



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Acting Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2010

| NOTICE SUBMISSION DEADLINE | NOTICE PUB. DATE | HEARING OR COMMENTS 20 DAYS | FIRST POSSIBLE ADOPTION DATE 35 DAYS | ADOPTED FILING DEADLINE | ADOPTED PUB. DATE | FIRST POSSIBLE EFFECTIVE DATE | POSSIBLE EXPIRATION OF NOTICE 180 DAYS |
|----------------------------------|------------------------|--------------------------------------|--|-------------------------------|-------------------------|--|---|
| *Dec. 23 '09* | Jan. 13 '10 | Feb. 2 '10 | Feb. 17 '10 | Feb. 19 '10 | Mar. 10 '10 | Apr. 14 '10 | July 12 '10 |
| Jan. 8 | Jan. 27 | Feb. 16 | Mar. 3 | Mar. 5 | Mar. 24 | Apr. 28 | July 26 |
| Jan. 22 | Feb. 10 | Mar. 2 | Mar. 17 | Mar. 19 | Apr. 7 | May 12 | Aug. 9 |
| Feb. 5 | Feb. 24 | Mar. 16 | Mar. 31 | Apr. 2 | Apr. 21 | May 26 | Aug. 23 |
| Feb. 19 | Mar. 10 | Mar. 30 | Apr. 14 | Apr. 16 | May 5 | June 9 | Sep. 6 |
| Mar. 5 | Mar. 24 | Apr. 13 | Apr. 28 | Apr. 30 | May 19 | June 23 | Sep. 20 |
| Mar. 19 | Apr. 7 | Apr. 27 | May 12 | May 14 | June 2 | July 7 | Oct. 4 |
| Apr. 2 | Apr. 21 | May 11 | May 26 | ***May 26*** | June 16 | July 21 | Oct. 18 |
| Apr. 16 | May 5 | May 25 | June 9 | June 11 | June 30 | Aug. 4 | Nov. 1 |
| Apr. 30 | May 19 | June 8 | June 23 | ***June 23*** | July 14 | Aug. 18 | Nov. 15 |
| May 14 | June 2 | June 22 | July 7 | July 9 | July 28 | Sep. 1 | Nov. 29 |
| ***May 26*** | June 16 | July 6 | July 21 | July 23 | Aug. 11 | Sep. 15 | Dec. 13 |
| June 11 | June 30 | July 20 | Aug. 4 | Aug. 6 | Aug. 25 | Sep. 29 | Dec. 27 |
| ***June 23*** | July 14 | Aug. 3 | Aug. 18 | Aug. 20 | Sep. 8 | Oct. 13 | Jan. 10 '11 |
| July 9 | July 28 | Aug. 17 | Sep. 1 | ***Sep. 1*** | Sep. 22 | Oct. 27 | Jan. 24 '11 |
| July 23 | Aug. 11 | Aug. 31 | Sep. 15 | Sep. 17 | Oct. 6 | Nov. 10 | Feb. 7 '11 |
| Aug. 6 | Aug. 25 | Sep. 14 | Sep. 29 | Oct. 1 | Oct. 20 | Nov. 24 | Feb. 21 '11 |
| Aug. 20 | Sep. 8 | Sep. 28 | Oct. 13 | Oct. 15 | Nov. 3 | Dec. 8 | Mar. 7 '11 |
| ***Sep. 1*** | Sep. 22 | Oct. 12 | Oct. 27 | ***Oct. 27*** | Nov. 17 | Dec. 22 | Mar. 21 '11 |
| Sep. 17 | Oct. 6 | Oct. 26 | Nov. 10 | ***Nov. 10*** | Dec. 1 | Jan. 5 '11 | Apr. 4 '11 |
| Oct. 1 | Oct. 20 | Nov. 9 | Nov. 24 | ***Nov. 24*** | Dec. 15 | Jan. 19 '11 | Apr. 18 '11 |
| Oct. 15 | Nov. 3 | Nov. 23 | Dec. 8 | ***Dec. 8*** | Dec. 29 | Feb. 2 '11 | May 2 '11 |
| ***Oct. 27*** | Nov. 17 | Dec. 7 | Dec. 22 | ***Dec. 22*** | Jan. 12 '11 | Feb. 16 '11 | May 16 '11 |
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| ***Dec. 8*** | Dec. 29 | Jan. 18 '11 | Feb. 2 '11 | Feb. 4 '11 | Feb. 23 '11 | Mar. 30 '11 | June 27 '11 |
| ***Dec. 22*** | Jan. 12 '11 | Feb. 1 '11 | Feb. 16 '11 | Feb. 18 '11 | Mar. 9 '11 | Apr. 13 '11 | July 11 '11 |

PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u> | <u>ISSUE DATE</u> |
|---------------------|------------------------------|-------------------|
| 9 | Friday, October 15, 2010 | November 3, 2010 |
| 10 | Wednesday, October 27, 2010 | November 17, 2010 |
| 11 | Wednesday, November 10, 2010 | December 1, 2010 |

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*****

CITY DEVELOPMENT BOARD[263]

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| Annexation requests; boundary adjustments; elections, 7.2(2), 7.8, 7.12, 10.1 IAB 9/22/10 ARC 9106B | Iowa Tourism Room, First Floor 200 E. Grand Ave. Des Moines, Iowa | October 12, 2010 2 to 3 p.m. |
|---|---|---------------------------------|

EARLY CHILDHOOD IOWA STATE BOARD[249]

| | | |
|---|--|----------------------------|
| Early childhood Iowa initiative, ch 1 IAB 10/6/10 ARC 9137B | Room 142 Lucas State Office Bldg. Des Moines, Iowa | October 26, 2010 9 a.m. |
|---|--|----------------------------|

EDUCATION DEPARTMENT[281]

| | | |
|--|---|---------------------------------|
| Extracurricular interscholastic competition, 36.1, 36.14 to 36.17, 36.20 IAB 10/6/10 ARC 9144B | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | October 26, 2010 1 to 2 p.m. |
| Special education—enforcement actions, 41.604 IAB 10/6/10 ARC 9147B | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | October 26, 2010 2 to 3 p.m. |
| | State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa | November 2, 2010 2 to 3 p.m. |

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| Authorization permit for discharge of biological and chemical pesticides to waters of the United States, 60.3, 64.3, 64.4, 64.6, 64.8(2), 64.15(7), 64.16(6), 66.1 IAB 9/8/10 ARC 9056B | Public Library 115 W. Washington St. Washington, Iowa (Attendees requested to park around the city park across from the library) | October 6, 2010 11 a.m. |
| | Auditorium, Wallace State Office Bldg. 502 E. Ninth St. Des Moines, Iowa | October 7, 2010 6 p.m. |

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

| | | |
|--|---|-----------------------------|
| Iowa hazard mitigation plan, 9.3 IAB 10/6/10 ARC 9150B (See also ARC 9149B herein) | Division Conference Room Camp Dodge W-4 7105 NW 70th Ave. Johnston, Iowa | October 26, 2010 10 a.m. |
|--|---|-----------------------------|

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| Limited purpose subsidiary life insurance companies, ch 99 IAB 9/22/10 ARC 9080B | Lobby Conference Room 330 Maple St. Des Moines, Iowa | October 12, 2010 10 a.m. |
| Standards and commissioner's authority for companies deemed to be in hazardous financial condition, ch 110 IAB 9/22/10 ARC 9105B | Lobby Conference Room 330 Maple St. Des Moines, Iowa | October 12, 2010 10 a.m. |

