>	\$10.24
Preschool	<del>\$29.26</del> <u>\$30.43</u>	<del>\$15.22</del> <u>\$15.83</u>	<del>\$12.88</del> <u>\$13.40</u>	\$ 8.99
School Age	<del>\$29.17</del> <u>\$30.34</u>	<del>\$14.05</del> <u>\$14.61</u>	<del>\$11.71</del> <u>\$12.18</u>	\$ 9.20

The following definitions apply in the use of the rate tables:

(1) "Child care center" shall mean those providers as defined in 170.4(3) "a" and "g." "Registered child development home" shall mean those providers as defined in 170.4(3) "b." "Nonregistered family child care home" shall mean those providers as defined in 170.4(3) "f."

(2) Under age group, "infant and toddler" shall mean age two weeks to two years; "preschool" shall mean two years to school age; "school age" shall mean a child in attendance in full-day or half-day classes.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1064C**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6 and 2013 Iowa Acts, Senate File 446, section 29, the Department of Human Services amends Chapter 187, "Aftercare Services and Supports," Iowa Administrative Code.

This amendment increases youth stipend and provider rates. Contractors and subcontractors with the Department that provide preparation for adult living (PAL) services will have their state fiscal year 2013 rates increased by 5 percent for state fiscal year 2014.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0850C** on July 24, 2013. The amendment was also Adopted and Filed Emergency and published as **ARC 0851C** on the same date and became effective July 1, 2013.

The Department received no comments. This amendment is identical to that published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted this amendment on September 11, 2013.

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

This amendment does not provide for waivers in specified situations because the legislation does not specifically allow for waivers. 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 234.6.

This amendment will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Amend subrule 187.12(2) as follows:

**187.12(2) Amount of monthly stipend.** The maximum monthly stipend shall be \$574 \$602.70.

a. The stipend shall be prorated based on the date of entry.

b. Effect of income.

(1) When the monthly unearned income of the youth exceeds the maximum monthly stipend, the youth is not eligible for a stipend.

(2) When the net earnings of the youth exceed the maximum monthly stipend, the stipend shall be reduced the following month by 50 cents for every dollar earned over the maximum monthly stipend.

(3) A youth receiving Supplemental Security Income payments is not eligible for a stipend.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1047C****INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 56, "Fining and Citations," Iowa Administrative Code.

This rule making describes the process for the informal conference on a contested citation issued to a facility licensed pursuant to Iowa Code chapter 135C, which is provided for in Iowa Code section 135C.42, and incorporates legislative changes made by 2013 Iowa Acts, Senate File 394.

The Department does not believe that the amendments impose any financial hardship on any regulated entity, body, or individual.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0922C**. Comments were received from the Iowa Health Care Association and LeadingAge Iowa. After consideration of the comments, subparagraph 56.14(3)"c"(2) was revised to allow facilities to submit supporting documentation for the informal conference after the deadline established, but only as permitted by the independent reviewer upon good cause shown.

The State Board of Health reviewed the proposed amendments at its July 10, 2013, meeting, and subsequently approved this rule making at its September 11, 2013, meeting.

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

These amendments are intended to implement Iowa Code sections 135C.14 and 135C.42 and 2013 Iowa Acts, Senate File 394.

These amendments shall become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. 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 director of the department of inspections and appeals in writing~~ that it desires to contest such citation and request in writing an informal conference with ~~a representative of the department of inspections and appeals~~ an independent reviewer. The informal conference will

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

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.

*a. Definition.* For purposes of this subrule, “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.

ITEM 2. Amend rule 481—56.15(135C) as follows:

**481—56.15(135C) Procedure for facility after informal conference.** After the conclusion of an informal conference requested by the licensee and provided pursuant to 56.14(3):

**56.15(1)** If the facility does not desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five ~~working~~ business days after the informal conference, or within five ~~working~~ business days after receipt of the written decision and explanation

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

of the ~~department of inspections and appeals' representative at the informal conference~~ independent reviewer, whichever occurs later, comply with the provisions of subrule 56.14(1).

**56.15(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 ~~working business~~ business days after the informal conference, or within five ~~working business~~ business days after receipt of the written decision and explanation of the ~~department of inspections and appeals' representative at the informal conference, as the case may be, 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 9/11/13, effective 1/1/14]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1050C****INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 57, "Residential Care Facilities," Chapter 58, "Nursing Facilities," Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)," Chapter 63, "Residential Care Facilities for the Intellectually Disabled," Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," and Chapter 67, "General Provisions for Elder Group Homes, Assisted Living Programs and Adult Day Services," Iowa Administrative Code.

Currently, Iowa Code chapter 155A, Iowa Administrative Code rule 657—8.32(124,155A), and 2013 Iowa Acts, Senate File 353, give pharmacists some authority to administer certain immunizations. The Department's rules limit the administration of injectable medications to qualified nurses or physicians. These amendments allow pharmacists to administer injectable medications as permitted by Iowa law.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0907C**. Comments were received from the Iowa Physician Assistant Society, which noted inconsistencies with the proposed amendments and Iowa Code chapter 148C. Under chapter 148C, physician assistants are authorized to administer medications, including injections, in licensed health care facilities as delegated by a supervising physician. As a result, the amendments have been changed to include physician assistants among those individuals authorized to administer medications to residents in health care facilities.

In addition, paragraph 67.5(6)"a" in Item 6 has been updated to correspond with **ARC 0961C** and **ARC 0963C** (IAB 8/21/13) that amended the paragraph.

The Department does not believe that these amendments impose any financial hardship on any regulated entity, body, or individual.

The State Board of Health initially reviewed the proposed amendments at its July 10, 2013, meeting and subsequently approved them at the Board's September 11, 2013, meeting.

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.

These amendments shall become effective on November 6, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **57.19(3)"h"** as follows:

*h.* Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, or physician, pharmacist, or physician assistant (PA).

ITEM 2. Amend paragraph **58.21(15)"a"** as follows:

*a.* Injectable medications shall ~~not~~ be administered as permitted by Iowa law by ~~anyone other than~~ a qualified nurse, or physician, pharmacist, or physician assistant (PA). In the case of a resident who has

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

been certified by the resident's physician or physician assistant (PA) as capable of taking the resident's own insulin, the resident may inject the resident's own insulin. (II)

ITEM 3. Amend paragraph **62.15(2)“j”** as follows:

*j.* Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, ~~or~~ physician, pharmacist, or physician assistant (PA).

ITEM 4. Amend paragraph **63.18(3)“i”** as follows:

*i.* Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, ~~or~~ physician, pharmacist, or physician assistant (PA).

ITEM 5. Amend paragraph **65.17(1)“i”** as follows:

*i.* Injectable medications shall ~~not~~ be administered as permitted by Iowa law by ~~anyone other than a prescriber or licensed~~ a qualified nurse, physician, pharmacist, or physician assistant (PA) ~~except when residents have been certified by a physician as capable of taking their insulin. When~~ In the case of a resident who has been certified by the resident's physician or physician assistant (PA) as capable of taking the resident's own insulin, the resident may prepare and inject the resident's own insulin. (II)

ITEM 6. Amend paragraph **67.5(6)“a”** as follows:

*a.* The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by or certified and noncertified staff in accordance with subrule 67.9(4) or a physician assistant (PA) in accordance with 645—Chapter 327. Injectable medications shall be administered as permitted by Iowa law by a registered nurse, licensed practical nurse, advanced registered nurse practitioner, physician, pharmacist, or physician assistant (PA).

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1048C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, “Nursing Facilities,” Iowa Administrative Code.

Effective with services furnished on or after January 1, 2011, Section 1814(a)(2) of the federal Social Security Act, which was amended by Section 3108 of the federal Affordable Care Act, authorizes physician assistants who are not employed by the facility to perform skilled nursing facility level of care certifications and recertifications. This rule making adopts the federal law in order to maintain consistency between federal regulations and state rules.

The Department does not believe that this 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 10, 2013, meeting, and subsequently approved the rule making at its September 11, 2013, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0923C**. The only comment received on the proposed amendment voiced support for the rule making. No changes were made to the amendment 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 section 135C.14.

This amendment shall become effective November 6, 2013.

The following amendment is adopted.



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

Amend subrule 58.14(8) as follows:

**58.14(8) Physician delegation of tasks.** Each resident shall be visited by or shall visit the resident's physician at least twice a year. The year period shall be measured from the date of admission and is not to include preadmission physicals.

*a.* For a skilled nursing patient, the resident must be seen by a physician for the initial comprehensive visit. Additional visits are required at least once every 30 days for 90 days after admission and at least once every 60 days thereafter. After the initial comprehensive visit, alternate required visits may be performed by an advanced registered nurse practitioner, clinical nurse specialist or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

*b.* Notwithstanding the provisions of 42 CFR 483.40, any required physician task or visit in a nursing facility may also be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

*c.* In dually certified skilled nursing/nursing facilities, the advanced registered nurse practitioner, clinical nurse specialist, and physician assistant must follow the skilled nursing facility requirements for services for skilled nursing facility stays. For nursing facility stays in skilled nursing/nursing facilities, any required physician task or visit may be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant working in collaboration with the physician. (III)

*d.* Nurse practitioners, clinical nurse specialists, and physician assistants may perform other tasks that are not reserved to the physician such as visits outside the normal schedule needed to address new symptoms or other changes in medical status. (III)

Table 1: Authority for non-physician practitioners to perform visits, sign orders, and sign certifications/recertifications when permitted by state law\*

	Initial Comprehensive Visit/Orders	Other Required Visits <sup>1</sup>	Other Medically Necessary Visits and Orders <sup>2</sup>	Certification/Recertification
<b>Skilled Nursing Facilities</b>				
<del>Nurse</del> Physician assistant, nurse practitioner and clinical nurse specialist employed by the facility	May not perform/May not sign	May perform <u>alternate visits</u>	May perform and sign	May not sign
<del>Nurse</del> Physician assistant, nurse practitioner and clinical nurse specialist not a facility employee	May not perform/May not sign	May perform <u>alternate visits</u>	May perform and sign	May sign subject to state requirements
<del>Physician assistant regardless of employer</del>	<del>May not perform/May not sign</del>	<del>May perform</del>	<del>May perform and sign</del>	<del>May not sign</del>
<b>Nursing Facilities</b>				
Nurse practitioner, clinical nurse specialist, and physician assistant employed by the facility	May not perform/May not sign	May not perform	May perform and sign	<del>May sign subject to state requirements</del> Not applicable <sup>+</sup>
Nurse practitioner, clinical nurse specialist, and physician assistant not a facility employee	May perform/May sign	May perform	May perform and sign	<del>May sign subject to state requirements</del> Not applicable <sup>+</sup>

\*As permitted by state law governing the scope and practice of nurse practitioners, clinical nurse specialists, and physician assistants.

<sup>1</sup> Other required visits include the skilled nursing resident monthly visits that may be alternated between physician and advanced registered nurse practitioners, clinical nurse specialists, or physician assistants after the initial comprehensive visit is completed.

<sup>2</sup> Medically necessary visits may be performed prior to the initial comprehensive visit.

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

+This requirement relates specifically to coverage of Part A Medicare stays, which can take place only in a Medicare-certified skilled nursing facility.

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1055C****INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231C.3(1), the Department of Inspections and Appeals hereby amends Chapter 67, "General Provisions for Elder Group Homes, Assisted Living Programs and Adult Day Services," Iowa Administrative Code.

This rule making implements changes resulting from legislation in 2013 Iowa Acts, Senate File 394, which establishes an informal conference process for assisted living programs and becomes effective January 1, 2014. The legislation gives programs the opportunity to contest the Department's final findings in an informal conference with an independent reviewer.

The Department does not believe that these amendments pose a financial hardship on any regulated entity or individual.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0941C**. Comments were received from the Iowa Health Care Association and LeadingAge Iowa. After consideration of the comments, subparagraph 67.14(2)"b"(2) was amended to allow programs to submit supporting documentation for the informal conference after the established deadline, but only as permitted by the independent reviewer with good cause shown.

One commenter suggested amending subrule 67.10(2) relating to accessibility of records to add "unless such records are otherwise privileged or protected by law." Iowa Code section 231C.3(5)"a" allows the Department "full access at reasonable times to all records, materials and common areas pertaining to the provision of services and care to the tenants...." The subrule conforms with the statutory language and therefore was not changed.

One commenter suggested that the definition of "preponderance of the evidence" be added to subrule 67.10(3). This definition is already in rule 481—67.1(231B,231C,231D) and need not be repeated.

One commenter suggested that subrules 67.13(4) and 67.12(7) be amended to add that the Department should notify the program that it has elected not to conduct a monitoring revisit and has determined that, based on the submission of an accepted plan of correction, the program has corrected the cited regulatory insufficiencies. The Department finds the suggested language unnecessary.

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

These amendments are intended to implement Iowa Code section 231C.3(1) and 2013 Iowa Acts, Senate File 394.

These amendments shall become effective on January 1, 2014.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition in rule **481—67.1(231B,231C,231D)**:

*"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.

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

ITEM 2. Rescind rule 481—67.10(17A,231B,231C,231D) and adopt the following new rule in lieu thereof:

**481—67.10(17A,231B,231C,231D) Monitoring.**

**67.10(1) *Frequency of monitoring.*** The department shall monitor a certified program at least once during the program's certification period.

**67.10(2) *Accessibility of records and program areas.*** All records and areas of the program deemed necessary to determine compliance with the applicable requirements shall be accessible to the department for purposes of monitoring.

**67.10(3) *Standard for determining whether a regulatory insufficiency exists.*** The department shall use a preponderance-of-the-evidence standard when determining whether a regulatory insufficiency exists. A preponderance-of-the-evidence standard does not require that the monitor shall have personally witnessed the alleged violation.

ITEM 3. Amend paragraph **67.11(1)“b”** as follows:

*b.* When the nature of the complaint is outside the department's authority, the department shall forward the complaint or refer the complainant, if known, to the appropriate investigatory entity.

ITEM 4. Amend subrule 67.11(5) as follows:

**67.11(5) *Notification of program and complainant.*** The department shall notify the program and, if known, the complainant of the final report regarding the complaint investigation. ~~The department and the program shall follow the procedures outlined in subrules 67.10(2) through 67.10(7).~~

ITEM 5. Rescind rule 481—67.12(17A,231B,231C,231D) and adopt the following new rule in lieu thereof:

**481—67.12(17A,231B,231D) Adult day services and elder group homes—preliminary report, plan of correction and request for reconsideration.**

**67.12(1) *Preliminary report.*** When a regulatory insufficiency is found, a preliminary report detailing the insufficiency shall be sent by the department to the adult day services program or elder group home within 10 working days. The department may send the report electronically or by certified mail.

**67.12(2) *Plan of correction.*** Within 10 working days following receipt of the preliminary report, the adult day services program or elder group home shall submit a plan of correction to the department.

*a. Contents of plan.* The plan of correction shall include:

- (1) Elements detailing how the program will correct each regulatory insufficiency;
- (2) The date by which the regulatory insufficiency will be corrected;
- (3) What measures will be taken to ensure the problem does not recur;
- (4) How the program plans to monitor performance to ensure compliance; and
- (5) Any other required information.

The date by which the regulatory insufficiency will be corrected shall not exceed 30 days following the date of the exit interview without approval of the department.

*b. Review of plan.* The department shall review the plan of correction within 10 working days of receipt. The department may request additional information or suggest revisions to the plan. Once an acceptable plan of correction has been received, the department shall issue a final report within 10 working days and shall determine whether any enforcement action related to the program's continued certification is necessary.

**67.12(3) *Request for reconsideration.*** Within 10 working days of receiving the preliminary report, the adult day services program or elder group home may submit a request for reconsideration in response to a regulatory insufficiency. Regardless of whether a request for reconsideration is submitted, a plan of correction must be submitted.

*a.* The request may include additional information to support the request for reconsideration.

*b.* The department shall review the request for reconsideration and additional information and determine whether to withdraw or modify the regulatory insufficiency.

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

c. The department shall accept a request for reconsideration if the additional information submitted by the program shows by a preponderance of the evidence that the regulatory insufficiency did not exist at the time of the monitoring.

d. The department's decision regarding a request for reconsideration shall be reflected in the final report.

**67.12(4) Final report.** The final report shall be issued after the plan of correction and request for reconsideration have been considered. The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found. The final report may be delivered to the applicant or certificate holder by electronic or certified mail, or by personal service.

**67.12(5) Appeal of final report.** The final report and the civil penalty, if assessed, may be appealed. A written notice of appeal and request for hearing shall be delivered to the department within 30 days after the mailing or service of notice.

**67.12(6) Hearings.** Hearings shall be conducted by the administrative hearings division of the department pursuant to Iowa Code chapter 17A and 481—Chapter 10.

**67.12(7) Monitoring revisit.** The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. The department may issue a regulatory insufficiency for failure to implement the plan of correction. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

ITEM 6. Rescind rule 481—67.13(17A,231B,231C,231D) and adopt the following new rule in lieu thereof:

**481—67.13(17A,231C,85GA,SF394) Assisted living programs—exit interview, final report, plan of correction.**

**67.13(1) Exit interview.** The department shall provide an exit interview in person or by telephone at the conclusion of a monitoring, during which the department shall inform the assisted living program's representative of all issues and areas of concern related to insufficient practices. A second exit interview shall be provided if the department identifies additional issues or areas of concern. The program shall have 2 working days from the date of the exit interview to submit additional or rebuttal information to the department.

**67.13(2) Final report.** The department shall issue the final report of a monitoring within 10 working days after completion of the on-site monitoring or the receipt by the department of additional or rebuttal information, by personal service, electronically or by certified mail. The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found.

**67.13(3) Plan of correction.** Within 10 working days following receipt of the final report, the program shall submit a plan of correction to the department.

a. *Contents of plan.* The plan of correction shall include:

- (1) Elements detailing how the program will correct each regulatory insufficiency;
- (2) The date by which the regulatory insufficiency will be corrected;
- (3) What measures will be taken to ensure the problem does not recur;
- (4) How the program plans to monitor performance to ensure compliance; and
- (5) Any other required information.

The date by which the regulatory insufficiency will be corrected shall not exceed 30 days from receipt of the final report pursuant to subrule 67.13(2) without approval of the department.

b. *Review of plan.* The department shall review the plan of correction within 10 working days. The department may request additional information or suggest revisions to the plan.

**67.13(4) Monitoring revisit.** The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. The department may issue a regulatory insufficiency for failure to implement the plan of correction. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

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

ITEM 7. Rescind rule 481—67.14(17A,231B,231C,231D) and adopt the following new rule in lieu thereof:

**481—67.14(17A,231C,85GA,SF394) Assisted living programs—response to final report.** Within 20 working days after the issuance of the final report and assessment of civil penalty, if any, the assisted living program shall respond in the following manner.

**67.14(1) *If not contesting final report.*** If the program does not desire to seek an informal conference or contest the final report and civil penalty, if assessed, the program shall remit to the department of inspections and appeals the amount of the civil penalty, if assessed. If an assisted living program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if the requirements of subrule 67.17(5) are met.

**67.14(2) *Informal conference.*** If the assisted living program desires to contest the final report and civil penalty, if assessed, and request an informal conference, the assisted living program shall notify the department of inspections and appeals in writing that it desires to contest the final report and civil penalty and request in writing an informal conference with an independent reviewer.

*a. Request for informal conference.* The request for an informal conference must be in writing and include the following:

- (1) Identification of the regulatory insufficiency(ies) being disputed;
- (2) The type of informal conference requested: face-to-face or telephone conference; and
- (3) A request for monitor's notes for the regulatory insufficiencies being disputed, if desired.

*b. Submission of documentation.* The program shall submit the following within 10 working days from the date of the program's written request for an informal conference:

- (1) The names of those who will be attending the informal conference, including legal counsel; and
- (2) Documentation supporting the assisted living program's position. The assisted living program must highlight or use some other means to identify written information pertinent to the disputed regulatory insufficiency(ies). Supporting documentation that is not submitted with the request for an informal conference 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 program has shown good cause, the independent reviewer shall consider what circumstances kept the program from submitting the supporting documentation within the required time frame.