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| OSHA standards for cranes and derricks—adoption by reference, 26.1 IAB 9/22/10 ARC 9090B | Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa | October 13, 2010 9 a.m. (If requested) |
| Boilers and pressure vessels, 90.15, 91.1, 91.20(1)“d” IAB 9/22/10 ARC 9087B | Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa | October 13, 2010 10 a.m. (If requested) |

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| Confidential records, 2.13 IAB 9/22/10 ARC 9089B | Board Office, Suite C 400 SW 8th St. Des Moines, Iowa | October 12, 2010 11 a.m. |
|--|---|-----------------------------|

NATURAL RESOURCE COMMISSION[571]

| | | |
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| Boat motor regulations related to horsepower limitations, 45.4, 45.5 IAB 10/6/10 ARC 9117B | Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa | October 28, 2010 1 to 3 p.m. |
| State parks and recreation and camping areas—reservations, 61.3, 62.4 IAB 10/6/10 ARC 9118B | Fifth Floor East and West Conference Rooms Wallace State Office Bldg. Des Moines, Iowa | October 26, 2010 2 p.m. |

PHARMACY BOARD[657]

| | | |
|--|---|-------------------------------|
| Pharmacy technician, amendments to chs 3, 5 IAB 10/6/10 ARC 9115B (See ARC 8891B , IAB 6/30/10) | Board Office, Suite E 400 SW 8th St. Des Moines, Iowa | November 1, 2010 2 p.m. |
| Drugs in emergency medical service programs, ch 11 IAB 10/6/10 ARC 9116B (See ARC 8923B , IAB 6/30/10) | Board Office, Suite E 400 SW 8th St. Des Moines, Iowa | November 4, 2010 1:30 p.m. |

PUBLIC HEALTH DEPARTMENT[641]

| | | |
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| Outpatient diabetes education programs, amendments to ch 9 IAB 9/22/10 ARC 9092B | Room 518 Lucas State Office Bldg. Des Moines, Iowa | October 12, 2010 10:30 a.m. |
|--|--|--------------------------------|

PUBLIC SAFETY DEPARTMENT[661]

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| Weapons permits, ch 91 IAB 9/22/10 ARC 9085B | First Floor Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa | October 13, 2010 10 a.m. |
| Liquefied petroleum gas—reference updates, stationary service, 226.1, 226.4, 226.5, 226.7, 226.8 IAB 9/22/10 ARC 9098B | First Floor Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa | October 13, 2010 9:30 a.m. |
| Electrician and electrical contractor licensing, 500.2, 502.1, 502.2, 502.3 IAB 9/22/10 ARC 9099B | First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa | October 21, 2010 10 a.m. |

The following list will be updated as changes occur.

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

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

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

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ARC 9137B

EARLY CHILDHOOD IOWA STATE BOARD[249]

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 2010 Iowa Acts, Senate File 2088, section 281, the Early Childhood Iowa State Board hereby gives Notice of Intended Action to adopt new Chapter 1, “Early Childhood Iowa Initiative,” Iowa Administrative Code.

The Early Childhood Iowa Initiative was established by the General Assembly to create a partnership between communities and state-level partners to improve the efficiency and effectiveness of early care, education, health, and human services to support children prenatal through age five and their families.

No waiver provision is included because the Early Childhood Iowa State Board has adopted a waiver policy for the initiative.

Any interested person may make written comments or suggestions on the proposed rules on or before October 26, 2010. Such written comments should be directed to Shanell Wagler, Department of Management, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4225 or by E-mail to shanell.wagler@iowa.gov.

A public hearing will be held on October 26, 2010, at 9 a.m. in Room 142 of the Lucas State Office Building, Des Moines, Iowa, at which time comments may be submitted orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Shanell Wagler at (515)281-4321 to advise of any specific needs.

These rules are intended to implement 2010 Iowa Acts, Senate File 2088, sections 278 to 289 and 310.

The following amendment is proposed.

Adopt the following **new** 249—Chapter 1:

CHAPTER 1
EARLY CHILDHOOD IOWA INITIATIVE

249—1.1(83GA,SF2088) Purpose. This chapter establishes the early childhood Iowa initiative enacted by the general assembly.

249—1.2(83GA,SF2088) Scope of the rules. The rules for the initiative are promulgated under 2010 Iowa Acts, Senate File 2088, section 281. No rule shall, in any way, relieve a person affected by or subject to these rules, or any person affected by or subject to the rules promulgated by the early childhood Iowa initiative, from any duty under the laws of this state.

249—1.3(83GA,SF2088) Definitions. For the purpose of these rules, the following definitions apply:

“*Alignment*” means state- and community-level efforts to integrate early care, health, and education systems and to enhance state and community partnerships through innovative approaches.

“*Assessment*” means to identify for children and their families all formal and informal supports, assets and resources, as well as gaps, in an early childhood Iowa area. An assessment includes communitywide data, statistics, and facts upon which to base decisions to develop a community plan and to identify priorities to reach the desired results.

“*Citizen representative*” means a member of the early childhood Iowa area board who is not an elected official or a paid staff member of an agency whose services fall under the plan or purview of the area board either directly or indirectly.

EARLY CHILDHOOD IOWA STATE BOARD[249](cont'd)

“Community partners” means individuals, early childhood service providers, and staff of other programs or agencies that communicate, coordinate and collaborate with an area board.

“Community plan” means the local comprehensive analysis of needs, gaps and strengths, also referred to in 2010 Iowa Acts, Senate File 2088, as the school ready grant plan, adopted by the area board following input from the community and implemented in the early childhood Iowa area.

“Decategorization project” means the human services decategorization of child welfare and juvenile justice funding project operated under Iowa Code section 232.188.

“Department” means the Iowa department of management.

“Designation” means the status awarded by the state board to an early childhood Iowa area meeting the criteria and the levels of excellence rating system.

“Early childhood Iowa area” or *“area”* means a geographic area as defined by the local community and designated by the state board.

“Early childhood Iowa area board” or *“area board”* means the governing board for an early childhood Iowa area.

“Early childhood Iowa fund” means a fund created in the state treasury from which moneys are distributed to early childhood Iowa areas for the purpose of supporting children and their families.

“Early childhood Iowa office” means a state unit within the department of management to coordinate the early childhood Iowa initiative.

“Early childhood Iowa state board” or *“state board”* means the state of Iowa’s early childhood Iowa board as appointed by the governor that meets the membership criteria of citizens and state agency directors as voting members and legislators as nonvoting members.

“Early childhood stakeholders alliance” or *“early childhood Iowa stakeholders alliance”* means the early childhood stakeholders alliance created in 2010 Iowa Acts, Senate File 2088.

“Elected official” means a member of a board or governing body elected through a public election.

“Evidence-based” means that a program has completed a randomized control trial conducted by an independent researcher and has demonstrated positive results for children and families. “Evidence-based” may also include research conducted by the program that has been published in a peer-reviewed journal that also demonstrates positive results for children and families. To be evidence-based, the program must include stringent standards for program replication including standards for implementation and monitoring to ensure that the program is being operated with fidelity to the original model.

“First years first” means a public-private partnership for early childhood in Iowa, which includes an account created in the early childhood Iowa fund under the authority of the department of management to be used for first years first.

“Fiscal agent,” as designated by an area board, means a public agency as defined in Iowa Code section 28E.2; a community action agency as defined in Iowa Code section 216A.91; a nonprofit corporation; or an area education agency as defined in Iowa Code chapter 273.

“Funding sources” means a comprehensive fiscal assessment of identified sources and amounts to support children prenatal through five years of age.

“Home visitation” means a strategy to deliver family support or parent education services. A home visit is a face-to-face visit with a family in the family’s home or other alternate location to facilitate meeting the family’s goals.

“Indicator” means a measure that indirectly quantifies the achievement of a result.

“Members of the public” means individuals who meet the definition of citizen representative on an area board.

“Parent” or *“grandparent”* or *“guardian”* means a parent or primary caregiver of a child from birth to kindergarten entry, including a grandparent, other relative of the child, or foster parent; or a noncustodial parent who has an ongoing relationship with, and at times provides physical care for, the child.

“Performance measure” means a measure that assesses a program, activity, or service.

“Result” means the effect desired for Iowans.

EARLY CHILDHOOD IOWA STATE BOARD[249](cont'd)

“*State agency*” means a department of the executive branch including, but not limited to, the departments of economic development, education, human rights, human services, public health, and workforce development.

“*Technical assistance*” means an ongoing, systematic and interactive process that is designed to achieve results and that enables knowledge from research, policy and evidence-based practices to be shared in partnerships through a variety of strategies with specific groups, agencies, communities and other partners to use within their unique contexts.

“*Technical assistance team*” means the early childhood Iowa office in the department of management and identified personnel from the state departments of economic development, education, human rights, human services, public health, and workforce development that provide the day-to-day operational work of local- and state-level early childhood Iowa and support to the state board.

249—1.4(83GA,SF2088) Early childhood Iowa state board responsibility.

1.4(1) The state board shall provide leadership and coordination for the development of Iowa’s early care, health and education system in cooperation with area boards, community partners and other state agencies.

1.4(2) The state board shall:

- a. Develop a levels of excellence rating system for area boards.
 - (1) The rating system is the mechanism by which an area board is designated.
 - (2) The rating system shall include the following four levels: probation, compliant, quality, and model.
 - (3) The state board shall adopt criteria for each level.
- b. Adopt state-level indicators with input from area boards and the early childhood stakeholders alliance. The state board shall report on indicators each fiscal year and compare the data against baseline data and data from prior fiscal years as available. Indicators shall measure all result areas of the early care, health and education system.
- c. Adopt minimum standards to promote equal access to services subject to the authority of the area boards.
- d. Adopt guidelines and standards for services provided under a school ready children grant.
- e. In cooperation with the early childhood stakeholders alliance:
 - (1) Further the development of an early childhood integrated data system across state agencies and other partners.
 - (2) Develop guidance to identify and improve the quality of services in early care, health and education programs, including evidence-based practices.
 - (3) Promote other measures to advance the initiative.

249—1.5(83GA,SF2088) Early childhood Iowa coordination staff. In consultation with the state board, the department shall provide fiscal oversight of the early childhood Iowa initiative.

249—1.6(83GA,SF2088) Early childhood Iowa areas.

1.6(1) The state board shall approve early childhood Iowa area boundaries and the creation of area boards. Minimum criteria for areas and the approval of area boards are set forth in 2010 Iowa Acts, Senate File 2088, section 283.

1.6(2) The state board may waive any of the minimum criteria referenced in 2010 Iowa Acts, Senate File 2088, section 283, if it is determined that exceptional circumstances exist. The state board further defines exceptional circumstances to include the following:

- a. The proposed change of boundaries creates hardship that reduces performance or quality of services within the area. The area board must provide compelling documentation of the hardship and clearly document the impact to performance or quality of services or both.
- b. The area board is granted model level of performance within the levels of excellence rating system by the state board.

EARLY CHILDHOOD IOWA STATE BOARD[249](cont'd)

249—1.7(83GA,SF2088) Early childhood stakeholders alliance. The early childhood stakeholders alliance shall assist the state board in the development and implementation of the state board's strategic plan.

249—1.8(83GA,SF2088) Transition.

1.8(1) The state board shall adopt the deadline of July 1, 2013, for compliance with 2010 Iowa Acts, Senate File 2088, section 283, for all area boards. Area boards that are impacted by boundary criteria shall merge by July 1, 2013, or be granted an exception by the state board.

1.8(2) Early childhood Iowa area boards shall ensure that area service providers and other community providers are invited to participate in conversations as the area boards transition into early childhood Iowa or if the area boards change geographic boundaries.

These rules are intended to implement 2010 Iowa Acts, Senate File 2088, sections 278 to 289 and 310.

ARC 9143B

EDUCATION DEPARTMENT[281]

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 256.7(5), the State Board of Education hereby proposes to amend Chapter 17, “Open Enrollment,” Iowa Administrative Code.

Iowa Code section 257.11(3)“a” states that supplementary weighted funds are available to a school district for the district's “resident high school pupils [emphasis added]” who enroll in community college courses for concurrent credit. The statute provides no guidance regarding nonresident pupils who open enroll into another district. This rule making codifies the Department's guidance that the resident district sends to the receiving district the supplementary weighting counted in October of the current year multiplied by the district cost per pupil of the current year. This fiscal policy is as consistent as possible with other items that follow open enrolled pupils from their resident districts to their receiving districts, such as limited English proficient (LEP) weighting and the former Phase III funds, both of which were based on “generated” funding.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendment on or before October 26, 2010, at 4:30 p.m. Comments on the proposed amendment should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

This amendment is intended to implement Iowa Code sections 257.11 and 282.18.

The following amendment is proposed.

Adopt the following **new** subrule 17.10(8):

17.10(8) A student under open enrollment is eligible to be counted for supplementary weighting pursuant to 281—subrule 97.2(5) for qualifying concurrent enrollment classes in which the student is enrolled, including concurrent enrollment classes provided via the ICN. An open enrolled student who is under competent private instruction (CPI) shall be weighted in the student's receiving district, and no tuition shall be billed to the resident district. An open enrolled student who is not under CPI shall be weighted in the resident district, and the funding shall be sent to the receiving district in addition to open enrollment tuition.

EDUCATION DEPARTMENT[281](cont'd)

- a.* If the open enrolled student is present in the resident district on October 1 of the school year, the resident district shall count the student, excluding a student under CPI, for supplementary weighting.
- b.* The concurrent enrollment course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(5).
- c.* The resident district shall forward the weighting generated for the concurrent enrollment for that student using the district cost per pupil of the school year. The amount generated is calculated as the supplementary weighting full-time-equivalency for that one student for each qualified concurrent enrollment course times the current school year's district cost per pupil in the resident district.
- d.* The receiving district shall pay the community college the tuition negotiated for the course. The tuition negotiated may cost the receiving district a different amount than that received from the resident district. No additional amount may be charged to the resident district, the student, or the parent, guardian, or legal custodian.
- e.* If the student was not present in the resident district on October 1 of the school year and is a late transfer, the receiving district bears all the tuition cost and shall not bill the resident district in the first year pursuant to subrule 17.10(7).

ARC 9144B**EDUCATION DEPARTMENT[281]****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 256.7(5), the State Board of Education hereby proposes to amend Chapter 36, "Extracurricular Interscholastic Competition," Iowa Administrative Code.

The proposed amendments are the result of a periodic review of Chapter 36 that the Department undertakes with executive directors of the Iowa High School Athletic Association (IHSAA) and the Iowa Girls High School Athletic Union (IGHSAU).

The proposed amendments in Items 1, 2, and 7 clarify the prohibition against all-star players competing in all-star contests.