*c. Face-to-face or telephone conference.* A face-to-face or telephone conference, if requested, will be scheduled to occur within 10 working days of the receipt of the written request, all supporting documentation and the plan of correction required by subrule 67.13(3).

- (1) Failure to submit supporting documentation will not delay scheduling.
- (2) The conference will be scheduled for one hour. The assisted living program will informally present information and explanation concerning the contested regulatory insufficiency(ies). The department will have time to respond to the assisted living program's presentation. Due to the confidential nature of the conference, attendance may be limited.

(3) If additional information is requested by the independent reviewer during the informal conference, the assisted living program will have 2 working days to deliver the additional materials to the independent reviewer.

(4) When extenuating circumstances preclude a face-to-face conference, a telephone conference will be held or the assisted living program may be given one opportunity to reschedule the face-to-face conference.

*d. Results.* The results of the informal conference will generally be sent within 10 working days after the date of the informal conference, or within 10 working days after the receipt of additional information, if requested.

(1) The independent reviewer may affirm or may modify or dismiss the regulatory insufficiency and civil penalty. The independent reviewer shall state in writing the specific reasons for the affirmation, modification or dismissal of the regulatory insufficiency.

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

(2) The department will issue an amended (changes in factual content) or corrected (changes in typographical/data errors) final report if changes result from the informal conference.

(3) The assisted living program must submit to the department a new plan of correction for the amended or corrected report within 10 calendar days from the date of the letter conveying the results of the conference.

(4) If the informal conference results in dismissal of a regulatory insufficiency for which a civil penalty was assessed, the corresponding civil penalty will be rescinded.

**67.14(3) *Procedure after informal conference.*** After the conclusion of an informal conference:

*a.* If the assisted living program does not desire to further contest an affirmed or modified final report, the assisted living program shall, within 5 working days after receipt of the written decision of the independent reviewer, remit to the department of inspections and appeals the civil penalty, if assessed.

*b.* If the assisted living program does desire to further contest an affirmed or modified final report, the assisted living program shall, within 5 working days after receipt of the written decision of the independent reviewer, notify the department of inspections and appeals in writing that it desires to formally contest the final report.

**67.14(4) *Appeals.*** Formal hearings shall be conducted by the administrative hearings division pursuant to Iowa Code chapter 17A and 481—Chapter 10.

ITEM 8. Renumber rules **481—67.15(17A,231C,231D)** to **481—67.18(231B,231C,231D)** as **481—67.20(17A,231C,231D)** to **481—67.23(231B,231C,231D)**.

ITEM 9. Adopt the following **new** rules 481—67.15(17A,231B,231C,231D) to 481—67.18(17A,231B,231C,231D):

**481—67.15(17A,231B,231C,231D) Denial, suspension or revocation of a certificate.**

**67.15(1) *Notice and request for hearing.*** The denial, suspension or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail or by personal service a notice setting forth the particular reasons for such actions. A denial, suspension or revocation shall be effective 30 days after certified mailing or personal service of the notice, unless the applicant or certificate holder gives the department written notice requesting a hearing within the 30-day period. If a timely request for hearing is made, the notice shall be deemed suspended pending the outcome of the hearing, unless subrule 67.15(3) or 67.15(4) applies. If an enforcement action has been implemented immediately in accordance with subrule 67.15(3) or 67.15(4), the enforcement action remains in effect regardless of a request for hearing.

**67.15(2) *Hearings.*** Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and 481—Chapter 10.

**67.15(3) *Immediate suspension of a certificate.*** When the department finds that an imminent danger to the health or safety of tenants of a program exists which requires action on an emergency basis, the department may direct removal of all tenants from the program and suspend the certificate or require additional remedies to ensure the ongoing safety of the program's tenants prior to a hearing.

**67.15(4) *Immediate imposition of enforcement action.*** When the department finds that an imminent danger to the health or safety of tenants exists which requires action on an emergency basis, the department may immediately impose a conditional certificate and accompanying conditions upon the program in lieu of immediate suspension of the certificate and removal of the tenants from the program if the department finds that tenants' health and safety would still be protected. The program may request a hearing, but the immediate enforcement action remains in effect regardless of the request for hearing.

**481—67.16(17A,231B,231C,231D) Conditional certification.**

**67.16(1) *Conditional certification.*** In lieu of denial, suspension or revocation of a certificate, the department may issue a conditional certificate for a period of up to one year. Notwithstanding subrule 67.15(4), a conditional certificate shall be issued only when regulatory insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm.

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

*a.* The department shall specify the reasons for the conditional certificate in the notice issuing the conditional certificate.

*b.* The department may place conditions upon a certificate, such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions deemed appropriate by the department.

*c.* Failure by the program to adhere to the plan of correction or conditions placed on the certificate may result in suspension or revocation of the conditional certification and may result in further enforcement action as available under applicable requirements.

*d.* A program must be in substantial compliance with applicable requirements before the removal of a conditional certificate by the department. Prior to lifting a conditional certificate, the department may conduct a monitoring to verify substantial compliance. Once the program is in substantial compliance with applicable requirements, the department shall lift the conditional certificate.

**67.16(2) *Appeal of conditional certificate.*** A written request for hearing must be received by the department within 30 days after the mailing or service of notice. The conditional certificate shall not be suspended pending the hearing. Hearings shall be conducted by the administrative hearings division of the department of inspections and appeals pursuant to Iowa Code chapter 17A and 481—Chapter 10.

**481—67.17(17A,231B,231C,231D) Civil penalties.**

**67.17(1) *When civil penalties may be issued.*** Civil penalties may be issued when the director finds that any of the following has occurred:

*a.* A program that does not comply with applicable requirements and the noncompliance results in imminent danger or a substantial probability of resultant death or physical harm to a tenant may be assessed a civil penalty of not more than \$10,000.

*b.* A program that continues to fail or refuses to comply with applicable requirements within prescribed time frames established by the department or approved by the department in the program's plan of correction and the noncompliance has a direct relationship to the health, safety, or security of tenants may be assessed a civil penalty of not more than \$5,000.

*c.* A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than \$1,000.

*d.* A program that discriminates or retaliates in any way against a tenant, tenant's family, or an employee of the program who has initiated or participated in any proceeding authorized by Iowa Code chapter 231B, 231C or 231D and the corresponding administrative rules may be assessed a civil penalty of not more than \$5,000.

**67.17(2) *Duplicate civil penalties prohibited.*** The department shall not impose duplicate civil penalties on a program for the same set of facts and circumstances.

**67.17(3) *Factors in determining the amount of a civil penalty.*** The department shall consider the following factors when determining the amount of a civil penalty:

*a.* The frequency and length of time the regulatory insufficiency occurred (i.e., whether the regulatory insufficiency was an isolated or a widespread occurrence, practice, or condition);

*b.* The past history of the program as it relates to the nature of the regulatory insufficiency (the department shall not consider more than the current certification period and the immediately previous certification period);

*c.* The culpability of the program as it relates to the reasons the regulatory insufficiency occurred;

*d.* The extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;

*e.* The relationship of the regulatory insufficiency to any other types of regulatory insufficiencies which have occurred in the program;

*f.* The actions of the program after the occurrence of the regulatory insufficiency, including when corrective measures, if any, were implemented and whether the program notified the director as required;

*g.* The accuracy and extent of records kept by the program which relate to the regulatory insufficiency, and the availability of such records to the department;

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

- h.* The rights of tenants to make informed decisions;
- i.* Whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

**67.17(4) *Civil penalties due.*** The civil penalty shall be paid to the department within 30 days following the program's receipt of the final report and demand letter. The program may appeal in accordance with rule 481—67.12(17A,231B,231D) or 481—67.14(17A,231C,85GA,SF394). If the program appeals, the civil penalty shall be deemed suspended until the appeal is resolved.

**67.17(5) *Reduction of civil penalty amount by 35 percent.*** If an assisted living program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if both of the following requirements are met:

- a.* The program does not request a formal hearing pursuant to rule 481—67.12(17A,231B,231D) or 481—67.14(17A,231C,85GA,SF394), or withdraws its request for formal hearing within 30 calendar days of the date that the civil penalty was assessed; and
- b.* The civil penalty is paid and payment is received by the department within 30 calendar days of receipt of the final report.

**481—67.18(17A,231B,231C,231D) *Judicial review.*** Judicial review shall be conducted pursuant to Iowa Code chapter 17A and 481—Chapter 10.

ITEM 10. Amend **481—Chapter 67**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 231B, 231C as amended by 2013 Iowa Acts, Senate File 394, and 231D.

[Filed 9/11/13, effective 1/1/14]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1076C**

## INSURANCE DIVISION[191]

### Adopted and Filed

Pursuant to the authority of Iowa Code section 502.605, the Insurance Division hereby adopts amendments to Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

The rules in Chapter 50 prescribe the terms and conditions under which broker-dealers, investment advisers and securities offerings operate.

These amendments were proposed under Notice of Intended Action and published in the May 1, 2013, Iowa Administrative Bulletin as **ARC 0716C**. The adopted amendments are promulgated in order that the rules be more similar to a North American Securities Administrators Association (NASAA) model, to parallel recent rule updates by the Financial Industry Regulatory Authority (FINRA), to recognize electronic filing with the Investment Advisory Registration Depository (IARD), to adopt some required state language regarding payment of state debts, and to correct some dates and cross references.

A public hearing was held on May 21, 2013, at the offices of the Insurance Division, 330 Maple Street, Des Moines, Iowa. The Division also accepted written comments on the proposed amendments on or before May 21, 2013. One comment letter was received in favor of the amendments.

Upon review, the Division made the following editorial changes for better consistency, clarity and organizational logic:

New paragraph 50.38(1)"I" was reworded.

Proposed new paragraph 50.38(1)"m" was removed and has become instead subrule 50.38(5); internal references and numbering were changed accordingly. Existing paragraphs "I" through "Z" were relettered as "m" to "y," and internal references were changed accordingly.

Paragraph 50.38(5)"g" (formerly proposed 50.38(1)"m"(7)) was reworded.



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

The definition of “custody” in paragraph 50.39(4)“b” was rearranged and renumbered.

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

These amendments are intended to implement Iowa Code chapter 502.

These amendments will become effective November 6, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following new definitions in rule **191—50.1(502)**:

“*Form ADV-E*” means the Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser.

“*PCAOB*” means the Public Company Accounting Oversight Board.

ITEM 2. Amend rule 191—50.2(502) as follows:

**191—50.2(502) Cost of audit or inspection.**

**50.2(1)** A broker-dealer or investment adviser may be assessed ~~the greater of a flat fee of \$100 or the actual and necessary costs of salaries, travel, lodging, and meals~~ other expenses directly attributable to an audit or inspection made pursuant to Iowa Code section 502.411(4). The assessment of costs of ~~salaries, travel, lodging, and meals~~ other expenses, if any, shall be determined in accordance with the department of administrative services (DAS) state accounting enterprise Accounting Policy and Procedures Manual in effect at the time of the audit or inspection.

**50.2(2)** If costs are assessed under subrule 50.2(1), the administrator may, upon completion of the examination, or at such regular intervals prior to completion as the administrator determines, prepare an account of the costs incurred in performing and preparing the report of the examination which shall be charged to and paid by the broker-dealer or investment adviser examined.

~~**50.2(2)**~~ **50.2(3)** The administrator shall notify the broker-dealer or investment adviser of the expenses attributable to the audit or inspection as soon as practicable.

~~**50.2(3)**~~ **50.2(4)** Assessments collected by the administrator pursuant to this rule shall be remitted to the state treasury paid to the administrator and shall be deposited as provided in Iowa Code section 505.7.

This rule is intended to implement Iowa Code section 502.411(4).

ITEM 3. Amend subrules 50.12(1) and 50.12(2) as follows:

**50.12(1) Agent registration.**

~~a. An Every~~ applicant for registration as an ~~Iowa-registered agent of a FINRA or non-FINRA member broker-dealer shall~~ agent of a broker-dealer shall:

~~(1) Pass one of the following FINRA examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62. In the event that an applicant for registration as an agent has received a waiver by FINRA of a FINRA examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement;~~

~~(2) a. Pass the FINRA Series 63 or Series 66 examination~~ Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66);

b. Pass the appropriate qualifying examination administered by the Financial Industry National Regulatory Authority (FINRA). In the event that an applicant for registration as an agent has received a waiver by FINRA of a FINRA examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement;

~~(3) c.~~ File an accurate and complete Form U-4 with CRD; and

~~(4) d.~~ Pay a \$40 filing fee to FINRA if applying for registration as an agent of a FINRA member broker-dealer, or to the administrator if applying for registration as an agent of a non-FINRA member broker-dealer.

~~b. An applicant may file with the administrator a written request for waiver of the examination requirement contained in paragraph “a” pursuant to rule 191—4.21(17A), et seq. A waiver will be considered for an applicant with ten years of continuous experience in the securities industry. A waiver of the Series 63 examination will not be granted.~~

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~~50.12(2) No application for an agent registration shall be considered for approval until all requirements of subrule 50.12(1), as applicable, are met. In the administrator's discretion, an applicant may be required to provide additional information regarding any aspect of the application. The application shall be considered incomplete until any such additional information is provided. Any individual who is out of the business of effecting transactions in securities for less than two years from the date of filing an application and who has previously passed an examination required in subrule 50.12(1) shall not be required to retake the examination to be eligible to be relicensed upon application.~~

ITEM 4. Rescind paragraph **50.16(1)"c"** and adopt the following new paragraph in lieu thereof:

c. Suitability:

(1) Failing to use reasonable diligence, in regard to the opening and maintenance of every account, to know and retain the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer;

(2) Recommending a transaction or investment strategy involving a security or securities without a reasonable basis to believe that the transaction or investment strategy is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile. A customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the broker-dealer or agent in connection with such recommendation;

ITEM 5. Amend subrule 50.16(2) as follows:

**50.16(2)** Dishonest or unethical practices by an agent in the securities business as prohibited pursuant to Iowa Code section 502.412(4) "*m*" include, but are not limited to, the following:

a. to g. No change.

h. Evading or otherwise negating the requirements of paragraph 50.16(2) "*a*," "*f*" or "*g*" by terminating the customer relationship for the purpose of soliciting or accepting a loan or gift or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An agent is not in violation of this paragraph if the agent has made a bona fide termination of the customer relationship and conducted no securities-related business or other business for a period of three years with the customer; ~~and~~

i. Engaging in conduct specified in subrule 50.16(1), paragraphs "*b*" to "*f*," "*i*," "*j*," "*n*" to "*q*," "*u*," and "*w*" to "*aa*";<sub>2</sub>

j. Engaging in conduct deemed dishonest or unethical in rule ~~191—50.54(502)-191—50.55(502)~~; and

k. Employing any method or tactic which uses undue pressure, force, fright, or threat, whether explicit or implied, to solicit the purchase or sale of securities, or committing any act which shows that the agent has exerted undue influence over a person.

ITEM 6. Amend subrule 50.31(1) as follows:

**50.31(1)** *Investment adviser applications—required filings.* The application for initial registration as an investment adviser shall be made by:

a. Filing Form ADV ~~Part I~~ Parts 1 and 2 with IARD; and

b. Remitting the \$100 filing fee to IARD pursuant to Iowa Code section 502.410(3); ~~and~~

c. ~~Filing Form ADV Part II with the administrator.~~

ITEM 7. Rescind subrule 50.34(2) and adopt the following new subrule in lieu thereof:

**50.34(2)** *Form ADV Part 2.* The administrator may:

a. Accept a copy of Part 2 of Form ADV as filed electronically with IARD; or

b. Deem Part 2 of Form ADV filed if a federal covered investment adviser provides, within five days of a request, Part 2 of Form ADV to the administrator. Because the administrator deems Part 2 of Form ADV to be filed, a federal covered investment adviser is not required to submit Part 2 of Form ADV to the administrator unless specifically requested to do so.

ITEM 8. Rescind rule 191—50.36(502) and adopt the following new rule in lieu thereof:

**191—50.36(502) Investment adviser brochure.**

**50.36(1) General requirements.**

a. Unless otherwise provided in this rule, an investment adviser registered or required to be registered pursuant to Section 403 of the Act shall furnish each advisory client and prospective advisory client with:

- (1) A brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;
- (2) A copy of its Part 2B brochure supplement for each individual:
  1. Providing investment advice and having direct contact with clients in this state; or
  2. Exercising discretion over assets of clients in this state, even if no direct contact is involved;
- (3) A copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;
- (4) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and
- (5) Such other information as the administrator may require.

b. The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2.

c. Notwithstanding the SEC's Instructions for Part 2A of Form ADV, fee changes constitute material changes requiring an update to all parts of Form ADV.

**50.36(2) Delivery.**

a. *Initial delivery.* An investment adviser, except as provided in paragraph 50.36(2) "c," shall deliver the Part 2A brochure and any brochure supplements required by rule 191—50.36(502) to a prospective advisory client:

- (1) Not less than 48 hours before an investment adviser enters into any advisory contract with such client or prospective client; or
- (2) At the time an advisory client enters into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

b. *Annual delivery.* An investment adviser, except as provided in paragraph 50.36(2) "c," must:

- (1) Deliver within 120 days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or
- (2) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochures and supplements and information on how the client may obtain a copy of the brochures and supplements, provided that advisers are not required to deliver a summary of material changes if no material changes have taken place since the last summary and brochure delivery.

c. *Exceptions to delivery.* Delivery of the brochure and related brochure supplements required by paragraphs 50.36(2) "a" and "b" need not be made to:

- (1) Clients who receive only impersonal advice and who pay less than \$500 in fees per year; or
- (2) An investment company registered under the Investment Company Act of 1940; or
- (3) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of Section 15c of that Act.

d. *Electronic delivery.* Delivery of the brochure and related supplements may be made electronically if the investment adviser:

- (1) In the case of an initial delivery to a potential client, obtains verification that readable copies of the brochure and supplements were received by the client;
- (2) In the case of other than initial deliveries, obtains each client's prior consent to provide the brochure and supplements electronically;
- (3) Prepares the electronically delivered brochure and supplements in the format prescribed in subrule 50.36(1) and Instructions to Form ADV Part 2;
- (4) Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form; or

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

(5) Establishes procedures to supervise personnel transmitting the brochure and supplements and to prevent violations of this rule.

**50.36(3) Other disclosures.** Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

**50.36(4) Definitions.** For the purpose of this rule:

*a. "Contract for impersonal advisory services"* means any contract relating solely to the provision of investment advisory services:

(1) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(2) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) Any combination of the foregoing services.

*b. "Entering into,"* in reference to an advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

This rule is intended to implement Iowa Code section 502.411(7).

ITEM 9. Amend rule 191—50.38(502) as follows:

**191—50.38(502) Dishonest or unethical business practices of investment advisers and investment adviser representatives, or fraudulent or deceptive conduct by federal covered investment advisers. Prohibited conduct in providing investment advice.**

**50.38(1)** An investment adviser, an investment adviser representative, or a federal covered investment adviser ~~has is~~ a fiduciary and has a duty to act primarily for the benefit of its clients. ~~The federal statutory and regulatory provisions referenced in this rule apply to investment advisers and federal covered investment advisers, to the extent permitted by the NSMIA. This rule Rule 191—50.38(502) applies to federal covered investment advisers to the extent that the alleged conduct is fraudulent, deceptive, or as otherwise prohibited~~ permitted by the NSMIA.