Item 3 rescinds the definition of "organization" because the definition includes only "registered organizations," which are specified in rule 281—36.2(280).

Because several rules within Chapter 36 use "school" or "calendar" to modify "days," Items 4, 6, 8, 9, and 10 add a clarifying modifier to "days" in other rules.

The changes in Item 5 to the awards rule are proposed in an attempt to keep that rule current with inflation.

The proposed amendment in Item 8 clarifies that it is not appropriate for academically ineligible students to appeal a failing grade to the IHSAA or IGHSAU; such appeals must be pursued with the student's local school inasmuch as the athletic organizations have no authority regarding the validity of locally issued grades.

Finally, the proposed change in Item 10 reflects actual practice regarding cooperative sharing programs.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before October 26, 2010, at 4:30 p.m. Comments on the proposed amendments should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

EDUCATION DEPARTMENT[281](cont'd)

A public hearing will be held on October 26, 2010, from 1 to 2 p.m. in the State Board Room on the second floor of the Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of specific needs by calling (515)281-5295.

These amendments are intended to implement Iowa Code section 280.13.

The following amendments are proposed.

ITEM 1. Rescind the definition of “All-star” in rule **281—36.1(280)** and adopt the following **new** definition in lieu thereof:

“*All-star*” means a secondary student from a high school interscholastic athletic team whose outstanding performance is the basis for the student’s selection to compete individually in an all-star contest or on an all-star high school team to compete with other all-stars from several other high school teams against another all-star team in an all-star contest. An “all-star” shall not include a twelfth grade student whose interscholastic athletic season for the sport in question has concluded.

NOTE: Bylaw 14.6 of the National Collegiate Athletic Association (NCAA) (as revised 7/30/10) states that a “student-athlete shall be denied the first year of intercollegiate athletics competition if, following completion of high-school eligibility in the student-athlete’s sport and prior to the student-athlete’s high-school graduation, the student-athlete competes in more than two all-star football contests or two all-star basketball contests.”

ITEM 2. Adopt the following **new** definition of “All-star contest” in rule **281—36.1(280)**:

“*All-star contest*” means an event for which admission is charged and at which all-stars compete during the school year against other all-stars, either individually or as all-star teams. “All-star contests” shall not include noninvitational events for which students audition or try out or the auditions or try outs themselves.

ITEM 3. Rescind the definition of “Organization” in rule **281—36.1(280)**.

ITEM 4. Amend subrule 36.14(1) as follows:

36.14(1) Physical examination. Every year each student shall present to the student’s superintendent a certificate signed by a licensed physician and surgeon, osteopathic physician and surgeon, osteopath, qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, to the effect that the student has been examined and may safely engage in athletic competition.

Each doctor of chiropractic licensed as of July 1, 1974, shall affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic ~~examiners~~.

The certificate of physical examination is valid for the purpose of this rule for one calendar year. A grace period not to exceed 30 calendar days is allowed for expired physical certifications.

A student shall not be required to submit to a physical examination if the student’s parent or the 18-year-old student submits to a school administrator an affidavit that the physical examination requirement conflicts with the tenets and practice of a recognized religious denomination of which the student is an adherent or member.

ITEM 5. Amend subrule 36.14(3) as follows:

36.14(3) Awards.

a. Awards from ~~the student’s a secondary school or registered organization~~. ~~A For participation in an interscholastic athletic contest or program, a student will be permitted to receive only the customary ribbon or medal for participation in an interscholastic athletic contest. A student will be allowed to receive from the student’s school, another secondary school, a registered organization, or the host of an event sanctioned by a registered organization for participation in the interscholastic athletic program, an award whose value cannot exceed \$25 \$50. Nothing in this subrule shall preclude or prevent the awarding and the acceptance of an inexpensive, unmounted, unframed paper certificate of recognition as an award, or an inexpensive table favor which is given to everyone attending a banquet.~~

EDUCATION DEPARTMENT[281](cont'd)

b. Awards for participation in school programs from ~~other than the student's school~~ an individual or organization other than a secondary school or registered organization. No student shall receive any award from an individual or outside organization for high school participation while enrolled in high school, except that nothing in this subrule shall preclude the giving of a complimentary dinner by local individuals, organizations, or groups, with approval of the superintendent, to members of the local high school athletic squad. No student shall accept any trip or excursion of any kind by any individual, organization, or group outside the student's own school or the governing organization, with the exception of bona fide recruiting trips that meet NCAA requirements. Nothing in this subrule shall preclude or prevent the awarding and the acceptance of an inexpensive, unmounted, unframed paper certificate of recognition as an award, or an inexpensive table favor which is given to everyone attending a banquet.

c. Awards for participation in nonschool programs. If a student participates in an outside school activity ~~during the school year~~, the student may ~~not~~ receive any award ~~the value of which exceeds \$25~~ provided that the award does not violate the amateur award rule of the amateur sanctioning body for that sport. ~~During the summer months, a student may enter an event in any sport as an individual or as a member of a team not representing the student's school, subject to subrule 36.15(6). If the student wins an award, the student may accept the award provided it does not violate the amateur award rule of the amateur sanctioning body for that sport. In the absence of an applicable amateur award rule, the student shall not receive any award the value of which exceeds \$50.~~

d. Absolute prohibition on cash ~~or cash equivalent~~. At no time may any student accept an award of cash ~~or cash equivalent~~.

e. No change.

ITEM 6. Amend paragraph **36.15(3)“a,”** introductory paragraph, as follows:

a. Exceptions. The executive officer or executive board shall consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten school days:

ITEM 7. Amend paragraph **36.15(6)“a”** as follows:

a. School personnel, whether employed or volunteers, of a member or associate member school shall not coach that school's student athletes during the school year in a sport for which the school personnel are currently under contract or are volunteers, outside the period from the official first day of practice through the finals of tournament play. Provided, however, school personnel may coach a senior student from the coach's school in an all-star contest once the senior student's interscholastic athletic season for that sport has concluded. ~~Not shall~~ In addition, volunteer or compensated coaching personnel shall not require students to participate in any activities outside the season of that coach's sport as a condition of participation in the coach's sport during its season.

ITEM 8. Amend rule 281—36.16(280) as follows:

281—36.16(280) Executive board review. A student, parent of a minor student, or school contesting the ruling of a student's eligibility based on these rules, other than subrule 36.15(1); or paragraph 36.15(2)“c,” “d,” “f,” or “k,” or a school contesting a penalty imposed under ~~subrule~~ paragraph 36.15(6), paragraph “b,” shall be required to state the basis of the objections in writing ~~and may also request an oral hearing~~, addressed to the executive officer of the board of the governing organization. ~~The~~ Upon request of a student, parent of a minor student, or a school, the executive officer shall schedule a hearing before the executive board on or before the next regularly scheduled meeting of the executive board, but not later than 20 calendar days following the receipt of the objections unless a later time is mutually agreeable. The executive board shall give at least 5 business days' written notice of the hearing. The executive board shall consider the evidence presented and issue findings and conclusions in a written decision within 5 business days of the hearing; and shall mail a copy to appellant.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 9. Amend rule 281—36.17(280) as follows:

281—36.17(280) Appeals to director. If the claimant is still dissatisfied, an appeal may be made in writing to the director of education by giving written notice of the appeal to the state director of education with a copy by registered mail to the executive officer of the governing organization. An appeal shall be in the form of an affidavit and shall be filed within 10 business days after the date of mailing of the decision of the governing organization. The director of education shall establish a date for hearing within 20 calendar days of receipt of written notice of appeal by giving at least 5 business days' written notice of hearing to the appellant unless another time is mutually agreeable. The procedures for hearing adopted by the state board of education and found at 281—Chapter 6 shall be applicable, except that the decision of the director is final. Appeals to the executive board and the state director are not contested cases under Iowa Code subsection 17A.2(2)(5).