**50.38(1)** ~~An~~ While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser, an investment adviser representative, or a federal covered investment adviser and its clients and the circumstances of each case, an investment adviser, an investment adviser representative, or a federal covered investment adviser shall not engage in dishonest or unethical business practices or prohibited fraudulent, ~~and~~ deceptive, or manipulative conduct including, but not limited to:

*a.* Recommending to a client to whom supervisory, management, or consulting investment advisory services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered investment adviser;

*b.* Exercising any discretionary power authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to discretionary authority, unless the discretionary ~~power~~ authority relates solely to the price at which, or the time when, an order for a definite amount of a specified security shall be executed, or both;

*c.* Inducing trading in a client's account trading that is excessive in size or frequency compared to the financial resources, investment objectives, and character of the account;

*d.* Placing an order to purchase or sell a security for a client account without authority to do so;

*e.* Placing an order to purchase or sell a security for a client account upon instruction of a third party without first obtaining a written third-party trading authorization from the client;

*f.* Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

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

g. Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

h. Misrepresenting to any ~~advisory~~ client, or prospective ~~advisory~~ client, the qualifications of the investment adviser, investment adviser representative, or federal covered investment adviser or any employee, or affiliated persons of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

i. Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser, investment adviser representative, or federal covered investment adviser without disclosing that fact. This prohibition does not apply when the investment adviser, investment adviser representative, or federal covered investment adviser uses published research reports or statistical analyses to render advice or when an investment adviser, investment adviser representative, or federal covered investment adviser orders such a report in the normal course of providing service;

j. Charging a client an unreasonable ~~advisory~~ fee;

k. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest regarding the investment adviser, investment adviser representative, or federal covered investment adviser or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:

(1) Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an investment advisory fee for rendering advice when a ~~commission~~ compensation for ~~executing~~ effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser or its employees or affiliated persons;

l. Knowingly selling any security to or purchasing any security from a client while acting as principal for an advisory account of the investment adviser, investment adviser representative, or federal covered investment adviser, or knowingly effecting any sale or purchase of any security for the account of the client while acting as broker-dealer for a person other than the client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser, investment adviser representative, or federal covered investment adviser is acting and without obtaining the written consent of the client to the transaction.

(1) The prohibitions of paragraph 50.38(1) "l" shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(2) The prohibitions of paragraph 50.38(1) "l" shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts solely as an investment adviser:

1. By means of publicly distributed written materials or publicly made oral statements;

2. By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

3. Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

4. Any combination of the foregoing services.

(3) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve the investment adviser of any other disclosure obligations under the Act.

(4) Definitions for purposes of rule 191—50.38(502):

1. "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

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2. "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

~~l. m.~~ Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the investment adviser's services with advice rendered;

n. Making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading;

~~m. o.~~ Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless disclosed with the client's consent;

~~n. p.~~ Taking any action, directly or indirectly, regarding securities or funds in which any client has any beneficial interest when the investment adviser is has custody or possession of such securities or funds and when the action of the investment adviser or investment adviser representative is subject to and in violation of the custody requirements provided by rule 191—50.39(502);

~~o. —~~ Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses:

~~(1) The services to be provided;~~

~~(2) The term of the contract;~~

~~(3) The advisory fee;~~

~~(4) The formula for computing the fee;~~

~~(5) The amount of prepaid fee to be returned in the event of contract termination or nonperformance;~~

~~(6) Whether the contract grants discretionary power to the investment adviser; and~~

~~(7) That no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;~~

~~p. q.~~ Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940;

~~q. —~~ Entering into, extending, or renewing any advisory contract in violation of Section 205 of the Investment Advisers Act of 1940. This provision applies to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or investment adviser representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940;

~~r. —~~ Providing in an advisory contract any condition, stipulation, or provisions which purport to bind any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940 or any other practice contrary to Iowa Code section 502.509(12) or Section 215 of the Investment Advisers Act of 1940;

~~s. r.~~ Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, or unethical in violation of Section 206(4) of the Investment Advisers Act of 1940, regardless of whether the investment adviser or investment adviser representative is not registered or required to be registered pursuant to Section 203 of the Investment Advisers Act of 1940;

~~t. s.~~ Engaging in conduct or any act, indirectly or through or by any other person, which is unlawful for such person to do directly under the provisions of this Act, its implementing rules, or order of the administrator;

~~u. t.~~ Failing to disclose or providing incomplete disclosure to a client regarding any securities-related activities, or engaging in deceptive practices;

~~v. u.~~ Soliciting or accepting a gift, directly or indirectly, from an unrelated customer that in the aggregate exceeds \$250 in a calendar year. A gift accepted by an immediate family member from an unrelated client shall be included in the aggregate limit. An investment adviser shall not solicit or accept from a client a gift transferred through a relative or third party to the investment adviser's benefit that would have the effect of evading this paragraph;

~~w. v.~~ Soliciting or accepting being named as a beneficiary, executor, or trustee in a will or trust of an unrelated customer; and

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

~~u.~~ w. Evading or otherwise negating the requirements of paragraph 50.38(1) "~~f,~~" "~~g,~~" "~~u~~" or "~~v,~~" or "~~w~~" by terminating the customer relationship for the purpose of soliciting or accepting a loan or gift or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An investment adviser or investment adviser representative will not be in violation of this rule if the investment adviser or investment adviser representative has made a bona fide termination of the client relationship and conducted no securities-related business or other business for a period of three years with the client;

~~y.~~ x. Engaging in conduct deemed dishonest or unethical in rule ~~191—50.54(502).~~ 191—50.55(502); and

y. Employing any method or tactic which uses undue pressure, force, fright, or threat, whether explicit or implied, in connection with providing investment advice, or committing any act which shows that an investment adviser or investment adviser representative has exerted undue influence over a client.

**50.38(2)** ~~Except as otherwise provided in subrule 50.38(3), it shall constitute a dishonest or unethical practice within the meaning of Iowa Code section 502.412(4) "~~m~~" for any~~ An investment adviser, or investment adviser representative, or federal covered investment adviser shall not, directly or indirectly, ~~to use~~ publish, circulate, or distribute any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment adviser, ~~or investment adviser representative,~~ or federal covered investment adviser or concerning any advice, analysis, report, or other service rendered by such investment adviser, ~~or investment adviser representative,~~ or federal covered investment adviser.

b. Refers to past specific recommendations of the investment adviser, ~~or investment adviser representative,~~ or federal covered investment adviser that were or would have been profitable to any person, except that an investment adviser, ~~or investment adviser representative,~~ or federal covered investment adviser may furnish or offer to furnish a list of all recommendations made by the investment adviser, ~~or investment adviser representative,~~ or federal covered investment adviser within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.

c. Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to the use of any graph, chart, formula or device.

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

e. Represents that the administrator has approved any advertisement.

f. Contains any untrue statement of a material fact, or any statement that is otherwise false or misleading.

**50.38(3)** With respect to federal ~~investment~~ covered investment advisers, the provisions of ~~this rule~~ subrule 50.38(2) apply only to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

**50.38(4)** For the purposes of ~~this rule~~ subrule 50.38(2), the term "advertisement" shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

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- a. Any analysis, report, or publication concerning securities.
- b. Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.
- c. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.
- d. Any other investment advisory service with regard to securities.

50.38(5) The prohibitions of rule 191—50.38(502) shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

a. The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

b. Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

c. At or before the completion of each agency cross transaction, the investment adviser or any other person relying on subrule 50.38(5) sends the client a written confirmation. The written confirmation shall include:

- (1) A statement of the nature of the transaction;
- (2) The date the transaction took place;
- (3) An offer to furnish, upon request, the time when the transaction took place; and
- (4) The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

d. At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on subrule 50.38(5) sends each client a written disclosure statement identifying:

- (1) The total number of agency cross transactions for the client during the period since the date of the last such statement or summary; and
- (2) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period;

e. Each written disclosure and confirmation required by subrule 50.38(5) must include a conspicuous statement indicating that the client may revoke the written consent required under paragraph 50.38(5) "a" at any time by providing written notice to the investment adviser;

f. No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser;

g. "Agency cross transaction for an advisory client," for purposes of subrule 50.38(5), means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and for another client on the other side of the transaction. When acting in such capacity, such person acting as an investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, is required to be registered as a broker-dealer in this state unless excluded from the definition of investment adviser;

h. Nothing in subrule 50.38(5) shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the client, nor shall subrule 50.38(5) relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act.

This rule is intended to implement Iowa Code section 502.412(4) "*m.*" 502.502(2).



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ITEM 10. Rescind subrules 50.39(1) and 50.39(2) and adopt the following new subrules in lieu thereof:

**50.39(1) Safekeeping required.** It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless the following conditions are met:

*a. Notice to administrator.* The investment adviser notifies the administrator promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.

*b. Qualified custodian.* A qualified custodian maintains those funds and securities:

- (1) In a separate account for each client under that client's name; or
- (2) In accounts that contain only the investment adviser's clients' funds and securities, under the investment adviser's name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

*c. Notice to clients.* If an investment adviser opens an account with a qualified custodian on its client's behalf, under the client's name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian's name and address and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to whom the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

*d. Account statements.* The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which the qualified custodian maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

*e. Special rule for limited partnerships and limited liability companies.* If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle):

(1) The account statements required under paragraph 50.39(1) "d" must be sent to each limited partner (or member or other beneficial owner); and

(2) The investment adviser must:

1. Enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts; and

2. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

- Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

- Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

*f. Independent verification.* The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant (CPA), pursuant to a written agreement between the investment adviser and the independent CPA, at a time that is chosen by the independent CPA without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of execution of the written agreement, except that, if the investment adviser maintains client funds or securities pursuant to rule 191—50.38(502) as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after the investment adviser obtains the internal control report. The written agreement must require the independent CPA to:

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(1) File a certificate on Form ADV-E with the administrator within 120 days of the time chosen by the independent CPA in paragraph 50.39(1) “f,” stating that the independent CPA has examined the funds and securities and describing the nature and extent of the examination;

(2) Notify the administrator within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first-class mail, directed to the attention of the administrator; and

(3) File within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

1. The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent CPA; and

2. An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

*g. Investment advisers acting as qualified custodians.* If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to rule 191—50.39(502) as a qualified custodian in connection with advisory services the investment adviser provides to clients:

(1) The independent CPA that the investment adviser retains to perform the independent verification required by paragraph 50.39(1) “f” must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(2) The investment adviser must obtain, or receive from its related person, within six months of execution of the written agreement and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent CPA.

1. The internal control report must include an opinion of an independent CPA as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment adviser’s clients, during the year;

2. The independent CPA must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment adviser’s related person; and

3. The independent CPA must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

*h. Independent representatives.* A client may designate an independent representative to receive, on the client’s behalf, notices and account statements as required under paragraphs 50.39(1) “c” and “d.”

**50.39(2) Exceptions.**

*a. Shares of mutual funds.* With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 (“mutual fund”), the investment adviser may use the mutual fund transfer agent in lieu of a qualified custodian for purposes of complying with subrule 50.39(1).

*b. Certain privately offered securities.*

(1) The investment adviser is not required to comply with paragraph 50.39(1) “b” with respect to securities that are:

1. Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

2. Uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

3. Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(2) Notwithstanding subparagraph 50.39(2) “b”(1), the provisions of paragraph 50.39(2) “b” are available with respect to securities held for the account of a limited partnership (or limited liability

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company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph 50.39(2) “d,” and the investment adviser notifies the administrator in writing that the investment adviser intends to provide audited financial statements, as described in this subparagraph. Such notification is required to be provided on Form ADV.

*c. Fee deduction.* Notwithstanding paragraph 50.39(1) “f,” an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following conditions are met:

(1) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(2) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(3) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

1. Sends the independent party designated pursuant to subparagraph 50.39(1) “e”(2) an invoice or statement of the amount of the fee to be deducted from the client’s account; and

2. Sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management on which the fee is based, and the time period covered by the fee; and

(4) The investment adviser notifies the administrator in writing that the investment adviser intends to use the safeguards provided in paragraph 50.39(2) “c.” Such notification is required to be given on Form ADV.

*d. Limited partnerships subject to annual audit.* An investment adviser is not required to comply with paragraphs 50.39(1) “c” and “d” and shall be deemed to have complied with paragraph 50.39(1) “f” with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions is met:

(1) The adviser sends to all limited partners (or members or other beneficial owners), at least quarterly, a statement showing:

1. The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian’s records;

2. A listing of all long and short positions on the closing date of the statement in accordance with the Financial Accounting Standards Board, Rule ASC 946-210-50; and

3. The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor’s interest in the fund at the end of the quarter;

(2) At least annually the fund is subject to an audit and distributes the fund’s audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the administrator within 120 days of the end of the fund’s fiscal year;

(3) The audit is performed by an independent CPA that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;

(4) Upon liquidation, the adviser distributes the fund’s final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the administrator promptly after the completion of such audit;

(5) The written agreement with the independent CPA must require the independent CPA, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, to notify the administrator within four business days accompanied by a statement that includes:

1. The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent CPA; and

2. An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination;

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(6) The investment adviser must also notify the administrator in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described in paragraph 50.39(2)“d.” Such notification is required to be given on Form ADV.

*e. Registered investment companies.* The investment adviser is not required to comply with rule 191—50.39(502) with respect to the account of an investment company registered under the Investment Company Act of 1940.

ITEM 11. Renumber subrule **50.39(3)** as **50.39(4)**.

ITEM 12. Adopt the following **new** subrule 50.39(3):

**50.39(3) Delivery to related persons.** Sending an account statement under paragraph 50.39(1)“e” or distributing audited financial statements under paragraph 50.39(2)“d” shall not satisfy the requirements of rule 191—50.39(502) if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

ITEM 13. Amend renumbered subrule 50.39(4) as follows:

**50.39(4) Definitions.** For the purposes of this rule:

*a. “Control”* means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. “Control” includes the following:

(1) Each of the investment adviser’s officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;

(2) A person is presumed to control a corporation if the person:

1. Directly or indirectly has the right to vote 25 percent or more of a class of the corporation’s voting securities; or

2. Has the power to sell or direct the sale of 25 percent or more of a class of the corporation’s voting securities;

(3) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

(4) A person is presumed to control a limited liability company if the person:

1. Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;

2. Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or

3. Is an elected manager of the limited liability company; or

(5) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

~~*a. b. “Custody”*~~ means holding, directly or indirectly, client funds or securities, having any authority to obtain possession of client funds or securities, or having the ability to appropriate client funds or securities. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients.

(1) “Custody” includes:

~~(1) 1.~~ Possession of client funds or securities unless received inadvertently and returned to the sender promptly, ~~but in no case later than~~ within three business days following inadvertent receipt of receiving them and the investment adviser maintains the records required under paragraph 50.42(1)“v”;

~~(2) Receipt of checks drawn by clients and made payable to unrelated third parties, the record of which is maintained by the investment adviser in compliance with paragraph 50.42(1)“v” unless forwarded to the third party within 24 hours of receipt;~~

~~(3) 2.~~ Any arrangement including, but not limited to, a general power of attorney pursuant to which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser’s instruction; and

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(4) 3. Any capacity including, but not limited to, general partner of a limited partnership, managing member of a limited liability company, a comparable position for another type of pooled investment vehicle, or trustee of a trust that gives the investment adviser or a person supervised by the investment adviser legal ownership of or access to client funds or securities.

(2) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the investment adviser maintains the records required under paragraph 50.42(1)“v.”

c. “Independent certified public accountant” means a certified public accountant that meets the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).

~~b. d.~~ “Independent representative” means a person who:

(1) Acts as agent for an advisory client including, in the case of a pooled investment vehicle, limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle, and who is by law or contract required to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(2) Does not control, is not controlled by, and is not under common control with the investment adviser; and

(3) Does not have and has not had within the past two years a material business relationship with the investment adviser.

~~e. e.~~ “Qualified custodian” means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two years:

(1) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;

(2) A ~~registered~~ broker-dealer registered in Iowa and with the SEC holding client assets in customer accounts;

(3) A registered futures commission merchant registered pursuant to Section 4(f)(a) of the Commodity Exchange Act that is holding client funds and security futures or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon in customer accounts; and

(4) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

f. “Related person” means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

ITEM 14. Amend rule 191—50.40(502) as follows:

**191—50.40(502) Minimum financial requirements for investment advisers.**

**50.40(1)** An investment adviser registered or required to be registered under the Act that has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 except:

a. An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“~~d~~” 50.39(2)“c” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule; and

b. An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“~~e~~” or 50.39(2)“e” 50.39(2)“d” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule;

~~c. An investment adviser having custody solely due to meeting the definition of custody as defined by subparagraph 50.39(3)“a”(3) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule;~~

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~~d.—An investment adviser having custody solely by meeting the definition of custody as defined by subparagraph 50.39(3) “a”(4) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule; and~~

~~e.—An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1) “f” and the record-keeping requirements of subrule 50.42(4) is not required to comply with the net worth requirements of this rule.~~

**50.40(2)** An investment adviser registered or required to be registered pursuant to the Act that has discretionary authority over client funds or securities but does not have minimum net worth requirements due to the custody exceptions of subrule 50.40(1) custody of client funds or securities shall maintain a minimum net worth of \$10,000 at all times.

**50.40(3)** An investment adviser registered or required to be registered pursuant to the Act that ~~accepts payment of more than \$500 from a client six or more months in advance of providing services~~ shall maintain a positive net worth at all times.

**50.40(4) to 50.40(6)** No change.

**50.40(7)** For purposes of this rule:

a. “Net worth” means an excess of assets over liabilities calculated in accordance with generally accepted accounting principles. The calculation of assets shall not include the following: prepaid expenses (except those prepaid expenses classified as assets under generally accepted accounting principles); deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; in the case of an individual, home(s), home furnishings, automobile(s), or any other personal items not readily marketable; in the case of a corporation, advances or loans to stockholders or officers; and in the case of a partnership, advances or loans to partners.

b. “Custody” means the same as defined in paragraph 50.39(3) “a.” 50.39(4) “b.”

c. No change.

This rule is intended to implement Iowa Code section 502.411(1).

ITEM 15. Amend rule 191—50.41(502) as follows:

**191—50.41(502) Bonding requirements for investment advisers.**

**50.41(1)** Every investment adviser registered or required to be registered under the Act:

a. having Having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser ~~except;~~ and

~~a.—An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1) “d” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with bonding requirements of this rule;~~

b. ~~An investment adviser that has~~ Having custody of or discretionary authority over client funds or securities ~~that when the investment adviser does not meet the minimum net worth standard provisions of subrules 50.40(1) and 50.40(2) must be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000;~~

~~e.—An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1) “e” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the bonding requirements of this rule;~~

~~d.—An investment adviser having custody solely due to meeting the definition of “custody” as defined by subparagraph 50.39(3) “a”(3) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;~~

~~e.—An investment adviser having custody solely by meeting the definition of “custody” as defined by subparagraph 50.39(3) “a”(4) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;~~

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~~f. An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1) "f" and the record-keeping requirements of subrule 50.42(4) is not required to comply with the bonding requirements of this rule.~~

**50.41(2) and 50.41(3)** No change.

**50.41(4)** For purposes of this rule, "custody" means the same as defined in paragraph 50.39(3) "~~a.~~" 50.39(4) "b."

This rule is intended to implement Iowa Code section 502.411(5).

ITEM 16. Amend subrules 50.42(1) to 50.42(3) as follows:

**50.42(1)** An investment adviser registered or required to be registered pursuant to the Act shall make and keep true, accurate and current the following books, ledgers and records:

*a. to d.* No change.

*e.* All invoices, bills, or statements of ~~expenses or debts~~, or copies of those documents, relating to the investment adviser's business as an investment adviser regardless of whether the expense or debt is paid or unpaid.

*f.* All trial balances, financial statements ~~prepared in accordance with generally accepted accounting principles~~, and internal audit working papers relating to the investment adviser's business as an investment adviser. For the purposes of this paragraph, "financial statements" means a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation, if applicable, as required by subrule 50.40(7).

*g. to k.* No change.

*l.* Transactions involving beneficial ownership.

(1) A record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has or by reason of any transaction acquires a direct or indirect beneficial ownership, except the following:

1. transactions Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

2. transactions Transactions in securities which are direct obligations of the United States.

~~(1)~~ (2) The required record shall state, at a minimum, the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition), the price at which the transaction was effected, and the name of the bank or broker-dealer with or through which the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction must be recorded no later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be in violation of this paragraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required by this paragraph to be recorded.

(2) ~~For purposes of this paragraph, the following definitions shall apply:~~

~~"Advisory representative" means any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:~~

~~1. Any person in a control relationship to the investment adviser;~~

~~2. Any affiliated person of a controlling person; and~~

~~3. Any affiliated person of an affiliated person.~~

~~"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power results solely from an official position with such company. Any person who~~

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~~owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.~~

*m.* Notwithstanding the provisions of paragraph 50.42(1) "l," when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(1) No change.