ITEM 10. Amend subrules 36.20(6) and 36.20(7) as follows:

36.20(6) A copy of the written agreement between the governing boards of the particular schools involved, and all amendments to the agreement, shall be filed with the appropriate governing organization(s) no later than April 30 for the subsequent year, unless exception is granted by the organization for good cause shown. The agreements and amendments shall be deemed approved unless denied by the governing organization(s) within ten calendar days;

36.20(7) ~~Interscholastic competition is engaged in only under the name of the host school.~~ It is the purpose of this rule to allow individual students participation in interscholastic competition in activities not available to them at the school they attend, through local policy or arrangements made between the governing boards of the schools involved, so long as the interscholastic activities of other schools are not substantially prejudiced. Substantial prejudice shall include, but not necessarily be limited to, situations where a cooperative effort may result in an unfair domination of an activity; or substantial disruption of activity classifications and management. In the event an activity organization determines, after investigation, that an agreement between schools that was developed under the terms of ~~these subrules~~ this rule results in substantial prejudice to other schools engaged in the activity, or the terms of the agreement are not in conformity with the purpose and terms of this rule, the activity organization may give timely notice to the schools involved that the local policy or agreement between them is null and void for the purposes of this rule, insofar as cooperative student participation is concerned with a particular activity. Determinations are appealable to the director of education under the applicable terms of 281—36.17(280). For notice to be timely, it must be given at least 45 calendar days prior to the beginning of the activity season.

ARC 9147B

EDUCATION DEPARTMENT[281]

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 256.7(5), the State Board of Education hereby proposes to amend Chapter 41, “Special Education,” Iowa Administrative Code.

Based on technical assistance received from the United States Department of Education, the State Board of Education proposes these amendments to clarify that enforcement actions taken by the Department are mandatory, not permissive. These amendments conform to the Department’s current practice.

An agencywide waiver provision is provided in 281—Chapter 4.

EDUCATION DEPARTMENT[281](cont'd)

Two public hearings will be held. The first will be on October 26, 2010, from 2 to 3 p.m., and the second will be on November 2, 2010, from 2 to 3 p.m., at which time persons may present their views either orally or in writing. Both hearings will be in the State Board Room on the second floor of the Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

All persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of specific needs by calling (515)281-5295.

Interested individuals may make written comments on the proposed amendments on or before November 2, 2010, at 4:30 p.m. Comments on the proposed amendments should be directed to Thomas Mayes, Legal Consultant, Bureau of Student and Family Support Services, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)242-5614; E-mail Thomas.Mayes@iowa.gov; or fax (515)242-6019.

These amendments are intended to implement Iowa Code chapter 256B and 34 CFR Part 300.

The following amendments are proposed.

ITEM 1. Amend subrule 41.604(1), introductory paragraph, as follows:

41.604(1) Needs assistance. If the state determines for two consecutive years that an LEA or AEA needs assistance under 41.603(2) “b” in implementing the requirements of Part B of the Act, the state ~~may~~ shall take one or more of the following actions:

ITEM 2. Amend paragraph **41.604(2)“b”** as follows:

b. The state ~~may~~ shall take one or more of the following actions:

(1) Require the LEA or AEA to prepare a corrective action plan or improvement plan if the state determines that the LEA or AEA should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the AEA or LEA under Part B of the Act.

ITEM 3. Amend subrule 41.604(3), introductory paragraph, as follows:

41.604(3) Needs substantial intervention. Notwithstanding subrule 41.604(1) or 41.604(2), at any time that the state determines that an LEA or AEA needs substantial intervention in implementing the requirements of Part B of the Act or of this chapter or that there is a substantial failure to comply with any condition of an LEA’s eligibility or an AEA’s eligibility under Part B of the Act or this chapter, the state ~~may~~ shall take one or more of the following actions:

ARC 9145B

EDUCATION DEPARTMENT[281]

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 256.7(5), the State Board of Education hereby proposes to amend Chapter 44, “School Buses,” Iowa Administrative Code.

There is a discrepancy in the Department’s rules between the description of the weight of a Type A-2 bus and the requirement for tow hooks for a Type A-2 bus. A Type A-2 bus weighs 14,501 pounds or more. Paragraph “f” of 44.3(7) should say “14,501” and not “14,500” to be consistent with the definition. This rule making corrects that discrepancy.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendment on or before October 26, 2010, at 4:30 p.m. Comments on the proposed amendment should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

EDUCATION DEPARTMENT[281](cont'd)

This amendment is intended to implement Iowa Code sections 257.11 and 282.18.

The following amendment is proposed.

Amend paragraph **44.3(7)“f”** as follows:

f. Tow eyes or hooks are required on chassis of ~~14,500~~ 14,501 pounds GVWR or greater. Two tow eyes or hooks shall be installed by the chassis manufacturer so as not to project beyond the front bumper. Tow eyes or hooks shall be attached to the chassis frame in accordance with the chassis manufacturer's standards.

ARC 9146B

EDUCATION DEPARTMENT[281]

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 256.7(5), the State Board of Education hereby proposes to amend Chapter 103, “Corporal Punishment Ban; Restraint; Physical Confinement and Detention,” Iowa Administrative Code.

In 2008, detailed rules regarding seclusion (“time out” rooms) and restraint of students, including allowable parameters when a student is physically confined or detained, were added to this chapter. Item 1 contains a technical correction only. Iowa Protection and Advocacy has suggested amendments to the rules that the Department believes are in the best interest of students, and these are reflected in Item 2. The third item is based on a suggestion from the federal Office for Special Education Programs.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before October 26, 2010, at 4:30 p.m. Comments on the proposed amendments should be directed to Thomas Mayes, Legal Consultant, Bureau of Student and Family Support Services, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)242-5614; E-mail Thomas.Mayes@iowa.gov; or fax (515)242-6019.

These amendments are intended to implement Iowa Code sections 256B.3 and 280.21.

The following amendments are proposed.

ITEM 1. Amend rule **281—103.6(256B,280)**, numbered paragraph “**5**,” as follows:

5. The period of detention and confinement is reasonable, considering the age, size, and physical and mental condition of the student subject to confinement and detention, and not in excess of the hours in a school day as defined by local board policy or rule; however, reasonable periods of before- and after-school detention are permissible. If a period of physical confinement and detention exceeds the shorter of 60 minutes or the school's typical class period, staff members shall evaluate the continued need for physical confinement and detention, shall obtain administrator (or designee) approval for any continued confinement and detention ~~beyond the initial periodic reevaluation~~, and shall comply with any administrator (or designee) directives concerning any continued confinement and detention;

ITEM 2. Adopt the following **new** numbered paragraphs “**5**” and “**6**” in rule **281—103.8(256B,280)**:

5. An agency covered by this chapter shall investigate any complaint or allegation that one or more of its employees violated one or more of the provisions of this chapter. If an agency covered by this chapter determines that one or more of its employees violated one or more of the provisions of this chapter, the agency shall take appropriate corrective action. If any allegation involves a specific student, the agency shall transmit the results of its investigation, including any required corrective action, to the parents of the student;

EDUCATION DEPARTMENT[281](cont'd)

6. If any alleged violation of this chapter is also an allegation of “abuse” as defined in rule 281—102.2(280), the procedures in 281—Chapter 102 shall be applicable.

ITEM 3. Adopt the following new rule 281—103.9(280):

281—103.9(280) Relationship to federal law. If any subsequent federal statute, rule, or regulation imposes a scope, standard, or requirement that exceeds the scope, standards, or requirements of this chapter, an agency shall comply with the scope, standard, or requirement imposed by that subsequent federal statute, rule, or regulation.

ARC 9150B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Homeland Security and Emergency Management Division proposes to amend Chapter 9, “Iowa Comprehensive Plan,” Iowa Administrative Code.

Iowa Code section 29C.8(3) requires the Administrator of the Homeland Security and Emergency Management Division to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state. This amendment will formally adopt the updated Part B: Iowa Hazard Mitigation Plan, which is part of the Iowa Comprehensive Plan.

Consideration will be given to all written suggestions or comments on the proposed amendment submitted on or before October 26, 2010. Such written materials should be sent to the Administrator, Iowa Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge W-4, Johnston, Iowa 50131; or by facsimile to (515)725-3260.

Also, there will be a public hearing on October 26, 2010, at 10 a.m. in the Homeland Security and Emergency Management Division Conference Room, 7105 NW 70th Avenue, Camp Dodge W-4, Johnston, Iowa, at which time persons may present their views. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9149B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code chapter 29C.

ARC 9129B**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 2009 Iowa Code Supplement section 29C.20A(2), the Department of Human Services proposes to amend Chapter 58, “Emergency Assistance,” Iowa Administrative Code.

These amendments add a voucher system for the administration of benefits under the Iowa Disaster Aid Individual Assistance Grant Program as directed by the Iowa General Assembly.

Program rules have required that applicants for assistance first purchase the goods or services they need for disaster recovery and then present receipts for reimbursement. This requirement presents a barrier to applicants who have insufficient resources to make the purchases. Issuance of assistance through a purchase voucher to the seller of goods or services will enable applicants to replace or repair items without an initial outlay of funds.

These amendments require the county board of supervisors to designate a local administrative entity to administer a voucher system for issuing state individual disaster assistance to county residents. The designated entity must enter into a contract with the Department for determining eligibility of applicants, issuing vouchers to eligible applicants to purchase needed goods and services, and receiving from the Department reimbursement for the voucher purchases. There is no reimbursement for the administrative expenses of the local administrative entity.

These amendments do not provide for waivers in specified situations. Management of a voucher system for residents of a county affected by a disaster is best achieved locally.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9128B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before October 26, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement 2009 Iowa Code Supplement section 29C.20A as amended by 2010 Iowa Acts, House File 2294.

ARC 9131B**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 234.6, the Department of Human Services proposes to amend Chapter 58, “Emergency Assistance,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments implement the Iowans Helping Iowans Unmet Needs Disaster Assistance Program for the counties which were presidentially declared as disaster areas after June 1, 2010. The program is intended to address disaster-related expenses that cannot be met by other financial assistance.

Funding for the program is established by the Governor of Iowa through the Iowans Helping Iowans Program. The Rebuild Iowa Office will establish a methodology to distribute the funding among the counties in the presidentially declared disaster areas. The program will end when funds are exhausted or on June 30, 2011, whichever occurs first.

The program provides assistance for repair or replacement of personal property, home repair, food assistance, child care, and temporary housing to households whose income is less than 300 percent of the federal poverty level. The amount of assistance available to a household is capped at \$2,500.

The program will be administered through a local administrative entity designated by the county board of supervisors in each of the affected counties. The local administrative entity shall enter into a contract with the Department that delineates the entity's responsibilities for the administration of the program. The local administrative entity will receive applications from households and determine each household's eligibility for the program.

The local administrative entity shall disburse the funds allocated to the county by the Rebuild Iowa Office through direct reimbursement of documented expenses or issuance of vouchers for purchase of approved goods or services. The local administrative entity may keep up to 5 percent of the amount of benefits issued as administrative expense. The local administrative entity is required to submit weekly reports on program expenditures and to return any unused funds from its allocation when the program ends.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9130B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before October 26, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 234.6.

ARC 9112B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

The proposed amendments update provider qualifications for the Medicaid home- and community-based services programs to remove obsolete language and strengthen requirements. These amendments:

- Change the name of the home- and community-based services mental retardation (MR) waiver to the intellectual disability waiver (Items 1, 4, 7 and 16).

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Eliminate references to home care standards of the Department of Public Health in the qualifications for providers of homemaker services and home care services and require instead a contract with the Department of Public Health (Items 2, 5, 15, 20, 22, 24, 27, 29, 36, 38 and 39).
 - Eliminate references to rules of the Department of Elder Affairs (now Department on Aging) in standards for providers of adult day care and reference instead Department of Inspections and Appeals rules at 481—Chapter 70 (Items 3, 5, 14, 20, 23, 24, 29, 31, 35, 36, 38 and 39).
 - Eliminate references to rules of the Department of Elder Affairs in standards for providers of assisted living and reference instead Department of Inspections and Appeals rules at 481—Chapter 69 (Items 5, 20, 24, 29, 36 and 38).
 - Clarify the qualifications for providers of interim medical monitoring and treatment in relation to training and experience necessary to provide medical intervention in a medical emergency (Items 6, 30 and 37).
 - Change the word “consumer” to “member” where applicable in the rules amended (Items 5, 6, 9 to 13, 20, 24, 28 to 30 and 36 to 38).
 - Eliminate the requirement that licensed dietitians must be approved by an area agency on aging (Items 8 and 18).
 - Clarify that an independent support broker must have completed training approved by the Department, rather than certification (Item 10).
 - Clarify who may provide self-directed personal care, individual-directed goods and services, and self-directed community supports and employment under the consumer choices option (Items 11, 12 and 13). A person who is the recipient of respite services paid on behalf of a member through a waiver (including through the consumer choices option) may not serve as the provider of one of these services for that member or any other member. Nor may the parent or stepparent of a minor member or the spouse of a member be paid to provide self-directed personal care, individual-directed goods and services, or self-directed community supports and employment services to that member.
 - Clarify the time lines for submitting invoices and timesheets for reimbursement through the consumer choices option (Items 11, 12 and 13). The financial management service must receive invoices and timesheets within 30 calendar days of the date of service.
 - Change qualifications for providers of chore service under the elderly waiver to eliminate area agencies on aging and to add home health agencies certified under Medicare, agencies that provide a similar service through a contract with the Department of Public Health, chore providers that were enrolled on June 30, 2010, and community businesses engaged in the provision of chore services that have the necessary licenses and insurance (Item 17).
 - Change qualifications for providers of assistive devices under the elderly waiver to reference current Department on Aging rules and to add providers that were enrolled on June 30, 2010, and community businesses engaged in the provision of assistive devices that have the necessary licenses and insurance (Item 19).
 - Update qualifications for case managers to reference current Department on Aging rules and to replace a reference to approval under Department of Public Health standards with a reference to possession of a contract with the Department of Public Health (Item 21).
 - Under the intellectual disability and brain injury waivers, remove supported community living restrictions on living with other waiver members and remove obsolete provisions for conversion of existing facilities (Items 25, 26, 32 and 33).
 - Add requirements for accreditation of providers of supported employment under the intellectual disability and brain injury waivers (Items 28 and 34).
- The following items apply to individual home- and community-based waivers:
- AIDS/HIV waiver: Items 4, 10 to 13 and 22 to 24.
 - Brain injury waiver: Items 1, 10 to 13 and 32 to 37.
 - Children’s mental health waiver: Items 7 and 39.
 - Elderly waiver: Items 10 to 21.
 - Ill and handicapped waiver: Items 2 to 13.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Intellectual disability waiver (formerly called the mental retardation or MR waiver): Items 1, 7, 10 to 13 and 25 to 31.
- Physical disability waiver: Items 7 and 38.