(2) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition), the price at which it was effected, and the name of the broker-dealer or bank with or through which the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be deemed to have violated the provisions of this subparagraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded. ~~The terms "advisory representative" and "control" shall mean the same as defined in paragraph "l."~~

*n.* to *s.* No change.

*t.* A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization pertaining to the investment adviser or ~~any its investment adviser representative representatives~~, as defined by ~~paragraph 50.42(1) "l,"~~ subrule 50.42(11), including but not limited to all applications, amendments, renewal filings, and correspondence.

*u.* No change.

*v.* For each transaction in which the investment adviser inadvertently held or obtained the client's securities or funds and returned them to the client within three business days of receipt or forwarded a ~~third-party check drawn by a client and made payable to a third party within 24 hours~~ three business days of receipt, a ledger or list of all funds or securities held or obtained with the following information:

(1) to (10) No change.

*w.* ~~For each security exempted from the custody rules by paragraph 50.39(2) "b"~~ If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving a public offering that comply with the exception from custody in paragraph 50.39(2) "b," the adviser shall keep:

(1) and (2) No change.

**50.42(2)** In addition to the retention requirements of subrule 50.42(1), an investment adviser having custody of client funds or securities, as defined by paragraph ~~50.39(3) "a,"~~ 50.39(3) "b," shall retain the following records:

*a.* Copies of all documents executed by each client, including but not limited to a limited power of attorney, pursuant to which the investment adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

*b.* to *h.* No change.

**50.42(3)** An investment adviser deemed, ~~pursuant to paragraph 50.39(2) "e,"~~ to have custody of client securities or funds because the investment adviser advises a pooled investment vehicle shall, in addition to any other applicable record retention requirements, keep the following records:

*a.* to *c.* No change.



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ITEM 17. Rescind subrule **50.42(4)**.

ITEM 18. Renumber subrules **50.42(5)** to **50.42(12)** as **50.42(4)** to **50.42(11)**.

ITEM 19. Amend renumbered subrule 50.42(5) as follows:

**50.42(5)** Records required to be retained pursuant to rule 191—50.42(502) shall be kept as follows:

*a.* Except as provided in paragraphs 50.42(6) “*b*” to “*e*,” 50.42(1) “*k*” and “*p*,” all records required to be made under subrules 50.42(1) to 50.42(3) and paragraph 50.42(4) “*a*” shall be maintained and preserved in a readily accessible location for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, with no less than the first two years being kept in the principal office of the investment adviser.

*b.* to *d.* No change.

*e.* ~~An~~ Notwithstanding other record preservation requirements of rule 191—50.42(502), an investment adviser that has rendered or renders investment advisory services shall maintain at all times the following records at the investment adviser’s business location at all times from which the customer or client is being provided or has been provided investment advisory services during the applicable retention period:

(1) and (2) No change.

ITEM 20. Amend rule 191—50.43(502) as follows:

**191—50.43(502) Financial reporting requirements for investment advisers.**

**50.43(1)** Every registered investment adviser that has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall file with the administrator an audited balance sheet as of the end of the investment adviser’s fiscal year, except Each balance sheet filed pursuant to this rule must be:

*a.* Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

*b.* Audited by an independent certified public accountant; and

*c.* Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the opinion, the basis of included securities, and any other explanations required for clarity.

~~*a.* An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1) “*d*” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the financial reporting requirements of this rule;~~

~~*b.* An investment adviser that has custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1) “*e*” or 50.39(2) “*e*” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the financial reporting requirements of this rule; and~~

~~*c.* An investment adviser that has custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1) “*f*” and the record-keeping requirements of subrule 50.42(4) is not required to comply with the financial reporting requirements of this rule.~~

**50.43(2)** Every registered investment adviser that has discretionary authority over, but not custody of, client funds or securities shall file with the administrator a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles or such other basis of accounting acceptable to the administrator and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser’s fiscal year.

**50.43(3)** Each balance sheet filed pursuant to this rule must be:

*a.* Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

*b.* Audited by an independent certified public accountant; and

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~~*c.*—Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the audit, the basis of included securities, and any other explanations required for clarity.~~

~~50.43(4)~~ **50.43(3)** The financial statements required by this rule shall be filed with the administrator within 90 days following the end of the investment adviser's fiscal year.

~~50.43(5)~~ **50.43(4)** Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's financial reporting requirements.

This rule is intended to implement Iowa Code section 502.411(2).

ITEM 21. Adopt the following new rule 191—50.45(502):

**191—50.45(502) Registration exemption for investment advisers to private funds.**

**50.45(1) Definitions.** For purposes of this rule, the following definitions shall apply:

*"3(c)(1) fund"* means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under Section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

*"Private fund adviser"* means an investment adviser who provides advice solely to one or more qualifying private funds.

*"Qualifying private fund"* means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 CFR § 275.203(m)-1.

*"Value of primary residence"* means the fair market value of a person's primary residence, less the amount of debt secured by the property up to its fair market value.

*"Venture capital fund"* means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 CFR § 275.203(l)-1.

**50.45(2) Exemption for private fund advisers.** Subject to the additional requirements of subrule 50.45(3), a private fund adviser shall be exempt from the registration requirements of Iowa Code section 502.403 if the private fund adviser satisfies each of the following conditions:

*a.* Neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 CFR § 230.262;

*b.* The private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the SEC pursuant to SEC Rule 204-4, 17 CFR § 275.204-4;

*c.* The private fund adviser pays any applicable fees.

**50.45(3) Additional requirements for private fund advisers to certain 3(c)(1) funds.** In order to qualify for the exemption described in subrule 50.45(2), a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraph 50.45(3) "*b.*" comply with the following requirements:

*a.* The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 CFR § 275.205-3, at the time the securities are purchased from the issuer.

*b.* At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(1) All services, if any, to be provided to individual beneficial owners;

(2) All duties, if any, the private fund adviser owes to the beneficial owners; and

(3) Any other material information affecting the rights or responsibilities of the beneficial owners.

*c.* The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

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**50.45(4) Federal covered investment advisers.** If a private fund adviser is registered with the SEC, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers.

**50.45(5) Investment adviser representatives.** A person is exempt from the registration requirements if the person is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to rule 191—50.45(502) and does not otherwise act as an investment adviser representative.

**50.45(6) Electronic filing.** The report filings described in paragraph 50.45(2) “b” shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required are filed and accepted by the IARD on the state’s behalf.

**50.45(7) Transition.** An investment adviser that becomes ineligible for the exemption provided by rule 191—50.45(502) must comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser’s eligibility for this exemption ceases.

**50.45(8) Grandfathering for investment advisers to 3(c)(1) funds with nonqualified clients.** An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in paragraph 50.45(3) “a” is eligible for the exemption contained in subrule 50.45(2) if the following conditions are satisfied:

- a. The subject fund existed prior to November 6, 2013;
- b. As of November 6, 2013, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in paragraph 50.45(3) “a”;
- c. The investment adviser discloses in writing the information described in paragraph 50.45(3) “b” to all beneficial owners of the fund; and
- d. As of November 6, 2013, the investment adviser delivers audited financial statements as required by paragraph 50.43(3) “c.”

This rule is intended to implement Iowa Code section 502.403.

ITEM 22. Adopt the following new rule 191—50.46(502):

**191—50.46(502) Contents of investment advisory contract.** The provisions of this rule shall apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996.

**50.46(1)** It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

- a. The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and any grant of discretionary power to the investment adviser, investment adviser representative, or federal covered investment adviser;
- b. That no direct or indirect assignment or transfer of the contract may be made by the investment adviser, investment adviser representative, or federal covered investment adviser without the consent of the client or other party to the contract;
- c. That the investment adviser, investment adviser representative, or federal covered investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
- d. That the investment adviser, investment adviser representative, or federal covered investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.

**50.46(2)** It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to:

- a. Include in an advisory contract any condition, stipulation, or provisions binding any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or

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

*b.* Enter into, extend or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

**50.46(3)** Notwithstanding paragraph 50.46(1) “*c.*,” an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in paragraphs 50.46(3) “*a.*” to “*d.*” are met.

*a.* The client entering into the contract must be:

(1) A natural person or a company that, immediately after entering into the contract, has at least \$750,000 under the management of the investment adviser; or

(2) A person that the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds \$1,500,000. The net worth of a natural person may include assets held jointly with that person’s spouse.

*b.* The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(1) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (definition of “current net asset value” for use in computing periodically the current price of redeemable security), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(2) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, the formula must include:

1. The realized capital losses of securities over the period; and

2. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(3) The formula must provide that any compensation paid to the investment adviser under paragraph 50.46(3) “*b.*” is based on the gains less the losses (computed in accordance with subparagraphs 50.46(3) “*b.*”(1) and (2)) in the client’s account for a period of not less than one year.

*c.* Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client’s independent agent all material information concerning the proposed advisory arrangement, including the following:

(1) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(2) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client’s account;

(3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(5) When the investment adviser’s compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, how the securities will be valued and the extent to which the valuation will be independently determined.

*d.* The investment adviser (and any investment adviser representative) that enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm’s length arrangement between the parties and that the client (or in the case of a client which is a company as defined in paragraph 50.46(6) “*d.*,” the person representing the company), alone or together with the client’s independent agent, understands the proposed method of compensation and its risks. The

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

representative of a company may be a partner, director, officer or an employee of the company or of the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in paragraph 50.46(6) "c."

**50.46(4)** Any person entering into or performing an investment advisory contract under rule 191—50.46(502) is not relieved of any obligations under rule 191—50.38(502) or any other applicable provision of the Act or any rule or order thereunder.

**50.46(5)** Nothing in rule 191—50.46(502) shall relieve a client's independent agent from any obligation to the client under applicable law.

**50.46(6)** The following definitions apply for purposes of rule 191—50.46(502):

*a. "Affiliate"* shall have the same definition as in Section 2(a)(3) of the Investment Company Act of 1940.

*b. "Assignment,"* as used in paragraph 50.46(1) "b," includes, but is not limited to, any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50 percent of any class of voting securities of, the investment adviser or federal covered investment adviser as compared to the individuals or entities that had such power as of the date when the contract was first entered into, extended or renewed.

*c. "Client's independent agent"* means any person who agrees to act as an investment advisory client's agent in connection with the contract. "Client's independent agent" does not include:

- (1) The investment adviser relying on rule 191—50.46(502);
- (2) An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;
- (3) An interested person of the investment adviser;
- (4) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or
- (5) A person with any material relationship between the person (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the past two years.

*d. "Company"* means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under Title 11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in the liquidating agent's capacity as such. "Company" shall not include:

- (1) A company required to be registered under the Investment Company Act of 1940 but which is not so registered;
- (2) A private investment company is an entity which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that Act;
- (3) An investment company registered under the Investment Company Act of 1940; or
- (4) A business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of "company."

*e. "Interested person"* means:

- (1) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;
- (2) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:
  1. One-tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or
  2. Five percent of the total assets of the person seeking to act as the client's independent agent; or
- (3) Any person or partner or employee of any person who has acted as legal counsel for the investment adviser within the past two years.

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

ITEM 23. Amend subrule 50.53(7) as follows:

**50.53(7)** Notwithstanding any statutory confidentiality provision, the administrator may share information with the ~~CSRU~~ college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code section 261.126.

ITEM 24. Renumber rule **191—50.54(502)** as **191—50.55(502)**.

ITEM 25. Adopt the following new rule 191—50.54(272D):

**191—50.54(272D) Denial, suspension or revocation of agent or investment adviser representative registration for failure to pay state debt.**

**50.54(1)** Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue (CCU), the administrator shall issue a notice to a securities agent or investment adviser representative applicant or registrant that any pending application for registration will be denied or any current registration will be suspended or revoked 60 days after the date of the notice. The notice shall be served by restricted certified mail, return receipt requested, or by personal service as provided by the Iowa Rules of Civil Procedure, unless the applicant or registrant accepts service personally or through authorized counsel.

**50.54(2)** The administrator shall provide the applicant or registrant with a copy of the certificate of noncompliance and shall provide a notice advising the applicant that:

*a.* The administrator intends to deny an application or to suspend or revoke a registration due to receipt of a certificate of noncompliance from the CCU;

*b.* The applicant or registrant must contact the CCU to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

*c.* Unless the CCU furnishes a withdrawal of a certificate of noncompliance to the administrator within 60 days of issuance of the notice, the application shall be denied or the registration shall be suspended or revoked;

*d.* The applicant or registrant does not have a right to a hearing before the administrator, but may file an application for hearing in district court pursuant to Iowa Code section 272D.9; and

*e.* The filing of an application for hearing with the district court will stay the proceedings of the division.

**50.54(3)** The filing of an application for hearing with the district court under Iowa Code section 272D.9 automatically stays action of the administrator until the administrator is notified of the resolution of the application.

**50.54(4)** If the administrator does not receive a withdrawal of the certificate of noncompliance from the CCU or a notice that an application for district court hearing has been filed, the administrator shall deny, suspend or revoke the application or registration 60 days after the notice prescribed in subrule 50.54(2) is issued.

**50.54(5)** Upon receiving a withdrawal of the certificate of noncompliance from the CCU, the administrator shall immediately halt action to deny an application or suspend or revoke a registration. The applicant or registrant shall be notified that action has been halted. If the application has already been denied or if a registration has already been suspended or revoked, the applicant or former registrant shall reapply for registration. The application shall be granted if the individual is otherwise in compliance with applicable laws, rules, regulations and orders.

**50.54(6)** All application fees must be paid by the applicant before a registration will be issued after the administrator has denied, suspended, or revoked a registration pursuant to Iowa Code chapter 272D.

**50.54(7)** Notwithstanding any statutory confidentiality provision, the administrator may share information with the CCU for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code chapter 272D.

This rule is intended to implement Iowa Code chapter 272D.

INSURANCE DIVISION[191](cont'd)

ITEM 26. Amend rule 191—50.66(502) as follows:

**191—50.66(502) NASAA guidelines and statements of policy.**

**50.66(1)** No change.

**50.66(2) *Registration of oil and gas programs.*** All oil and gas programs filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Oil and Gas Programs, which were initially adopted by the NASAA membership on September 22, 1976, as amended on October 12, 1977; October 31, 1979; April 23, 1983; July 1, 1984; September 3, 1987; September 14, 1989; October 24, 1991; ~~and~~ May 7, 2007; and May 6, 2012; and published in CCH NASAA Reports at paragraph 2621.

**50.66(3) and 50.66(4)** No change.

**50.66(5) *Registration of commodity pool programs.*** All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Commodity Pool Programs as adopted by the NASAA membership on September 21, 1983, effective January 1, 1984, amended August 30, 1990, amended May 7, 2007, amended May 6, 2012, and published in CCH NASAA Reports at paragraph 1201.

**50.66(6) *Registration of equipment programs.*** All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Equipment Programs as adopted by the NASAA membership on November 20, 1986, effective January 1, 1987, amended April 22, 1988, October 24, 1991, ~~and~~ May 7, 2007, and May 6, 2012, and published in CCH NASAA Reports at paragraph 1601.

**50.66(7) to 50.66(9)** No change.

**50.66(10) *Corporate securities definitions.*** For securities registration purposes, the administrator adopts the various definitions set out in the NASAA Statement of Policy Regarding Corporate Securities Definitions as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3812.

**50.66(11) *Impoundment of proceeds.*** When an impoundment of proceeds is necessary, it shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding the Impoundment of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 2151.

**50.66(12) *Loans and other material affiliated transactions.*** When there have been or will be loans or other material affiliated transactions, the transactions shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Loans and Other Material Affiliated Transactions as amended by the NASAA membership on April 27, 1997, and March 31, 2008, and published in CCH NASAA Reports at paragraph 374.

**50.66(13) *Options and warrants.*** The issuance of options and warrants may be allowed by the administrator if the issuance is in substantial compliance, as determined by the administrator, with the NASAA Statement of Policy Regarding Options and Warrants as ~~amended~~ adopted by the NASAA membership on November 17, 1997, and as amended September 28, 1999, and as amended March 31, 2008, and published in CCH NASAA Reports at paragraph 2801.

**50.66(14) *Preferred stock.*** A public offering of preferred stock may be allowed by the administrator if the offering substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Preferred Stock as ~~amended~~ adopted by the NASAA membership on April 27, 1997, and as amended March 31, 2008, and published in CCH NASAA Reports at paragraph 3001.

**50.66(15) *Promotional shares.*** The registration of a security may include promotional shares if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Promotional Shares as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3201.

**50.66(16)** No change.

INSURANCE DIVISION[191](cont'd)

**50.66(17) *Unsound financial condition.*** An issuer may be deemed to be in an unsound financial condition if it substantially meets, as determined by the administrator, the conditions provided within the NASAA Statement of Policy Regarding Unsound Financial Condition as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3821.

**50.66(18) *Use of proceeds.*** The registration of a security may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Specificity in Use of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3831.

**50.66(19) *Registration of asset-backed securities.*** All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Asset-Backed Securities as adopted by the NASAA membership on October 25, 1995, amended May 7, 2007, and May 6, 2012, and published in CCH NASAA Reports at paragraph 501.

This rule is intended to implement Iowa Code sections 502.305(6) and 502.306(1).

ITEM 27. Amend subrule 50.87(1) as follows:

**50.87(1)** Church extension funds or similar organizations making continuous offerings shall be exempt pursuant to Iowa Code section 502.201(7) “b” provided the issuer:

*a. to d.* No change.

*e.* Unless disallowed by the administrator within 15 days after the applicant has filed the items required by paragraphs 50.87(1) “a” to “d,” is authorized beginning 15 days after the filing is received to sell pursuant to the exemption;

*e. f.* After authorization, may sell securities for a period of 12 months; and

*f. g.* Upon the expiration of the 12-month period in paragraph “e,” 50.87(1) “f.” files a renewal application that complies with the requirements of this subrule.

ITEM 28. Amend subrule 50.88(2) as follows:

**50.88(2)** Any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of the purchase exceeds \$1 million, excluding the value of the primary residence of the natural person.

ITEM 29. Adopt the following new rule 191—50.89(502):

**191—50.89(502) Designated securities manuals.** Nationally recognized securities manuals for purposes of Iowa Code section 502.202(2) “d” include Mergent’s Manuals, S & P Capital IQ Standard Corporation Descriptions, Fitch Investment Services, and Best’s Insurance Reports, Life-Health.

This rule is intended to implement Iowa Code section 502.202(2) “d.”

[Filed 9/12/13, effective 11/6/13]

[Published 10/2/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1049C**

## **LABOR SERVICES DIVISION[875]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby amends Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The amendment adopts by reference changes to federal occupational safety and health standards concerning specialized equipment known as “digger derricks” that are used for tasks such as installing



LABOR SERVICES DIVISION[875](cont'd)

utility poles. Under the existing standards, most of the work done by digger derricks is exempt from the cranes and derricks standard. The change expands the exemption for digger derricks.

The principal reasons for adoption of this amendment are to implement legislative intent and make Iowa's regulations current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

Notice of Intended Action was published in the August 7, 2013, Iowa Administrative Bulletin as **ARC 0905C**. No public comment was received on the proposed amendment. This amendment is identical to the amendment published under Notice of Intended Action.

No variance procedures are included in this rule. Variance procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, this amendment will have no impact on jobs as it expands an exemption from a regulation.

This amendment is intended to implement Iowa Code section 88.5 and 29 CFR 1953.5.

This amendment shall become effective on November 6, 2013.

The following amendment is adopted.

Amend rule **875—26.1(88)** by inserting the following at the end thereof:

78 Fed. Reg. 32116 (May 29, 2013)

[Filed 9/11/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1033C**

## **MEDICINE BOARD[653]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Medicine hereby amends Chapter 13, "Standards of Practice and Principles of Medical Ethics," Iowa Administrative Code.

The purpose of Chapter 13 is to establish standards of medical practice for medical physicians and osteopathic physicians. The amendment rescinds 653—13.3(147), a rule that was made moot by a revision to Iowa Code chapter 155A to authorize vaccine administration by pharmacists. New Iowa Code section 155A.44, promulgated by 2013 Iowa Acts, Senate File 353, became effective July 1, 2013.