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

Any interested person may make written comments on the proposed amendments on or before October 26, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Strike “mental retardation waiver” wherever it appears in paragraph **77.25(6)“g”**; subparagraphs **77.25(7)“a”(1)**, **77.25(8)“d”(1)** and **77.25(9)“a”(1)**; rule **441—77.37(249A)**; and subparagraph **77.39(14)“a”(1)** and insert “intellectual disability waiver” in lieu thereof.

ITEM 2. Amend subrule 77.30(1) as follows:

77.30(1) Homemaker providers. ~~Homemaker providers shall be agencies which meet the home care standards and requirements set forth in department of public health rules, 641—80.5(135), 641—80.6(135), and 641—80.7(135) or which are certified as a home health agency under Medicare. that are:~~

- Certified as a home health agency under Medicare, or
- Authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

ITEM 3. Amend subrule 77.30(3) as follows:

77.30(3) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs ~~adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

ITEM 4. Strike “HCBS MR or BI waiver” wherever it appears in subparagraphs **77.30(5)“a”(2)** and **77.34(5)“a”(3)** and insert “home- and community-based services intellectual disability or brain injury waiver” in lieu thereof.

ITEM 5. Amend subrule 77.30(7) as follows:

77.30(7) Consumer-directed attendant care service providers. The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer~~ member to provide attendant care service and who is:

- (1) At least 18 years of age.
- (2) Qualified by training or experience to carry out the ~~consumer's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.
- (3) Not the spouse of the ~~consumer~~ member or a parent or stepparent of a ~~consumer~~ member aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on the behalf of a ~~consumer~~ member who receives home- and community-based services.

b. ~~Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

c. to f. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~g. Assisted living programs that are voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~

~~h. Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 6. Amend subrule 77.30(8) as follows:

77.30(8) *Interim medical monitoring and treatment providers.*

a. The following providers may provide interim medical monitoring and treatment services:

(1) Child care facilities, which are defined as child care centers licensed pursuant to 441—Chapter 109, preschools, or child development homes registered pursuant to 441—Chapter 110.

(2) to (5) No change.

b. Staff requirements. Staff members providing interim medical monitoring and treatment services to ~~consumers~~ members shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Not be the spouse of the ~~consumer~~ member or a parent or stepparent of the ~~consumer~~ member if the ~~consumer~~ member is aged 17 or under.

(3) Not be a usual caregiver of the ~~consumer~~ member.

(4) Be qualified by training or experience, ~~as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team and documented in the service plan,~~ to provide medical intervention or intervention in a medical emergency necessary to carry out the ~~consumer's~~ member's plan of care. The training or experience required must be determined by the member's usual caregivers and a licensed medical professional on the member's interdisciplinary team and must be documented in the member's service plan.

c. Service documentation. Providers shall maintain clinical and fiscal records necessary to fully disclose the extent of services furnished to ~~consumers~~ members. Records shall specify by service date the procedures performed, together with information concerning progress of treatment.

ITEM 7. Strike “mental retardation or brain injury waiver” wherever it appears in paragraphs **77.30(9)“c,” 77.33(9)“c,” 77.37(17)“a,” 77.41(3)“a”** and **77.46(2)“d”** and insert “home- and community-based services intellectual disability or brain injury waiver” in lieu thereof.

ITEM 8. Amend subrule 77.30(12) as follows:

77.30(12) *Nutritional counseling.* The following providers may provide nutritional counseling by a ~~licensed~~ dietitian licensed under 645—Chapter 81:

a. to d. No change.

e. ~~Licensed~~ Independent licensed dietitians approved by an area agency on aging.

ITEM 9. Amend subrule 77.30(13), introductory paragraph, as follows:

77.30(13) *Financial management service.* ~~Consumers~~ Members who elect the consumer choices option shall work with a financial institution that meets the following qualifications.

ITEM 10. Amend subrule 77.30(14) as follows:

77.30(14) *Independent support brokerage.* ~~Consumers~~ Members who elect the consumer choices option shall work with an independent support broker who meets the following qualifications.

a. No change.

b. The broker shall not be the ~~consumer's~~ member's guardian, conservator, attorney in fact under a durable power of attorney for health care, power of attorney for financial matters, trustee, or representative payee.

c. The broker shall not provide any other paid service to the ~~consumer~~ member.

d. The broker shall not work for an individual or entity that is providing services to the ~~consumer~~ member.

HUMAN SERVICES DEPARTMENT[441](cont'd)

e. The broker must consent to a criminal background check and child and dependent adult abuse checks. The results shall be provided to the ~~consumer~~ member.

f. The broker must complete an independent support brokerage ~~certification~~ training approved by the department.

ITEM 11. Amend subrule 77.30(15) as follows:

77.30(15) *Self-directed personal care.* ~~Consumers~~ Members who elect the consumer choices option may choose to purchase self-directed personal care services from an individual or business that meets the following requirements.

a. and *b.* No change.

c. All personnel providing self-directed personal care services shall:

(1) Be at least 16 years of age; ~~and~~.

(2) Be able to communicate successfully with the ~~consumer~~ member.

(3) Not be the recipient of respite services paid through home- and community-based services on behalf of a member who receives home- and community-based services.

(4) Not be the recipient of respite services paid through the consumer choices option on behalf of a member who receives the consumer choices option.

(5) Not be the parent or stepparent of a minor child member or the spouse of a member.

d. The provider of self-directed personal care services shall:

(1) No change.

(2) Submit invoices and ~~timecards~~ timesheets to the financial management service within no later than 30 calendar days from the date when the last service in the billing period was provided. Payment shall not be made if invoices and timesheets are received after this 30-day period.

ITEM 12. Amend subrule 77.30(16) as follows:

77.30(16) *Individual-directed goods and services.* ~~Consumers~~ Members who elect the consumer choices option may choose to purchase individual-directed goods and services from an individual or business that meets the following requirements.

a. and *b.* No change.

c. All personnel providing individual-directed goods and services shall:

(1) Be at least 18 years of age; ~~and~~.

(2) Be able to communicate successfully with the ~~consumer~~ member.

(3) Not be the recipient of respite services paid through home- and community-based services on behalf of a member who receives home- and community-based services.

(4) Not be the recipient of respite services paid through the consumer choices option on behalf of a member who receives the consumer choices option.

(5) Not be the parent or stepparent of a minor child member or the spouse of a member.

d. The provider of individual-directed goods and services shall:

(1) No change.

(2) Submit invoices and ~~timecards~~ timesheets to the financial management service within no later than 30 calendar days from the date when the last service in the billing period was provided. Payment shall not be made if invoices and timesheets are received after this 30-day period.