The Board approved the Notice of Intended Action during a regularly scheduled meeting on June 28, 2013. The Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0890C** on July 24, 2013. No public hearing was held.

On August 30, 2013, the Board voted to adopt and file an amendment that is identical to the noticed amendment.

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

This amendment is intended to implement Iowa Code chapters 147, 148 and 272C.

This amendment will become effective November 6, 2013.

The following amendment is adopted.

Rescind and reserve rule **653—13.3(147)**.

[Filed 9/3/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1034C****MEDICINE BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Medicine hereby amends Chapter 13, “Standards of Practice and Principles of Medical Ethics,” Iowa Administrative Code.

The purpose of Chapter 13 is to establish standards of medical practice for medical physicians and osteopathic physicians. The amendment establishes the standards of practice for physicians who prescribe or administer abortion-inducing drugs.

The Board approved the Notice of Intended Action during a regularly scheduled meeting on June 28, 2013. The rule making was promulgated by a petition calling on the Board to adopt the standards of practice. The Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0891C** on July 24, 2013. A public hearing was held on August 28, 2013.

Testimony was made at the hearing by 28 persons, and written comments from 244 individuals and organizations were received by the August 28, 2013, deadline.

Generally, supporters of the amendment said that standards are necessary to protect the safety of women who have chemical abortions in clinical settings where a physician does not perform a physical examination on the woman and a physician prescribes and administers the abortion-inducing drug via a videoconferencing system.

Generally, opponents of the amendment said that an appropriate physical examination of the woman is performed by non-physician staff of the clinic and that the videoconferencing system used by physicians to prescribe and administer the drug is safe. Opponents said that the rule would restrict access to chemical abortion services in rural areas of the state.

The Iowa Medical Society and the Iowa Osteopathic Medical Association asked the Board for more evaluation of the requirements in the amendment before adopting it.

On August 30, 2013, the Board voted to adopt and file an amendment that is identical to the noticed amendment.

Pursuant to Iowa Administrative Code 653—subparagraph 1.8(2)“c”(6), the Board posted on its Web site, [www.medicalboard.iowa.gov](http://www.medicalboard.iowa.gov), by September 28, 2013, a statement of the principal reasons for and against the rule it adopted, incorporating therein the reasons for overruling considerations urged against the rule.

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

This amendment is intended to implement Iowa Code chapters 147, 148 and 272C.

This amendment will become effective November 6, 2013.

The following amendment is adopted.

Adopt the following new rule 653—13.10(147,148,272C):

**653—13.10(147,148,272C) Standards of practice—physicians who prescribe or administer abortion-inducing drugs.**

**13.10(1) Definition.** As used in this rule:

“*Abortion-inducing drug*” means a drug, medicine, mixture, or preparation, when it is prescribed or administered with the intent to terminate the pregnancy of a woman known to be pregnant.

**13.10(2) Physical examination required.** A physician shall not induce an abortion by providing an abortion-inducing drug unless the physician has first performed a physical examination of the woman to determine, and document in the woman’s medical record, the gestational age and intrauterine location of the pregnancy.

**13.10(3) Physician’s physical presence required.** When inducing an abortion by providing an abortion-inducing drug, a physician must be physically present with the woman at the time the abortion-inducing drug is provided.

**13.10(4) Follow-up appointment required.** If an abortion is induced by an abortion-inducing drug, the physician inducing the abortion must schedule a follow-up appointment with the woman at the

MEDICINE BOARD[653](cont'd)

same facility where the abortion-inducing drug was provided, 12 to 18 days after the woman's use of an abortion-inducing drug to confirm the termination of the pregnancy and evaluate the woman's medical condition. The physician shall use all reasonable efforts to ensure that the woman is aware of the follow-up appointment and that she returns for the appointment.

**13.10(5) Parental notification regarding pregnant minors.** A physician shall not induce an abortion by providing an abortion-inducing drug to a pregnant minor prior to compliance with the requirements of Iowa Code chapter 135L and rules 641—89.12(135L) and 641—89.21(135L) adopted by the public health department.

[Filed 9/3/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1074C**

## **PUBLIC HEALTH DEPARTMENT[641]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 144.3 and 144.46, the Department of Public Health hereby amends Chapter 95, "Vital Records: General Administration," Iowa Administrative Code.

The rules in Chapter 95 describe the general administration of vital records including definitions, fees, the handling of records, access to records, issuance of certified copies and confidentiality. These amendments increase certain fees related to vital records beginning January 1, 2014. These fees will revert back to current levels beginning July 1, 2019. The additional moneys generated by this time-limited fee increase will support the development and implementation of the Iowa Vital Events System. This includes the electronic registration and issuance of new events and the conversion of historical events into one system to manage the Civil Registry and health data collected and managed by the Department.

Notice of Intended Action was published in the August 7, 2013, Iowa Administrative Bulletin as **ARC 0926C**. A public hearing was held on August 27, 2013, with a conference call for the public to call in any comments. Comments received from the Iowa Funeral Directors Association were in opposition to the increase. No other comments were received. No action has been taken by the Department due to the sunset clause for the fee increase, and the fees will revert to the current amount on July 1, 2019. The adopted amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on September 11, 2013.

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

These amendments are intended to implement Iowa Code sections 144.46 and 144.46A.

These amendments will become effective on January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 95.6(1) as follows:

**95.6(1) Fees for services provided by state registrar or county registrar.** The following fees shall be charged and remitted for the various services provided by the state registrar or the county registrar.

*a.* The state registrar or county registrar, as applicable, shall charge a fee of ~~\$15~~ \$20 to conduct a search for a record. On and after July 1, 2019, this fee will revert to \$15.

(1) The search fee shall include one certified copy of the record.

(2) For each additional certified copy of the same record, a ~~\$15~~ \$20 fee shall be charged. On and after July 1, 2019, this fee will revert to \$15.

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

*b.* The state registrar shall charge a fee of ~~\$15~~ \$20 to prepare an adoption certificate, to amend a certificate, to amend a certificate of live birth to reflect a legal change of name, to prepare a delayed certificate, to process other administrative or legal actions, or for the search and preparation of copies of

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

supporting documents on file in the state registrar's office. On and after July 1, 2019, this fee will revert to \$15. No fee shall be charged for establishment of paternity.

*c. and d.* No change.

*e.* The state registrar shall charge a fee of ~~\$15~~ \$20 to amend an abstract or other legal documentation in support of the preparation of a new certificate. On and after July 1, 2019, this fee will revert to \$15.

*f.* No change.

*g.* The state registrar shall charge a fee of ~~\$15~~ \$20 to conduct a search for a certificate of fetal death for the purpose of issuing an uncertified copy of a certificate of birth resulting in stillbirth pursuant to ~~2012 Iowa Acts, House File 2368, section 4~~ Iowa Code section 144.31A. On and after July 1, 2019, this fee will revert to \$15.

ITEM 2. Amend subrule 95.6(2) as follows:

**95.6(2) *Overpayments.*** Any overpayment of less than ~~\$15~~ \$20 received by the state registrar for the copying of or search for vital records, or for the preparation or amending of a certificate, shall not be refunded. The state registrar shall retain the first ~~\$9~~ \$14 of any overpayment with any remaining amount to be deposited in the general fund of the state. On and after July 1, 2019, the overpayment amount will revert to \$15 and the amount retained by the state registrar will revert to \$9.

ITEM 3. Amend subrule 95.6(5) as follows:

**95.6(5) *Distribution of fees.***

*a.* All fees collected by the county registrar and the state registrar shall be distributed as follows:

(1) For fees collected by a county registrar, with the exception of the fee in subrule 95.6(4), the county registrar shall retain \$4 of each ~~\$15~~ \$20 fee collected by that office, ~~which~~. On and after July 1, 2019, this \$20 fee will revert to \$15. Fees collected shall be divided as follows:

1. For a birth certificate or a marriage certificate, the state registrar shall receive ~~\$8~~ \$13, and \$3 shall be deposited in the general fund of the state, except for the fee collected pursuant to paragraph 95.6(1) "*f.*" On and after July 1, 2019, the amount received by the state registrar will revert to \$8.

2. For a death certificate, the state registrar shall receive ~~\$6~~ \$11, the office of the state medical examiner shall receive \$3, and \$2 shall be deposited in the general fund of the state. On and after July 1, 2019, the amount received by the state registrar will revert to \$6.

(2) For fees collected by the state registrar, the state registrar shall retain all fees, with the exception of the fees in paragraph 95.6(1) "*a.*" of which the state registrar shall retain ~~\$9~~ \$14 of each ~~\$15~~ \$20 fee collected for the issuance of certified copies. On and after July 1, 2019, the fee collected will revert to \$15 and the amount retained by the state registrar will revert to \$9. The \$6 balance of certified copy fees collected by the state registrar shall be divided as follows:

1. For a birth certificate or a marriage certificate, \$6 shall be deposited in the general fund of the state.

2. For a death certificate, the office of the state medical examiner shall receive \$3, and \$3 shall be deposited in the general fund of the state.

*b.* All fees retained by the state registrar shall be added to the vital records fund established by the department pursuant to Iowa Code section 144.46A.

*c.* All fees received by the office of the state medical examiner shall be added to the operating budget established for the operation of that office.

[Filed 9/12/13, effective 1/1/14]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

## ARC 1075C

## PUBLIC HEALTH DEPARTMENT[641]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 144.3, the Department of Public Health hereby amends Chapter 96, "Birth Registration," and Chapter 99, "Vital Records Modifications," Iowa Administrative Code.

The rules in Chapter 96 describe the responsibilities and process for the registration of births. The amendments in Chapter 96 institute a process for establishing parentage on the birth certificate for married lesbian couples when one of the parties to the marriage delivers a child.

The rules in Chapter 99 describe the processes in place for amending vital records. The amendments in Chapter 99 clarify who an entitled person is for purposes of requesting corrections of a minor error or amending a birth certificate; clarify how intended parents are established on a record following a birth by gestational surrogate arrangement; and clarify terminology changing "father" to "parent" and "husband" to "spouse." These changes are necessary to comply with the *Gartner v. Iowa Department of Public Health*, Supreme Court Decision No. 12-0243.

Notice of Intended Action was published in the August 7, 2013, Iowa Administrative Bulletin as **ARC 0925C**. No comments were received. The adopted amendments are identical to those published under Notice.

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

These amendments are intended to implement *Gartner v. Iowa Department of Public Health*, Supreme Court Decision No. 12-0243.

These amendments will become effective on November 6, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **96.5(1)"b"** as follows:

b. Obtain the signature of the mother or her legal ~~husband~~ spouse or other signature as directed by the state registrar;

ITEM 2. Amend paragraph **96.6(2)"c"** as follows:

c. The original Iowa official birth worksheet completed and signed by the mother, or her legal ~~husband~~ spouse, or as directed by the state registrar; and

ITEM 3. Amend paragraph **96.7(1)"c"** as follows:

c. ~~The father or the mother of the infant~~ or her legal spouse.

ITEM 4. Amend subrule 96.7(5) as follows:

**96.7(5)** The official non-institution birth worksheet shall include a notarized signature of the mother or her legal ~~husband~~ spouse and shall be accompanied by a clear photocopy of that person's current government-issued photo identification. If photo identification is unavailable, other identifying documentation may be acceptable to the state registrar.

ITEM 5. Amend subparagraph **96.18(2)"b"(5)** as follows:

(5) The full name of the ~~father~~ mother's legal spouse. However, if the mother was not married ~~to the father of the child~~ at the time of conception or birth or at any time during the period between conception and birth, the name of ~~the father~~ a second parent shall not be entered on the delayed certificate unless the child has been adopted or legitimated or parentage has been determined by a court of competent jurisdiction ~~or there is evidence of acknowledgment of paternity by both parents~~.

ITEM 6. Amend subrule 99.4(2) as follows:

**99.4(2)** For a certificate of live birth, entitled persons include in the following descending order of priority:

a. ~~The single parent or both parents~~ Either parent as shown on the child's certificate of live birth;  
or

b. ~~The mother, in the case of the death or incapacity of the father;~~

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~c. The father if listed on the birth certificate, in the case of the death or incapacity of the mother;~~  
or

~~d.~~ b. The legal guardian or agency having legal custody of the child.

ITEM 7. Amend paragraphs **99.5(1)“b”** and **“c”** as follows:

b. The mother, in the case of the death or incapacity of the ~~father~~ second parent;

c. The ~~father~~ second parent if listed on the birth certificate, in the case of the death or incapacity of the mother; or

ITEM 8. Amend subrule 99.6(2) as follows:

**99.6(2)** For a certificate of live birth, entitled persons include in the following descending order of priority:

a. ~~The single parent or both parents~~ Either parent as shown on the child's certificate of live birth;

b. The mother, in the case of the death or incapacity of the ~~father~~ second parent;

c. The ~~father~~ second parent if listed on the birth certificate, in the case of the death or incapacity of the mother; or

d. The legal guardian or agency having legal custody of the child.

ITEM 9. Rescind subrules 99.15(4) to 99.15(12) and adopt the following new subrules in lieu thereof:

**99.15(4)** Two intended parents—both intended parents are biological parents to the child. If the intended mother is the egg donor and the intended father is the sperm donor to the child being carried by the gestational surrogate:

a. After the birth of the child, the intended parents shall petition a court of competent jurisdiction to establish legal paternity and maternity of the child.

b. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother and father as the legal mother and father and requiring the state registrar to seal the original birth certificate and all related documentation.

c. The court order shall:

(1) Identify the child's full name as stated on the original certificate of live birth;

(2) State the child's date of birth and place of birth;

(3) Identify the full names of the birth mother and her legal spouse, if married;

(4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child;

and

(5) Identify the intended parents' full names prior to any marriage, full current legal names, dates of birth, birthplaces, social security numbers, and full current residential address including county.

d. The intended parents or their legal representative shall:

(1) Submit a certified copy of the court order to the state registrar;

(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

**99.15(5)** Two intended parents—intended mother is biological mother to the child; her legal spouse is not a biological parent. If the intended mother is the egg donor but her legal spouse is not the sperm donor, the intended mother shall petition a court of competent jurisdiction after the birth of the child to establish legal maternity.

a. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother as the legal mother and shall require the state registrar to seal the original certificate of live birth and all related documents.

b. The court order establishing legal maternity shall:

(1) Identify the child's full name as stated on the original certificate of live birth;

(2) State the child's date of birth and place of birth;

(3) Identify the full names of the birth mother and her legal spouse, if married;

(4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child;

and

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(5) Identify the intended mother's full name prior to any marriage, full current name, date of birth, birthplace, social security number, and full current residential address including county.

c. The intended mother or her legal representative shall:

(1) Submit a certified copy of the court order to the state registrar;

(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

**99.15(6)** Two intended parents—intended father is biological father to the child; his legal spouse is not a biological parent.

a. If the surrogate birth mother is unmarried and the intended father is the sperm donor, the unmarried surrogate birth mother and the intended father may complete a Voluntary Paternity Affidavit form after the child's birth to place the intended father's name and information on the certificate of live birth.

b. If the surrogate birth mother is married and the intended father is the sperm donor, the married surrogate birth mother and the intended father shall by court order disestablish the surrogate birth mother's legal spouse as the legal parent and may complete a Voluntary Paternity Affidavit form pursuant to Iowa Code section 144.13.

c. The court order that disestablishes the married surrogate birth mother's legal spouse and the completed Voluntary Paternity Affidavit form shall be submitted to the state registrar.

d. If a certified copy of the certificate of live birth is requested, a notarized written request shall also be submitted to the state registrar with the certified copy fee and mailing instructions.

e. There is no administrative fee to process the completed Voluntary Paternity Affidavit form.

f. Adoption laws shall be followed to reestablish the certificate of live birth by establishing the nonbiological parent on the certificate of live birth pursuant to Iowa Code chapter 600.

**99.15(7)** Two intended parents—neither biological parent to the child. If the intended parents are neither the egg donor nor sperm donor, adoption laws shall be followed to reestablish the certificate of live birth by disestablishing the birth mother and her legal spouse, if any, and establishing the nonbiological parents on the certificate of live birth pursuant to Iowa Code chapter 600.

**99.15(8)** One female intended parent—biological mother to the child. If the intended mother is the egg donor to the child being carried by the gestational surrogate:

a. After the birth of the child, the intended mother shall petition a court of competent jurisdiction to establish legal maternity of the child.

b. The court shall enter an order requiring the state registrar to reestablish the certificate of live birth naming the intended mother as the legal mother and requiring the state registrar to seal the original certificate of live birth and all related documentation.

c. The court order shall:

(1) Identify the child's full name as stated on the original certificate of live birth;

(2) State the child's date of birth and place of birth;

(3) Identify the full names of the birth mother and her legal spouse, if married;

(4) Disestablish the birth mother and her legal spouse, if married, as the legal parents of the child; and

(5) Identify the intended parent's full name prior to any marriage, full current legal name, date of birth, birthplace, social security number, and full current residential address including county.

d. The intended parent or her legal representative shall:

(1) Submit a certified copy of the court order to the state registrar;

(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

**99.15(9)** One male intended parent—biological father to the child.

a. If the surrogate birth mother is unmarried and the intended father is the sperm donor, the unmarried surrogate birth mother and the intended father may complete a Voluntary Paternity Affidavit

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

form after the child's birth to place the intended father's name and information on the certificate of live birth.

b. If the surrogate birth mother is married and the intended father is the sperm donor, the married surrogate birth mother and the intended father shall by court order disestablish the surrogate birth mother's legal spouse as the legal parent and may complete a Voluntary Paternity Affidavit form pursuant to Iowa Code section 144.13.

c. The court order that disestablishes the married surrogate birth mother's legal spouse and the completed Voluntary Paternity Affidavit form shall be submitted to the state registrar.

d. If a certified copy of the certificate of live birth is requested, a notarized written request shall also be submitted to the state registrar with the certified copy fee and mailing instructions.

e. There is no administrative fee to process the completed Voluntary Paternity Affidavit form.

f. If the intended father has been established as the legal father pursuant to paragraph 99.15(9) "a" or "b" and the surrogate birth mother and the intended father wish to remove the surrogate birth mother as the legal mother from the certificate of live birth, the parties shall seek a court order. The court order disestablishing legal maternity shall:

(1) Identify the child's full name as stated on the original certificate of live birth;

(2) State the child's date of birth and place of birth;

(3) Identify the full name of the birth mother; and

(4) Disestablish the birth mother as the legal parent of the child.

g. The intended parent or his legal representative shall:

(1) Submit a certified copy of the court order to the state registrar;

(2) Remit administrative and certified copy fees pursuant to rule 641—95.6(144); and

(3) Include a notarized written request with mailing instructions for the certified copy of the certificate of live birth.

**99.15(10)** One intended parent—not biological parent to the child. If the intended parent is neither the egg donor nor sperm donor, adoption laws shall be followed to reestablish the certificate of live birth by disestablishing the birth mother and her legal spouse, if any, and establishing the nonbiological parent on the certificate of live birth pursuant to Iowa Code chapter 600.

**99.15(11)** The state registrar shall seal the original certificate of live birth. The state registrar shall place the original certificate of live birth and all related documents in a sealed file, and the file shall not be opened and inspected except by the state registrar for administrative purposes or upon an order from a court of competent jurisdiction pursuant to Iowa Code section 144.24.

**99.15(12)** The new certificate of live birth shall not be marked "amended."

ITEM 10. Adopt the following new subrules 99.15(13) and 99.15(14):

**99.15(13)** The new certificate of live birth shall not be on file at the county registrar's office pursuant to rule 641—95.7(144).

**99.15(14)** A certified copy fee and an administrative fee to replace a parent's information on a certificate of live birth shall be charged and remitted pursuant to rule 641—95.6(144).

ITEM 11. Amend subrule 99.16(1) as follows:

**99.16(1)** If the birth mother was legally married at the time of conception or birth or at any time during the period between conception and birth, the name of her ~~husband~~ spouse shall be entered on the certificate of live birth as ~~the father~~ a parent pursuant to Iowa Code section 144.13.

ITEM 12. Amend subrule 99.16(3) as follows:

**99.16(3)** If the birth mother was legally married at the time of conception or birth or at any time during the period between conception and birth, and her legal ~~husband~~ spouse is not the biological father, the birth mother and the alleged biological father may:

a. No change.

b. Obtain a court order that disestablishes her legal ~~husband~~ spouse as ~~the biological father~~ a parent; and

c. No change.



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ITEM 13. Amend subrule 99.17(1) as follows:

**99.17(1)** If the birth mother was married at the time of conception or birth or at any time during the period between conception and birth, the name of ~~the husband~~ her spouse shall be entered on the certificate of live birth as ~~the father~~ a parent unless paternity has been determined otherwise by a court of competent jurisdiction pursuant to Iowa Code section 144.13.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1079C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby amends Chapter 134, "Trauma Care Facility Categorization and Verification," Iowa Administrative Code.

The rules in Chapter 134 describe the process and standards for the categorization and verification of hospitals and emergency care facilities as trauma care facilities. These amendments amend the definition of emergency medical care provider by referencing the definition found in 641—131.1(147A). These amendments also update the reference to the "Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria"; the "Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria"; and the "Iowa Trauma System Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria" documents to the 2013 editions.

Notice of Intended Action was published in the May 29, 2013, Iowa Administrative Bulletin as **ARC 0772C**. No comments were received. The adopted amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on September 11, 2013.

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

These amendments are intended to implement Iowa Code section 147A.23.

These amendments will become effective on January 6, 2014.

The following amendments are adopted.

ITEM 1. Amend rule **641—134.1(147A)**, definition of "Emergency medical care provider," as follows:

*"Emergency medical care provider"* means ~~an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department~~ emergency medical care provider as defined in 641—131.1(147A).

ITEM 2. Amend subrule 134.2(3) as follows:

**134.2(3)** Adoption by reference.

*a.* "Resources for Optimal Care of the Injured Patient" (2006) published by the American College of Surgeons Committee on Trauma is incorporated and adopted by reference for Resource (Level I) hospital and emergency care facility categorization criteria. "Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria" (2006 2013) is incorporated and adopted by reference for Regional (Level II) hospital and emergency care facility categorization criteria. "Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria" (2006 2013) is incorporated and adopted by reference for Area (Level III) hospital and emergency care facility categorization criteria. "Iowa Trauma System Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria" (2010 2013) is incorporated and adopted by reference for Community

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(Level IV) hospital and emergency care categorization criteria. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

b. “Iowa Trauma System Regional (Level II) Hospital and Emergency Care Facility Categorization Criteria” (2006 2013), “Iowa Trauma System Area (Level III) Hospital and Emergency Care Facility Categorization Criteria” (2006 2013) and “Iowa Trauma System Community (Level IV) Hospital and Emergency Care Facility Categorization Criteria” (2010 2013) are available through the Iowa Department of Public Health, Bureau of ~~Emergency Medical Services~~ EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site ([www.idph.state.ia.us/ems](http://www.idph.state.ia.us/ems)).

[Filed 9/12/13, effective 1/6/14]

[Published 10/2/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1080C**

## **PUBLIC HEALTH DEPARTMENT[641]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby amends Chapter 135, “Trauma Triage and Transfer Protocols,” Iowa Administrative Code.

The rules in Chapter 135 establish the out-of-hospital trauma triage destination decision and the intertrauma care facility triage and transfer protocols. These amendments update the references to “Out-of-Hospital Trauma Triage Destination Decision Protocol” (Adult and Pediatric) documents to the 2013 editions and rescind the references to “Inter-Trauma Care Facility Triage and Transfer Protocol” (August 1996).

Notice of Intended Action was published in the May 29, 2013, Iowa Administrative Bulletin as **ARC 0774C**. No comments were received. 2013 Iowa Acts, Senate File 396, was signed by the Governor on June 20, 2013. One of the provisions of this bill was to repeal the statute establishing the system evaluation quality improvement committee (SEQIC). Changes have been made in Items 1 and 3 to remove references to this committee, which no longer exists.

The State Board of Health adopted these amendments on September 11, 2013.

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

These amendments are intended to implement Iowa Code section 147A.24(4)“e” and 2013 Iowa Acts, Senate File 396, section 57.

These amendments will become effective on February 1, 2014.

The following amendments are adopted.

ITEM 1. Rescind the definitions of “Intertrauma care facility triage and transfer protocol,” “SEQIC” and “System evaluation quality improvement committee” in rule **641—135.1(147A)**.

ITEM 2. Amend rule **641—135.1(147A)**, definition of “Out-of-hospital triage and transfer destination decision protocol,” as follows:

*“~~Out-of-hospital triage and transfer destination decision protocol~~ Out-of-Hospital Trauma Triage Destination Decision Protocol”* means written directives to assist in the decision making, established and approved by the department, that address the method of transport and trauma care facility destination to be followed by the service program.

ITEM 3. Amend paragraphs **135.2(1)“a”** to **“c”** as follows:

a. Adoption by reference. The “Out-of-Hospital Trauma Triage Destination Decision Protocol” (Adult and Pediatric, November 2001 2013) and the ~~“Inter-Trauma Care Facility Triage and Transfer Protocol” (August 1996)~~ “Out-of-Hospital Trauma Triage Destination Decision Protocol” (Pediatric, 2013) are incorporated by reference and adopted as the out-of-hospital trauma triage destination decision and the intertrauma care facility triage and transfer protocols. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

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b. ~~The out-of-hospital trauma triage destination decision protocol (Adult and Pediatric) and the intertrauma care facility triage and transfer protocol protocols~~ adopted by reference in paragraph 135.2(1)“a” are available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site ([www.idph.state.ia.us/ems](http://www.idph.state.ia.us/ems)).

c. Revisions and modifications to the ~~out-of-hospital trauma triage destination decision protocol and the intertrauma care facility triage and transfer protocol protocols~~ adopted by reference in paragraph 135.2(1)“a” may be made upon recommendation to the department from the ~~system evaluation quality improvement committee (SEQIC)~~ or the trauma system advisory council (TSAC). Revisions and modifications shall be approved by the department.

[Filed 9/12/13, effective 2/1/14]

[Published 10/2/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1081C****PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby amends Chapter 137, “Trauma Education and Training,” Iowa Administrative Code.

The rules in Chapter 137 describe trauma education and training for Iowa’s trauma system. These amendments clarify the trauma education and training requirements and replace the existing tables with written requirements.

Notice of Intended Action was published in the May 29, 2013, Iowa Administrative Bulletin as **ARC 0773C**. Comments were received from members of the State Board of Health concerning the requirements for residents and consultants to maintain Advanced Trauma Life Support (ATLS) training. After review of the entire rule in context, the existing language is clear that the only physicians who are required to maintain ATLS are non-emergency medicine, board-certified physicians identified by the trauma care facility as trauma team members and who participate directly in the initial resuscitation of the trauma patient. No changes have been made to the amendments based on this review.

Also, 2013 Iowa Acts, Senate File 396, was signed by the Governor on June 20, 2013. One of the provisions of this bill was to repeal the statute establishing the system evaluation quality improvement committee (SEQIC). Therefore, changes have been made in Items 1 and 3 and new Item 10 has been added to remove references to this committee, which no longer exists. Proposed Items 10 to 13 have been renumbered as Items 11 to 14 herein.

In addition, a cross reference was corrected in the definitions of “emergency medical services” and “service program” in Item 3.

The State Board of Health adopted these amendments on September 11, 2013.

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

These amendments are intended to implement Iowa Code section 147A.27 and 2013 Iowa Acts, Senate File 396, section 57.

These amendments will become effective on November 6, 2013.

The following amendments are adopted.

ITEM 1. Rescind the definitions of “ARNP,” “ATLS,” “LPN,” “PA,” “RN,” “RTTDC,” “SEQIC” “System evaluation quality improvement committee” and “TSAC” in rule **641—137.1(147A)**.

ITEM 2. Adopt the following new definitions in rule **641—137.1(147A)**:

“*Advanced emergency medical technician*” or “*AEMT*” means advanced emergency medical technician as defined in 641—131.1(147A).

“*Formal education*” means education in standardized educational settings with a curriculum.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*"Paramedic"* means paramedic as defined in 641—131.1(147A).

ITEM 3. Amend the following definitions in rule **641—137.1(147A)**:

*"Advanced registered nurse practitioner (~~ARNP~~)"* or *"ARNP"* means a nurse pursuant to 655—7.1(152) with current licensure as a registered nurse in Iowa who is registered in Iowa to practice in an advanced role. The ARNP is prepared for an advanced role by virtue of additional knowledge and skills gained through a formal advanced practice education program of nursing in a specialty area approved by the board. In the advanced role, the nurse practices nursing assessment, intervention, and management within the boundaries of the nurse-client relationship. Advanced nursing practice occurs in a variety of settings within an interdisciplinary health care team, which provide for consultation, collaborative management, or referral. The ARNP may perform selected medically delegated functions when a collaborative practice agreement exists.

*"Advanced trauma life support course<sup>®</sup>"* or *"ATLS<sup>®</sup>"* means a course for physicians with an emphasis on the first hour of initial assessment and primary management of the injured patient, starting at the point in time of injury continuing through initial assessment, life-saving intervention, reevaluation, stabilization, and transfer when appropriate.

*"Emergency medical care provider"* means ~~an individual who has been trained to provide emergency and nonemergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist or other certification levels recognized by the department before 1984 and who has been issued a certificate by the department~~ emergency medical care provider as defined in 641—131.1(147A).

*"Emergency medical services"* or *"EMS"* means emergency medical services as defined in 641—132.1(147A).

*"Emergency medical technician"* or *"EMT"* means emergency medical technician as defined in 641—131.1(147A).

*"Emergency medical technician-ambulance"* or *"EMT-A"* means emergency medical technician-ambulance as defined in 641—131.1(147A).

*"Emergency medical technician-basic"* or *"EMT-B"* means emergency medical technician-basic as defined in 641—131.1(147A).

*"Emergency medical technician-defibrillation"* or *"EMT-D"* means emergency medical technician-defibrillation as defined in 641—131.1(147A).

*"Emergency medical technician-intermediate"* or *"EMT-I"* means emergency medical technician-intermediate as defined in 641—131.1(147A).

*"Emergency medical technician-paramedic"* or *"EMT-P"* means emergency medical technician-paramedic as defined in 641—131.1(147A).

*"First responder"* or *"FR"* means first responder as defined in 641—131.1(147A).

*"First responder-defibrillation"* or *"FR-D"* means first responder-defibrillation as defined in 641—131.1(147A).

*"Licensed practical nurse"* or *"LPN"* means an individual licensed pursuant to Iowa Code chapter 152.

*"Physician assistant"* or *"PA"* means an individual licensed pursuant to Iowa Code chapter 148C.

*"Paramedic specialist"* or *"PS"* means paramedic specialist as defined in 641—131.1(147A).

*"Registered nurse"* or *"RN"* means an individual licensed pursuant to Iowa Code chapter 152.

*"Service program"* or *"service"* means ~~any medical care ambulance service or nontransport service that has received authorization by the department~~ service program as defined in 641—132.1(147A).

*"Trauma system advisory council"* or *"TSAC"* means the council established by the department pursuant to Iowa Code section 147A.24 to advise the department on issues and strategies to achieve optimal trauma care delivery throughout the state, to assist the department in the implementation of an Iowa trauma care plan, to develop criteria for the categorization of all hospitals and emergency care facilities according to their trauma care capabilities, to develop a process for verification of the trauma care capacity of each facility and the issuance of a certificate of verification, to develop standards for medical direction, trauma care, triage and transfer protocols, and trauma registries, to promote public

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

information and education activities for injury prevention, ~~and~~ to review rules adopted under this division, and to make recommendations to the director for changes to further promote optimal trauma care.

ITEM 4. Amend rule 641—137.2(147A), introductory paragraph, as follows:

**641—137.2(147A) Initial trauma education for Iowa's trauma system.** Initial trauma education (~~Table 1~~) is required of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

ITEM 5. Rescind Table 1 in rule **641—137.2(147A)**.

ITEM 6. Amend paragraph **137.2(1)“b”** as follows:

*b.* Trauma nursing course objectives (~~1998~~) (2007) are incorporated and adopted by reference for all trauma care facilities. For any differences which may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

ITEM 7. Adopt the following new subrule 137.2(2):

**137.2(2)** Specific requirements for initial trauma education for each provider category are as follows:

*a.* Physicians, PAs and ARNPs: current ATLS® certification.

*b.* RNs and LPNs: successful completion of trauma nursing course objectives (2007) recommended by TSAC.

ITEM 8. Amend rule 641—137.3(147A), introductory paragraph, as follows:

**641—137.3(147A) Continuing trauma education for Iowa's trauma system.** Continuing trauma education (~~Table 2~~) is required every four years of physicians, physician assistants, advanced registered nurse practitioners, registered nurses, and licensed practical nurses who are identified or defined as trauma team members by a trauma care facility and who participate directly in the initial resuscitation of the trauma patient.

ITEM 9. Rescind Table 2 in rule **641—137.3(147A)**.

ITEM 10. Amend subrule 137.3(1) as follows:

**137.3(1)** Topics for all or part of the continuing trauma education hours may be recommended to the department by ~~SEQIC or~~ TSAC based on trauma care system outcomes.

ITEM 11. Amend subrule 137.3(2) as follows:

**137.3(2)** General requirements for continuing trauma education.

*a.* ~~Three-fourths~~ Sixteen hours of the required continuing trauma education hours may be informal, determined and approved by a trauma care facility from any of the following:

1. to 7. No change.

*b.* ~~One-fourth~~ Eight hours of the required continuing trauma education hours shall be obtained through any formalized continuing education programs.

ITEM 12. Renumber subrule **137.3(3)** as **137.3(4)**.

ITEM 13. Adopt the following new subrule 137.3(3):

**137.3(3)** Specific requirements for each provider category are as follows:

*a.* Physicians: 24 hours of continuing trauma education is required, with a minimum of 8 hours as formal education.

(1) Physicians who treat trauma patients in the emergency department but are not board-certified in emergency medicine must maintain current ATLS® certification.

(2) Surgeons who are not board-certified in general surgery must maintain current ATLS® certification.

(3) The designated trauma service medical director, regardless of board certification, must maintain current ATLS® certification.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- b. PA and ARNP: 24 hours of continuing trauma education is required, with a minimum of 8 hours as formal education. Of the 8 hours of formal education, current ATLS® certification is required.
- c. RN and LPN: 16 hours of continuing trauma education is required, with a minimum of 4 hours as formal education based upon the trauma nursing course objectives (2007) recommended by TSAC.

ITEM 14. Amend renumbered subrule 137.3(4) as follows:

**137.3(4)** Continuing trauma education is required of certified emergency medical care providers every two years as follows:

- a. EMR, FR or FR-D: 2 continuing education hours.
- b. EMT, EMT-A, EMT-B, EMT-D: 4 continuing education hours.
- c. AEMT, EMT-I: 4 continuing education hours.
- d. EMT-P, PS, Paramedic: 6 continuing education hours.

[Filed 9/12/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1078C**

## **REGENTS BOARD[681]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby amends Chapter 13, "Iowa State University of Science and Technology Organization and General Rules," Iowa Administrative Code.

In general, the amendments include basic "housekeeping" revisions such as updating titles and contact information. The amendment in Item 2 deletes the list of forms and directs the reader to the university's Web site where the forms, primarily electronic, may be found. Amendments in Item 3 increase contracting authority given to the Senior Vice President and Provost. Amendments in Items 5 through 15 update procedures and processes for use of university facilities and grounds. Item 9 adds a subrule prohibiting camping on the campus except for specifically approved special events.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 10, 2013, as **ARC 0818C**. A comment period was established. No comments were received. The Board made two minor changes to the proposed amendments. In paragraphs 13.12(1)"c" and 13.12(2)"c," the phrase "ten business days and no later than four business days" was changed to "ten business days and not less than four business days." In addition, for consistency throughout the amendments, the prefix "http://" was removed from web addresses in three instances in rule 681—13.1(262).

The Board of Regents adopted the amendments on September 11, 2013.

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

These amendments are intended to implement Iowa Code section 262.9(3).

These amendments shall become effective on November 6, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 681—13.1(262) as follows:

### **681—13.1(262) Organization.**

**13.1(1) Statement of university mission.** Iowa State University of science and technology is a public land-grant institution serving the people of Iowa, the nation, and the world through its interrelated programs of instruction, research, extension and professional service. With an institutional emphasis in areas related to science and technology, the university carries out its traditional mission of discovering, developing, disseminating and preserving knowledge. The university's mission and vision may be found in the strategic plan at [www.president.iastate.edu/planning/strategic/plan.php](http://www.president.iastate.edu/planning/strategic/plan.php).

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**13.1(2) Officers.** The university has three statutory officers: president, secretary, and treasurer. The president is the chief administrative officer of the university and has authority and duties as have been delegated by the board of regents.

A detailed listing of the university units is shown on the organizational chart at the following Web site: <http://www.president.iastate.edu/org/univorg.pdf>.

**13.1(3) Operations.**

*a.* The ~~executive~~ senior vice president and provost oversees the academic, research, and extension activities of the university.

*b.* The academic mission of the university is principally carried out through its eight colleges: graduate, agriculture and life sciences, engineering, human sciences, liberal arts and sciences, design, business and veterinary medicine. The dean of each college is its chief administrative officer.

*c.* Extension and outreach are integral parts of the land-grant university system and provide the link whereby the findings of research are taken to the people of Iowa people. The chief administrative officer is the vice president for extension and outreach.

*d.* The vice president for research and economic development oversees the university's broad range of research, which contributes to economic development in the state and the nation.

*e.* The senior vice president for student affairs oversees the various services provided to students, including student activities, student health and student housing and dining.

*f.* The senior vice president for business and finance oversees the various business-related functions of the ~~campus~~ university, including physical plant, safety, accounting and purchasing.

**13.1(4) Communications.** Inquiries, submissions, and requests should be addressed to the Office of University Relations. Contact information for the Office of University Relations may be found online at the following address: <http://www.public.iastate.edu/~ur/> [www.ur.iastate.edu](http://www.ur.iastate.edu). Communications may also be addressed to the office of the Board of Regents, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905. Generally, inquiries, submissions, and requests by the public may be submitted by informal letter or e-mail. However, application for some purposes is to be made on a specified form. Rule 681—13.6(262) ~~contains a list of the forms and the offices from which the forms are available~~ provides an address for obtaining forms.

**13.1(5) Policy library.** The university policy library contains the policies governing the internal administrative operation of the university. It is available online at the following address: <http://www.policy.iastate.edu/>. Copies of the policies may be obtained from the Iowa State University Policy Administrator, 4750 3550 Beardshear Hall, telephone (515)294-1385.

ITEM 2. Amend rule 681—13.6(262) as follows:

**681—13.6(262) Forms.** The university uses ~~the a number of forms listed below~~ (primarily electronic) in dealing with the public. ~~The various forms are classified by subject matter, followed by the name of the office where they are available. The forms may be obtained by writing to the appropriate office in care of the Iowa State University of Science and Technology, Ames, Iowa 50011. The office may also have the forms or additional contact information on the office's Web page, which may be accessed through the university's Web site located at http://www.iastate.edu/.~~ Forms may be found via the University Forms Web site at [www.policy.iastate.edu/forms.php](http://www.policy.iastate.edu/forms.php).

~~Academic forms—deans of the colleges and departmental offices, registrar.~~

~~All academic matters such as enrollment, dropping and adding of courses, applying for graduation, waiver of academic requirements, academic grievances and the like.~~

~~Admission application forms—director of admissions.~~

~~Undergraduate, graduate, and professional students. Graduate and professional students may need to secure special forms from the department to which they are applying.~~

~~Housing forms—director of residence.~~

~~All forms related to housing, including applications and contracts for residence halls and apartments.~~

~~Intercollegiate athletic tickets—athletic ticket office.~~

~~All forms relating to purchase of athletic tickets.~~

~~Student financial aid—student financial aid office.~~

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All forms related to financial aid, including applications for student financial aid, loan applications.

Educational placement—teacher and career placement offices of the various colleges and the career exploration services office.

All forms related to placement for service learning, internships, registration forms for credential service, reference forms for credential files.

International education—study abroad center or international students and scholars.

All forms related to foreign study and immigration matters for visiting international students and scholars.

Registration—registrar.

Forms for registering and enrolling in classes.

Residency for tuition purposes—registrar.

Forms for requesting residency determinations.

Campus and student organizations—student activities center.

All forms for registering student groups, payment of club financial obligations, renting space, permission for holding events and the like.

Scientific testing—testing laboratories.

Each testing laboratory has its own forms for submission of samples and payment for testing services.

Artistic and cultural event tickets—Iowa State Center and athletics.

Forms for purchase of tickets to events at Iowa State Center and Hilton Coliseum.

Iowa State Center space use—Iowa State Center.

Rental agreement.

Hilton Coliseum, Jack Trice Stadium, Jacobson Athletic Building, and Steve and Debbie Bergstrom Indoor Practice Facility space use—athletics.

Facility use agreement.

Employment—human resource services.

All forms related to employment, including tax, benefits, employee information and applications for employment.

Parking and traffic—parking division of the department of public safety.

All forms related to parking and traffic, including permit applications, and violation citations.

Transcript requests—registrar.

Requests for issuance of transcripts.

ITEM 3. Amend rule 681—13.8(262) as follows:

### **681—13.8(262) Contracting authority.**

**13.8(1) General delegation.** Except for authority retained by the board of regents in the rules adopted under [681] of the Iowa Administrative Code or in the regents policy manual, the board of regents has delegated to the president authority to enter into contracts and agreements. The president has delegated authority for entering into such contracts and agreements ~~and contracts~~ to the senior vice president for business and finance in all cases except the following:

a. Employment ~~matters~~ contracts and agreements involving deans, directors, department chairs and faculty are ~~administered~~ signed by the ~~executive~~ senior vice president and provost.

b. Applications, proposals, ~~and agreements for grants,~~ and contracts for educational and agreements relating to economic development, and research and sponsored projects are signed by the senior vice president and provost, vice president for research and economic development or the director of the office of sponsored programs administration.

c. ~~Agreements~~ Contracts and agreements relating to form educational consortia, ~~for joint educational projects, and for cooperative education, service-learning and internship opportunities, and academic instruction provided to others~~ may be ~~are signed and administered~~ by the ~~executive~~ senior vice president and provost.

**13.8(2) Specific delegations.** Within the limits prescribed by the board of regents, the president, the senior vice president for business and finance, the ~~executive~~ senior vice president and provost, the vice president for research and economic development, and the director of the office of sponsored programs



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administration may delegate the authority they have received as provided by the ISU contracting authority policy found in the policy library.

ITEM 4. Amend rule 681—13.9(262) as follows:

**681—13.9(262) Lost and found.** ~~Lost and found items are deposited with the department of public safety. Unclaimed items are treated as abandoned property. Inquiries about items lost or found may be made by contacting Central Stores at (515)294-5762. A listing of lost and found items may be found at [www.iastate.edu/found/](http://www.iastate.edu/found/).~~

ITEM 5. Amend rule 681—13.10(262) as follows:

**681—13.10(262) General priority ~~on use of~~ for facilities and grounds use.** University ~~grounds and~~ facilities ~~and grounds~~ are primarily dedicated to the university's missions of teaching, research and service. While ~~grounds and~~ facilities ~~and grounds~~ are generally open to noncommercial use by the public, students, student organizations and staff, use for other than university-related purposes must not substantially interfere with university activities and must be in conformity with the requirements of this chapter. University-related activities, including the activities of recognized campus and student organizations, will be given priority. (The ISU facilities and grounds use activities policy may be found in the policy library.)

**13.10(1)** Except as specifically indicated, the policies stipulated in rules 681—13.11(262) to 681—13.19(262) are applicable to noncommercial uses.

**13.10(2)** Commercial uses, including solicitation, advertising and sales, are subject to the university's ~~policy rule on commercial activities and charitable uses in rule 681—13.15(262).~~

ITEM 6. Amend rule 681—13.11(262) as follows:

**681—13.11(262) Access to facilities and grounds.** University ~~grounds and~~ facilities ~~and grounds~~ are generally open to public access except as provided below:

**13.11(1)** Persons may not enter ~~buildings or~~ facilities ~~or grounds~~ without authorization when the ~~buildings or~~ facilities ~~or grounds~~ are locked, when signs indicate they are closed to the public or when they are closed to the public for specific events.

**13.11(2)** The following facilities and grounds are restricted areas. Access requires express permission of the relevant building supervisor, superintendent or other person in charge of the facility: individual residences or dwellings; research laboratories or facilities; farms and associated buildings; animal storage and confinement facilities; utility and maintenance closets; mechanical rooms; utility facilities; utility tunnels; storage areas; hazardous materials waste storage and handling areas; marked or fenced construction areas; institutional food preparation areas; private offices; workrooms; shops; areas where medical, psychological or other consultation takes place; radio and television studios; intercollegiate athletics competition facilities; or areas which bear signs indicating that access is restricted. The university has leased some of its ~~property and~~ facilities ~~and grounds~~ to other parties for use related to university purposes (for example, the Ames Laboratory and the National ~~Soil Till~~ Laboratory for Agriculture and the Environment). Such areas are not open to public use except as provided by the lessee of the property or facility. The buildings at the Iowa State Center (Scheman Continuing Education Building, Stephens Auditorium and Fisher Theater) and the Iowa State University Research Park are managed by separate organizations that regulate the use of these facilities and ~~property grounds~~.

**13.11(3)** Access to ~~grounds and~~ facilities ~~and grounds~~ may be denied when they are closed to the public for special university events; or when access would conflict with ~~another an~~ approved use of the ~~grounds or~~ facilities ~~or grounds~~. The university may limit or control access to areas of the campus for ceremonial events and celebrations such as graduation and VEISHEA.

**13.11(4)** Unapproved uses of university ~~grounds and~~ facilities ~~and grounds~~ by the general public are subject to preemption for university activities, for use by recognized student and campus organizations and for use by students, faculty and staff for purposes related to the university's mission.

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**13.11(5)** Access to performances, art exhibits, museums and other exhibitions may be regulated by requirement of payment of a fee for entry. Visitors are required to abide by policies ~~set by~~ established for the various facilities and grounds.

**13.11(6)** Access to campus roads and parking is governed by university parking and traffic regulations, as well as signage erected upon campus roadways and parking areas.

ITEM 7. Amend rule 681—13.12(262) as follows:

**681—13.12(262) When authorization is required for use of facilities and grounds open for general use.** To prevent conflicts in the use of facilities and grounds, groups or persons wishing to use facilities and grounds, whether indoors or outdoors, should schedule use of university facilities and grounds as provided below in this rule. ISU has designated public forum areas with few restrictions. Public events, ~~as defined below,~~ require filing of a notice, or approval depending on the event. “Public events” are defined as outdoor events in which more than 50 persons are participating or at which the sponsor reasonably expects more than 50 persons to be involved, or indoor events in which more than 15 persons are participating or at which the sponsor reasonably expects more than 15 persons to be involved. Organizations and groups desiring to use university facilities and grounds should contact the offices listed in subrule 13.12(3) to determine availability and fees for use.

**13.12(1) Outdoor areas.**

*a. Designated public forums.* The Edward S. Allen Area of Free Debate, located west and south of the Hub, and the area south of the Campanile have been designated as public forums for noncommercial expression. If these areas have not been reserved for use for university purposes or by student, faculty or staff organizations, any member of the public or of the university community may use these areas for expressive activities on a first-come, first-served basis. Signs or placards, each of which is carried by one or two persons, are permitted. Freestanding displays are permitted as long as the display occupies a space of less than 200 cubic feet and has a footprint of not more than 100 square feet, weighs less than 300 pounds and is accompanied at all times by an individual responsible for the display. Leafleting may be conducted if done in a way that avoids substantial littering of the campus.

*b. Uses that require only notice.* ~~Organizations and groups of persons wishing to use outdoor areas other than a designated public forum for a public event must file with the Student Activities Center a notice of intent to use an area.~~ Student organizations, university departments, and others wishing to use outdoor areas other than a designated public forum for a public event must notify the Memorial Union Event Management office. If possible, such notice should be ~~given~~ submitted at least 24 hours in advance of the event but, in any case, must be ~~given~~ submitted at least 3 hours prior to the event. No approval is necessary if the event meets the following criteria:

(1) On weekdays between the hours of 8 a.m. and 4 p.m., the event will be held at least 100 feet away from buildings that normally hold classes;

(2) No other person or group has been authorized to use the area or has filed a notice of intent to use that area or an adjacent area;

(3) The organizers do not intend to use amplification equipment or equipment requiring use of electrical power connections. Hand-held megaphones are permitted if used so as to direct the sound away from nearby buildings that normally hold classes;

(4) Participants will not use displays other than signs or banners carried at all times by one or two participants (unattended displays may not be used without permission);

(5) If the event is not held at one of the two public forum areas, the event will occur only between the hours of 8 a.m. and 10 p.m.; and

(6) The sponsor of the event indicates that the event will comply with the general restrictions indicated above.

*c. Uses that require approval.* A public event not at a designated public forum, and which does not meet the above criteria, requires prior approval by the filing of an ~~Activity Authorization Form~~ Online Event Authorization Request Form with the Student Activities Center when recognized student organizations make the request and with Facilities Planning and Management when university departments and nonuniversity entities make the request. It is preferred that the online request be made

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at least ~~three~~ ten business days and not less than four business days in advance of the proposed event. The Student Activities Center or Facilities Planning and Management will make every effort to provide approval or nonapproval, with a statement of the reasons for nonapproval, ~~within one business day in a timely manner~~. The sponsors of the event may request a waiver of the ~~three~~ four-day requirement. A waiver may be granted if the Student Activities Center or Facilities Planning and Management determines that there are good reasons for an exception.

(1) Approval of events will be based upon whether the event meets the general rules indicated in ~~this chapter rule 681—13.14(262)~~ and whether the event is appropriate for the location. Approval may be conditioned upon ~~sponsors'~~ sponsors making reasonable assurances that the event will comply with the general rules. In addition, reasonable time, place and manner restrictions may be required. ~~Events~~ Unless the event will violate the law, events will not be disapproved based upon the content of proposed speaking or expressive activity. Persons denied authorization may appeal to the senior vice president for business and finance.

(2) Following ~~such clearance~~ approval of the event, the organization shall make particular arrangements regarding location, electrical power needs, custodial services, and provision for liability insurance as directed by the Student Activities Center or Facilities Planning and Management. If streets or parking lots will be involved, the organization must receive clearance from the ~~department of public safety, telephone (515)294-4428~~ Parking Division, (515)294-3388. If streets will be involved, the organization must receive clearance from the office of the senior vice president for business and finance, (515)294-6162. Preferred locations for outdoor events ~~likely to cause disruption of other activities covered under this subrule~~ are the areas south or north of the Campanile, west of Curtiss Hall, ~~east of Ross Hall~~ south of MacKay Hall, south of the Hub, and south of the Parks Library, and west of Marston Hall provided the events do not conflict with university classes or scheduled activities and provided the events conform to appropriate uses for the area.

**13.12(2) Indoor areas.**

*a. General policy regarding use.* Any use of indoor areas must not conflict with university programs and events and must be compatible with the purpose of the facility or the particular area to be used.

(1) Members of the general public and campus community are free to enter university facilities, other than restricted areas, during business hours as necessary to transact business, seek information about the university or deliver petitions or correspondence.

(2) Organizations and groups desiring to use ~~academic and residence~~ university buildings and facilities for meetings, events, and conferences should contact the offices listed in ~~13.12(2) "d"~~ 13.12(3) to determine availability and fees for use. ~~Organizations desiring to use the Iowa State Center or the Iowa State Memorial Union for conferences, meetings and events should contact the relevant facility at the numbers listed below.~~

(3) Organizations (other than recognized campus and student organizations) using classrooms, auditoriums, and meeting rooms will be charged the customary rental of those facilities. All users will be responsible for costs incurred for setup, equipment use, cleanup and use of services and materials of the university.

(4) To avoid disruption, the following kinds of indoor areas are not available for non-university-related assembly or solicitation: hallways, stairways, waiting rooms, residence halls and apartments, dining facilities, workrooms, common areas provided around service windows, the Lloyd Veterinary Hospital Medical Center and the Thielen Student Health Center. Atria and open areas in buildings are generally available for use except when they are used as waiting areas or common areas around service windows.

*b. Uses that require scheduling.* To avoid conflicts with university activities and permitted use by others, organized use of indoor areas by groups of 15 or fewer persons that will substantially exclude others from using the same or adjacent areas, other than transitory passage through public areas and hallways, requires scheduling through the Student Activities Center Memorial Union Event Management Office when recognized student organizations make the request and with Facilities

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Planning and Management or Conference Planning and Management when university departments or nonuniversity entities make the request.

*c. Uses that require approval.* Organized or concerted assembly in or solicitation at indoor areas by groups involving more than 15 persons for non-university-related purposes must be approved by the filing of an ~~activity authorization form~~ Online Event Authorization Request Form with the Student Activities Center ~~at least three~~ when recognized student organizations make the request and with Facilities Planning and Management or Conference Planning and Management when university departments or nonuniversity entities make the request. It is preferred that the online request be made at least ten business days and not less than four business days in advance of the activity. The Student Activities Center and Facilities Planning and Management or Conference Planning and Management will make every effort to provide approval or nonapproval, with a statement of the reasons for nonapproval, ~~within one business day~~ in a timely manner. The sponsors of the event may request waiver of the ~~three~~ four-day requirement. A waiver may be granted if the Student Activities Center or Facilities Planning and Management or Conference Planning and Management determines that there are good reasons for an exception.

(1) Approval of events will be based upon whether the event ~~is consistent with the facility's purpose and with the university's general rules on facility use~~ meets the general rules indicated in rule 681—13.14(262) and whether the event is appropriate for the facility. ~~In addition, reasonable time, place and manner restrictions may be required. Events will not be disapproved based upon the content of any expressive activity.~~

(2) Approval may be conditioned upon sponsors making reasonable assurances that the event will comply with the general rules. In addition, reasonable time, place and manner restrictions may be required. Unless the event will violate the law, events will not be disapproved based upon the content of proposed speaking or expressive activity. Persons denied authorization may appeal to the senior vice president for business and finance.

~~d. 13.12(3) Facilities and grounds managed by separate university offices or organizations.~~

*a.* The Student Activities Center and users must coordinate use of these facilities with the listed offices:

1. (1) Common areas in buildings—~~building coordinator~~ supervisor for the building can be found at [www.fpm.iastate.edu/maps/buildings/](http://www.fpm.iastate.edu/maps/buildings/);

2. (2) Rooms in academic or administrative buildings—Room Scheduling, General Services Building, 294-5338 (515)294-4493. Room Reservation Request Forms are available at [www.fpm.iastate.edu/roomscheduling/departement form/](http://www.fpm.iastate.edu/roomscheduling/departement_form/);

3. (3) Memorial Union—Event Management Office, 3630 Memorial Union, (515)294-1437;

4. (4) Iowa State Center—Center Office, 4 Scheman Conference Center, (515)294-3347;

5. (5) Residence Halls—(515)294-2900 (general); (515)294-6428 (meeting rooms); (515)294-8384 (conferences);

6. (6) ~~University Family Housing~~ Schilletter and University Village (SUV) Office; —(515)294-5360;

7. (7) Fredericksen Court Office; —(515)294-2107;

8. (8) Recreation facilities and grounds—Recreation Services Administrative Office, 2220 1180 State Gym, (515)294-4980. ~~Recreation facilities include Beyer Hall, State Gym, Lied Recreation/Athletic Facility, and outdoor intramural recreation fields and courts~~ Recreation facilities and grounds are listed at [www.recservices.iastate.edu/facilities](http://www.recservices.iastate.edu/facilities);

9. (9) Howe Hall Auditorium—Engineering Distance Education, (515)294-7470;

10. (10) University Studios—(515)294-6014;

11. (11) Farm Bureau Pavilion—Animal Science, (515)294-5424;

12. (12) ~~Athletics Facilities~~ facilities and grounds—Athletic Department, Jacobson Athletic Building, (515)294-3662. Athletic facilities and grounds are listed at [www.cyclones.com](http://www.cyclones.com); ~~Athletics facilities include Hilton Coliseum, Jack Trice Stadium, Jacobson Athletic Building, and Steve and Debbie Bergstrom Indoor Practice Facility.~~

(13) Alumni Center—Alumni Association, 420 Beach Avenue, (515)294-4625;

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(14) Reiman Gardens—1407 University Boulevard, (515)294-8994.

b. Students and student organizations have priority for use of residence facilities and grounds, recreation facilities and grounds and the Memorial Union. Students and student organizations may directly contact the offices listed above to schedule use of meeting rooms and other facilities and grounds.

c. Organizations (other than recognized campus and student organizations) using facilities and grounds will be charged the customary rental of those facilities and grounds. All users will be responsible for costs incurred for setup, equipment use, cleanup and use of services and materials of the university.

d. As part of the university's comprehensive effort to conserve energy and save money, activities will generally be scheduled in buildings normally open and operational in the evenings. More information may be obtained through the Room Scheduling Office, (515)294-5338. The ISU policy on facilities and grounds use after hours may be found in the policy library.

ITEM 8. Amend subrule 13.13(2) as follows:

**13.13(2) Exterior displays.**

a. *Residence department buildings.* Signs, banners, and other display materials may be affixed to buildings only with the authorization of the coordinator of residence life in each residence complex.

b. *Academic buildings.* Signs, banners, and other display materials may not be affixed to buildings. Rare exceptions may be made in cases in which the display materials are clearly associated with an academic function. Prior approval must be obtained from the Student Activities Center and from Facilities, Planning and Management, ~~General Services Building~~, by the submission of an Activity Authorization Form. Such forms are available at the Student Activities Center.

c. *Exterior display, not on buildings.* Signs, banners, and other display materials may not be affixed to sidewalks, trees, fences, shrubs, light poles, or any other fixture of the landscape, nor may freestanding displays be placed in any area other than those areas scheduled through the activity authorization process. Except for those displays indicated in 13.12(1)"a" and 13.12(1)"b"(4) at events for which approval is not required, prior approval of displays must be obtained from the Student Activities Center by the submission of an ~~Activity Authorization Form~~ Online Event Authorization Request Form for recognized student organizations or from Facilities Planning and Management for university departments or nonuniversity entities.

d. *Cleanup and repair.* All visual displays should be removed as they become outdated or after authorization has expired. Cleanup and repair charges may be billed to the organization/department/individual for failure to clean up promptly. Organizations, departments, ~~or individuals, or nonuniversity entities~~ may be billed for cleanup and repair expenses for illegally posted materials. Additional information regarding exterior displays may be found in the ISU policy on facilities and grounds use activities in the policy library.

ITEM 9. Amend rule 681—13.14(262) as follows:

**681—13.14(262) General rules ~~on use of grounds~~ and for facilities and grounds use.**

**13.14(1)** University ~~grounds and~~ facilities and grounds may not be used in a manner that:

- a. Substantially disrupts university events or the lawful use by other persons;
- b. Substantially interferes with the free flow of vehicle or pedestrian traffic;
- c. Results in injury or creates the threat of injury to persons;
- d. Involves commission of a crime or illegal behavior;
- e. Damages or defaces university property or threatens to damage property; or
- f. Results in significant littering, pollution or other nuisance.

**13.14(2)** No person shall engage in harassment or stalking as defined by Iowa criminal law; or engage in sexual or racial harassment in violation of university policy.

**13.14(3)** No person may engage in public urination, defecation or other actions that create a sanitary hazard.

**13.14(4)** A person who enters specialized facilities, such as libraries, recreation facilities and grounds, clinics, research laboratories and other research facilities, and areas not open to the general

## REGENTS BOARD[681](cont'd)

public must comply with policies established by such facilities and grounds. Questions about applicable policies should be directed to the manager or supervisor of the facility or grounds.

**13.14(5)** Weapons are not permitted on the campus except for purposes of law enforcement and as specifically authorized for purposes of instruction, research or service. A weapon is any instrument or device which is designed primarily for use in inflicting death or injury upon a human being or animal; and which is capable of inflicting death or injury when used in the manner for which it was designed. Weapons include any pistol, revolver, shotgun, machine gun, rifle or other firearm, BB or pellet gun, ~~tazer~~ taser or stun gun, bomb, grenade, mine or other explosive or incendiary device, ammunition, archery equipment, dagger, stiletto, switchblade knife, or knife having a blade exceeding five inches in length. Residents of university housing may possess knives having a blade exceeding five inches for cooking purposes.

**13.14(6)** Consumption of alcohol is not permitted in outdoor areas of the campus. An exception is made for the consumption of alcoholic beverages served at approved events for which a valid liquor permit has been issued as provided by state law, and for private events or in designated areas at events. Unauthorized alcoholic beverages are subject to confiscation.

**13.14(7)** Vehicles are not permitted off roadways or parking areas without permission from ~~Room Scheduling Manager~~, Campus Services, 152 General Services Building, telephone (515)294-5338 0692 or from the Manager of Parking Division, 27 Armory, telephone (515)294-1987.

**13.14(8)** For reasons of safety, sanitation, and preservation of campus property, camping is not permitted except for special events approved by the senior vice president for business and finance or senior vice president for student affairs.

ITEM 10. Amend rule 681—13.15(262) as follows:

**681—13.15(262) Commercial and charitable uses.** This rule applies to ~~private~~ commercial and charitable uses other than those of university units, of university-affiliated entities or of recognized campus organizations.

**13.15(1) Commercial solicitation, advertising and sales.** Commercial solicitation, advertising and sales are not permitted on the campus except as follows:

a. Newspapers and periodicals may be distributed in established locations in accordance with the university's periodical distribution policy, which is available from the senior vice president for business and finance.

b. Commercial advertising or displays on bulletin boards must conform to the provisions of subrule 13.13(1).

c. Commercial sales or solicitation may be approved by the senior vice president for business and finance. Such activity may be approved for academic areas of the campus if the activity directly relates to the academic program. Otherwise, such commercial activity may be approved only in the area directly to the north of the Memorial Union, with priority being given to all other campus-related uses.

**13.15(2) ~~Mail systems~~ Charitable solicitation.** Use of university mail systems and related facilities may be approved by the senior vice president for business and finance for the solicitation of employees by charitable organizations when the following criteria are met.

a. The charitable organization presents documentation of its tax-exempt status as provided in Section 501(c)(3) of the Internal Revenue Code;

b. The solicitation is conducted once a year through an on-campus coordinated campaign of all eligible organizations meeting the conditions and giving written notice to the university of the desire to participate at least 120 days prior to the campaign period;

c. The organization may be expected to pay the administrative and out-of-pocket costs associated with using the university ~~campus~~ mail system or other university facilities and grounds;

d. The solicitation by any one charitable organization may occur once in any calendar year; and

e. Any eligible charitable organization acting pursuant to the authority of this rule may also make use of the payroll deduction system described in Iowa Code sections 70A.14 and 70A.15, if qualified under the terms of those provisions.

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ITEM 11. Amend subrule 13.16(2) as follows:

**13.16(2)** Special rules may be enforced with respect to events that are open to the public, based upon the nature of the event. For example, performers may require that no cameras or audio- or video-recording devices be permitted in the arena. Persons may be refused entry with items that may be used as projectiles. Umbrellas and other items that may obstruct the views of other attendees may be excluded from facilities and grounds.

ITEM 12. Amend subrule 13.16(5) as follows:

**13.16(5)** Laser pointers and similar devices are not permitted at athletic and performing events and are subject to confiscation. A person who uses any such device to interfere with athletes and performances is subject to immediate removal from the facility and grounds.

ITEM 13. Amend subrule 13.16(9) as follows:

**13.16(9)** In order to ensure that a person attending events may enter facilities and grounds efficiently, a person leaving the facility or grounds early in the event may be denied the right to secure a pass to reenter.

ITEM 14. Amend rule 681—13.18(262) as follows:

**681—13.18(262) ~~Livestock and pets~~ Animals on campus.**

**13.18(1)** All livestock and other domesticated animals, including but not limited to fowl, cats, dogs, cows, horses, mules, sheep, goats, swine, or reptiles, when on university property, must be kept confined or otherwise physically constrained. Any such animal found running at large on university grounds or found within university facilities and not part of a university-sponsored research program or project may be impounded. Consistent with the laws of the state of Iowa, such animals may be turned over to a city pound or other appropriate state or university agency.

**13.18(2)** For sanitation and safety reasons, pets except as provided below, animals are not permitted in university buildings. ~~Leader dogs and experimental subjects are excepted. This prohibition shall not apply to animals that are:~~

- a. Specially trained for and under the control of an individual with disabilities.
- b. Used for teaching and research purposes.
- c. Receiving treatment at the Lloyd Veterinary Medical Center or other approved facility.

**13.18(3)** Pets are permitted on the campus in outdoor areas when properly controlled and confined and when their presence does not jeopardize the safety or sanitation of university facilities or grounds or the safety of individuals on the campus. In the case of pets such as dogs, proper confinement shall consist of a cage or a leash of sufficient strength to restrain the dog held by a person competent to govern the behavior of the dog.

a. Any pets brought on the campus must be properly licensed and vaccinated under the laws of Iowa, and tags indicating such license and vaccination shall at all times be attached to the collar of the pet.

b. In those cases in which impoundment is necessary, the owner of the animal or its claimant shall be personally responsible for all costs associated with reclaiming the animal.

c. Any person who walks an animal on public areas of the campus shall be responsible for the control and behavior of the animal, as well as the prompt collection and disposal of the solid waste excreted by that animal. ~~This rule shall not apply to animals under control of a handicapped person and especially trained for the purpose of assisting handicapped persons.~~

ITEM 15. Amend rule 681—13.19(262) as follows:

**681—13.19(262) Authority to order persons off the campus.** Any person violating university regulations may have the person's permission to remain in or on university premises revoked. A person who does not voluntarily leave, or who immediately returns, is subject to arrest for trespassing under state law. A person who has engaged in serious or repeat violations of university regulations, who has committed crimes, or who has endangered other persons may be banned by the director of public safety or the director's designee from all or part of the campus. Such orders shall be issued in writing. Any

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person who is subject to such an order may appeal such action to the senior vice president for business and finance, who shall promptly handle the appeal. A person who violates such orders is subject to arrest and prosecution for trespassing.

[Filed 9/12/13, effective 11/6/13]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

## ARC 1053C

### SOIL CONSERVATION DIVISION[27]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 161A.71(3)“a,” the Division of Soil Conservation hereby amends Chapter 101, “Organization and Purpose,” Chapter 102, “Rules of Practice,” Chapter 103, “Appointment and Terms of Members,” Chapter 104, “Local Watershed Improvement Committees,” Chapter 105, “Watershed Improvement Grant Program,” and Chapter 106, “Watershed Improvement Fund,” Iowa Administrative Code.

The amendments conform the rules to statutory changes by clarifying the eligible applicants and specifying the water quality impairments that can be addressed. Technical changes are also made.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0927C** on August 7, 2013. No comments were received from the public. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code section 466A.2 and 2013 Iowa Acts, House File 648, section 23.

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 27—101.1(466A) as follows:

**27—101.1(466A) Watershed improvement review board composition.** The watershed improvement review board shall be comprised of one member of from each of the following entities: the Agribusiness Association of Iowa; ~~one member of the Iowa Association of Water Agencies~~; ~~one member of the Iowa Environmental Council~~; ~~one member of the Iowa Farm Bureau Federation~~; ~~one member of the Iowa Pork Producers Association~~; ~~one member of the Iowa Rural Water Association~~; ~~one member of the Iowa Soybean Association~~; ~~one member representing the soil and water conservation districts of Iowa~~; ~~one member of the Iowa Association of County Conservation Boards~~; ~~one person representing the department of agriculture and land stewardship~~; and ~~one person representing the department of natural resources~~.

Two state senators shall be appointed, one by the majority leader of the senate and one by the minority leader of the senate. Two state representatives shall be appointed, one by the speaker of the house of representatives and one by the minority leader of the house of representatives. The four members of the general assembly serve as ex officio, nonvoting members.

These members are appointed according to Iowa Code ~~Supplement~~ section 466A.3. The board is ~~responsible for administering grants to local watershed improvement committees awards grants and soil and water conservation districts to promote watershed protection efforts~~ monitors the progress, assists with the development of monitoring plans for local watershed improvement projects, and reviews costs and benefits of mitigation practices utilized by a project.

ITEM 2. Amend rule 27—101.8(466A) as follows:

**27—101.8(466A) Technical assistance.** The board shall elicit the expertise of other organizations for technical assistance in the work of the board. The organizations may include but are not limited to all of the following: the State University of Iowa; the Iowa State University of Science and Technology; the



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U.S. Geological Survey; the U.S. Department of Agriculture, Agricultural Research Service, National ~~Soil Till~~ Laboratory for Agriculture and the Environment; the U.S. Department of Agriculture, Natural Resource Conservation Service; the Leopold Center for Sustainable Agriculture; the Iowa Association of Municipal Utilities; the Iowa chapter of the American Waterworks Association; the Iowa Water Pollution Control Association; the Iowa League of Cities; the Iowa Cattlemen's Association; the Iowa Association of Business and Industry; the Iowa Environmental Health Association; the Iowa Corn Growers Association; the Iowa Poultry Association; the Iowa Farmers' Union; and the Iowa Land Improvement Contractors Association.

ITEM 3. Amend 27—**Chapter 101**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 4. Amend rule 27—**102.1(466A)**, definition of "Eligible applicant," as follows:

*"Eligible applicant"* means a nonprofit organization authorized by the secretary of state; ~~or~~ a soil and water conservation district; a public water supply utility; a county; a city; or a county conservation board.

ITEM 5. Amend rule 27—102.2(466A) as follows:

**27—102.2(466A) Public information.** The public is invited to obtain information or make informal requests of the board by addressing these matters, either orally or in writing, to the chairperson of the Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319; ~~(515)281-6153~~, or from the department's Web site at [www.iowaagriculture.gov/IWIRB.asp](http://www.iowaagriculture.gov/IWIRB.asp).

ITEM 6. Amend 27—**Chapter 102**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 7. Amend 27—**Chapter 103**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 8. Amend rules 27—104.3(466A) to 27—104.5(466A) as follows:

**27—104.3(466A) Governmental entities.** A federal, state or local governmental entity may not be a recipient of a grant from the board, with the exception of a soil and water conservation district, public water supply utility, county, county conservation board, or city. A federal, state or local governmental entity may partner with ~~a committee~~ an eligible applicant to implement a local watershed project.

**27—104.4(466A) Responsibilities.** A committee or an eligible applicant shall be responsible for application for and implementation of an approved local watershed grant, including providing authorization for project bids and project expenditures under the grant.

**104.4(1)** The committee or an eligible applicant shall monitor local performance throughout the local watershed grant project and shall submit a report at six-month intervals or at a frequency set forth in the grant agreement regarding the progress and findings of the project.

**104.4(2)** The committee or an eligible applicant shall provide ~~monitoring~~ oversight data before, during, and after the project's completion.

**27—104.5(466A) Audit.** A committee or an eligible applicant receiving a grant from the board may be subject to an audit performed by the auditor.

ITEM 9. Amend 27—**Chapter 104**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 10. Amend rule 27—105.1(466A) as follows:

**27—105.1(466A) Program purpose.** The board shall issue grant awards to eligible applicants to address water quality impairments including but not limited to agricultural runoff and drainage; stream bank erosion; municipal discharge; stormwater runoff; unsewered communities; industrial discharge; ~~or~~

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livestock runoff; structures and conservation systems for the prevention and mitigation of floods within the watershed of the project; or removal of channels of waterways to allow waterways to meander.

ITEM 11. Amend subrule 105.2(6) as follows:

**105.2(6)** Grant awards shall be for not more than ~~three~~ five years and may be extended for an additional five years after the date that the original period would have ended. Each local watershed improvement grant awarded shall not exceed 10 percent of the funds appropriated to the board. A grant recipient shall not be precluded from applying for future grant awards. Grant awards given by the board to an eligible applicant will have the full amount of awarded watershed improvement funds set aside for the entire project length when initially awarded.

ITEM 12. Amend rule 27—105.4(466A) as follows:

**27—105.4(466A) Reports.**

**105.4(1)** Eligible applicants that have been awarded a grant by the board shall submit ~~a written and~~ an electronic report at six-month intervals. This report shall include but not be limited to a statement of expenditures; progress toward performance measures established in the grant agreement; progress toward deliverables established in the grant agreement; monitoring methods and results; and the time line for project completion.

**105.4(2)** Eligible applicants that have been awarded a grant by the board shall submit a final ~~written and~~ electronic report at the conclusion of the grant agreement. This report shall include but not be limited to a final statement of expenditures; performance measures established in the grant agreement; deliverables established in the grant agreement; monitoring methods and results; and findings of the project.

ITEM 13. Amend **27—Chapter 105**, implementation sentence, as follows:  
These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

ITEM 14. Amend **27—Chapter 106**, implementation sentence, as follows:  
These rules are intended to implement Iowa Code ~~Supplement~~ chapter 466A.

[Filed 9/11/13, effective 1/1/14]

[Published 10/2/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.

**ARC 1073C**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2013 Iowa Acts, House File 355, the Iowa Department of Transportation, on September 11, 2013, adopted amendments to Chapter 601, "Application for License," Chapter 604, "License Examination," Chapter 605, "License Issuance," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the August 7, 2013, Iowa Administrative Bulletin as **ARC 0894C**. These amendments were also Adopted and Filed Emergency, effective July 9, 2013, and were published in the August 7, 2013, Iowa Administrative Bulletin as **ARC 0895C**.

2013 Iowa Acts, House File 355, section 1, amends Iowa Code section 321.196 and allows the Department to excuse certain persons from a vision screen or submission of a vision report in order to allow for electronic (online) renewals.

These amendments allow the Department to implement electronic renewal of driver's licenses for persons between the ages of 18 and 70 and nonoperator's identification cards for persons 18 and older on an every-other-renewal basis.

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Item 1 provides that a person who renews a driver's license electronically shall destroy the previous driver's license upon receipt of the renewed license.

Item 2 provides an exception for persons to electronically renew their driver's licenses. A person is not required to complete a vision screen or submit an acceptable vision report.

Item 3 provides that the Department may determine means or methods for renewing a driver's license electronically and sets forth the criteria a person must meet to be eligible to renew a driver's license electronically.

Item 4 provides that the Department may determine means or methods for renewing a nonoperator's identification card electronically and sets forth the criteria a person must meet to be eligible to renew a nonoperator's identification card electronically. The amendment also confirms in rule existing practice regarding surrender of prior driver's licenses or nonoperator's identification cards and provides that a person who renews a nonoperator's identification card electronically shall destroy the previous nonoperator's identification card upon receipt of the renewed nonoperator's identification card.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

One change was made from the Notice of Intended Action and the Adopted and Filed Emergency. In Item 3, subparagraph 605.25(7)“a”(1), the maximum age a person could be to apply for electronic renewal of a driver's license was corrected to read “not yet 70.”

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

These amendments are intended to implement Iowa Code section 321.196 as amended by 2013 Iowa Acts, House File 355, section 1.

These amendments will become effective November 6, 2013, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 761—601.2(321) as follows:

**761—601.2(321) Surrender of license and nonoperator's identification card.** An applicant for a driver's license shall surrender all other driver's licenses and nonoperator's identification cards. This includes those issued by jurisdictions other than Iowa. An applicant who renews a driver's license electronically pursuant to 761—subrule 605.25(7) shall destroy the previous driver's license upon receipt of the renewed driver's license.

This rule is intended to implement Iowa Code section 321.182.

ITEM 2. Amend rule 761—604.10(321) as follows:

**761—604.10(321) Vision screening.**

**604.10(1) to 604.10(3)** No change.

**604.10(4) *Exception for persons renewing electronically.*** An applicant renewing a driver's license electronically pursuant to 761—subrule 605.25(7) is not required to complete a vision screen or submit a vision report to complete the renewal. This subrule does not preclude the department from requiring a vision screen or vision report of a person who has renewed a driver's license electronically when the department has reason to believe that the person is not capable of operating a motor vehicle safely.

This rule is intended to implement Iowa Code sections 321.186, 321.186A and 321.196 as amended by 2013 Iowa Acts, House File 355, section 1.

ITEM 3. Amend rule 761—605.25(321) as follows:

**761—605.25(321) License renewal.**

**605.25(1) to 605.25(6)** No change.

**605.25(7)** The department may determine means or methods for electronic renewal of a driver's license.

a. An applicant who meets the following criteria may apply for electronic renewal:

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- (1) The applicant must be at least 18 years of age but not yet 70 years of age.
  - (2) The applicant completed a satisfactory vision screen or submitted a satisfactory vision report under 761—subrules 604.10(1) to 604.10(3) and updated the applicant's photo at the applicant's last issuance or renewal.
  - (3) The applicant's driver's license has not been expired for more than one year.
  - (4) The department's records show the applicant is a U.S. citizen.
  - (5) The applicant's driver's license is not marked "valid without photo."
  - (6) The applicant is not seeking to change any of the following information as it appears on the applicant's driver's license:
    - 1. Name.
    - 2. Date of birth.
    - 3. Sex.
  - (7) The applicant's driver's license is a Class C noncommercial driver's license, a Class D noncommercial driver's license (chauffeur), or Class M noncommercial driver's license (motorcycle) that is not a special license or permit, a temporary restricted license, or a two-year license.
  - (8) The applicant is not subject to a pending request for reexamination.
  - (9) The applicant does not wish to change any of the following:
    - 1. Class of license.
    - 2. License endorsements.
    - 3. License restrictions.
  - (10) The applicant is not subject to any of the following restrictions:
    - G—No driving when headlights required
    - J—Restrictions on the back of card
    - T—Medical report required at renewal
    - P—Special instruction permit
    - Q—No interstate or freeway driving
    - R—Maximum speed of 35 mph
  - b. The department reserves the right to deny electronic renewal and to require the applicant to personally apply for renewal at a driver's license examination station if it appears to the department that the applicant may have a physical or mental condition that may impair the applicant's ability to safely operate a motor vehicle, even if the applicant otherwise meets the criteria in 605.25(7) "a."
  - c. An applicant who has not previously been issued a driver's license that is compliant with the REAL ID Act of 2005, 49 U.S.C. Section 30301 note, as further defined in 6 CFR Part 37 (a REAL ID license) may not request a REAL ID driver's license by electronic renewal.
- This rule is intended to implement Iowa Code sections 321.186 and 321.196 as amended by 2013 Iowa Acts, House File 355, section 1, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 4. Amend rule 761—630.2(321) as follows:

**761—630.2(321) Application and issuance.**

**630.2(1) to 630.2(9)** No change.

**630.2(10)** The department may determine means or methods for electronic renewal of a nonoperator's identification card.

a. An applicant who meets the following criteria may apply for electronic renewal:

- (1) The applicant must be at least 18 years old.
- (2) The applicant updated the applicant's photo at the applicant's last issuance or renewal.
- (3) The applicant's nonoperator's identification card has not been expired for more than one year.
- (4) The department's records show the applicant is a U.S. citizen.
- (5) The applicant's nonoperator's identification card is not marked "valid without photo."
- (6) The applicant is not seeking to change any of the following as it appears on the applicant's nonoperator's identification card:
  - 1. Name.

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2. Date of birth.

3. Sex.

b. An applicant who has not previously been issued a REAL ID nonoperator's identification card may not request a REAL ID nonoperator's identification card by electronic renewal.

**630.2(11)** An applicant for a nonoperator's identification card shall surrender all other driver's licenses and nonoperator's identification cards, other than a temporary permit held under Iowa Code section 321.181. This includes any driver's licenses or nonoperator's identification cards issued by jurisdictions other than Iowa. An applicant who renews a nonoperator's identification card electronically pursuant to 630.2(10) shall destroy the previous nonoperator's identification card upon receipt of a renewed nonoperator's identification card.

[Filed 9/12/13, effective 11/6/13]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/2/13.