ITEM 13. Amend subrule 77.30(17) as follows:

77.30(17) *Self-directed community supports and employment.* ~~Consumers~~ Members who elect the consumer choices option may choose to purchase self-directed community supports and employment from an individual or business that meets the following requirements.

a. and *b.* No change.

c. All personnel providing self-directed community supports and employment shall:

(1) Be at least 18 years of age; ~~and~~.

(2) Be able to communicate successfully with the ~~consumer~~ member.

(3) Not be the recipient of respite services paid through home- and community-based services on behalf of a member who receives home- and community-based services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(4) Not be the recipient of respite services paid through the consumer choices option on behalf of a member who receives the consumer choices option.

(5) Not be the parent or stepparent of a minor child member or the spouse of a member.

d. The provider of self-directed community supports and employment shall:

(1) No change.

(2) Submit invoices and ~~timecards~~ timesheets to the financial management service within no later than 30 calendar days from the date when the last service in the billing period was provided. Payment shall not be made if invoices and timesheets are received after this 30-day period.

ITEM 14. Amend subrule 77.33(1) as follows:

77.33(1) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs ~~adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

ITEM 15. Amend subrule 77.33(4) as follows:

77.33(4) Homemaker providers. Homemaker providers shall be agencies ~~which meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135) or which are certified as a home health agency under Medicare.~~ that are:

a. Certified as a home health agency under Medicare, or

b. Authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

ITEM 16. Strike “HCBS MR” wherever it appears in subparagraph **77.33(6)“a”(4)** and rule **441—77.37(249A)** and insert “home- and community-based services intellectual disability” in lieu thereof.

ITEM 17. Amend subrule 77.33(7) as follows:

77.33(7) Chore providers. The following providers may provide chore services:

a. ~~Area agencies on aging as designated in 321—4.4(231). Chore providers subcontracting with area agencies on aging or with letters of approval from the area agencies on aging stating the organization is qualified to provide chore services may also provide chore services.~~ Home health agencies certified under Medicare.

b. Community action agencies as designated in Iowa Code section 216A.93.

c. ~~Home health aide providers meeting the standards set forth in subrule 77.33(3).~~ Home health aide providers contracting Agencies authorized to provide similar services through a contract with the department of public health shall be considered to have met these standards (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

d. Nursing facilities licensed pursuant to Iowa Code chapter 135C.

e. ~~Providers certified under the HCBS MR waiver that were enrolled as chore providers as of June 30, 2010, based on a subcontract with or letter of approval from an area agency on aging.~~

f. Community businesses that are engaged in the provision of chore services and that:

(1) Have all necessary licenses and permits to operate in conformity with federal, state, and local laws and regulations, and

(2) Submit verification of current liability and workers’ compensation coverage.

ITEM 18. Amend subrule 77.33(12) as follows:

77.33(12) Nutritional counseling. The following providers may provide nutritional counseling by a ~~licensed dietitian licensed under 645—Chapter 81:~~

a. to *d.* No change.

e. Licensed Independent licensed dietitians approved by an area agency on aging.

ITEM 19. Amend subrule 77.33(13) as follows:

77.33(13) Assistive ~~devices~~ device providers. The following providers may provide assistive devices:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- a. ~~Medicaid-eligible~~ enrolled medical equipment and supply dealers.
- b. Area agencies on aging as designated according to department of ~~elder affairs~~ on aging rules ~~321—4.3(249D) 17—4.4(231)~~ and ~~321—4.4(249D) 17—4.9(231)~~.
- c. ~~Assistive devices providers with a contract with an area agency on aging or with a letter of approval from an area agency on aging stating the organization is qualified to provide assistive devices. Providers that were enrolled as assistive device providers as of June 30, 2010, based on a contract with or letter of approval from an area agency on aging.~~
- d. Community businesses that are engaged in the provision of assistive devices and that:
 - (1) Have all necessary licenses and permits to operate in conformity with federal, state, and local laws and regulations, and
 - (2) Submit verification of current liability and workers' compensation coverage.

ITEM 20. Amend subrule 77.33(15) as follows:

77.33(15) Consumer-directed attendant care service providers. The following providers may provide consumer-directed attendant care service:

- a. An individual who contracts with the ~~consumer~~ member to provide attendant care service and who is:
 - (1) At least 18 years of age.
 - (2) Qualified by training or experience to carry out the ~~consumer's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.
 - (3) Not the spouse of the ~~consumer~~ member or parent or stepparent of a member aged 17 or under.
 - (4) Not the recipient of respite services paid through home- and community-based services on the behalf of a ~~consumer~~ member who receives home- and community-based services.
- b. ~~Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135). Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.~~
- c. to f. No change.
- g. ~~Assisted living programs that are voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~
- h. ~~Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 21. Amend paragraph **77.33(21)“a”** as follows:

- a. The case management provider ~~organization~~ shall be an agency or individual that:
 - (1) to (3) No change.
 - (4) Is accredited through the Council on Quality and Leadership in Supports for People with Disabilities (~~The Council~~ CQL) to provide case management; or
 - (5) Is approved by the department of ~~elder affairs~~ on aging as meeting the standards for case management services in ~~321—Chapter 21 17—Chapter 21~~; or
 - (6) ~~Is approved by the department of public health as meeting the standards for case management services in 641—Chapter 80. Is authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services and that:~~
 - 1. Meets the qualifications for case managers in 641—subrule 80.6(1); and
 - 2. Provides a current IDPH local public health services contract number.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 22. Amend subrule 77.34(3) as follows:

77.34(3) Homemaker providers. ~~Homemaker providers shall be agencies which meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135) and 641—80.7(135), or which are certified as a home health agency under Medicare.~~ that are:

- a. Certified as a home health agency under Medicare, or
- b. Authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

ITEM 23. Amend subrule 77.34(7) as follows:

77.34(7) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.

ITEM 24. Amend subrule 77.34(8) as follows:

77.34(8) Consumer-directed attendant care service providers. The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer member~~ consumer member to provide attendant care service and who is:

- (1) At least 18 years of age.
- (2) Qualified by training or experience to carry out the ~~consumer's member's~~ consumer's member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.
- (3) Not the spouse of the ~~consumer member~~ consumer member or a parent or stepparent of a ~~consumer member~~ consumer member aged 17 or under.
- (4) Not the recipient of respite services paid through home- and community-based services on the behalf of a ~~consumer member~~ consumer member who receives home- and community-based services.

b. ~~Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

c. to f. No change.

g. ~~Assisted living programs that are voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~

h. ~~Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 25. Rescind paragraph **77.37(14)“e”** and adopt the following **new** paragraph in lieu thereof:

e. The department shall approve living units designed to serve up to four persons except as necessary to prevent an overconcentration of supported community living units in a geographic area.

ITEM 26. Adopt the following **new** paragraph **77.37(14)“f”**:

f. The department shall approve a living unit designed to serve five persons if both of the following conditions are met:

- (1) Approval will not result in an overconcentration of supported community living units in a geographic area.
- (2) The county in which the living unit is located provides to the bureau of long-term care verification in writing that the approval is needed to address one or more of the following issues:

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. The quantity of services currently available in the county is insufficient to meet the need;
2. The quantity of affordable rental housing in the county is insufficient to meet the need; or
3. Approval will result in a reduction in the size or quantity of larger congregate settings.

ITEM 27. Amend subparagraph **77.37(15)“a”(7)** as follows:

~~(7) Home care agencies that meet the home care standards and requirements set forth in department of public health rules 641—80.5(135) through 641—80.7(135). Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.~~

ITEM 28. Amend subrule 77.37(16) as follows:

77.37(16) Supported employment providers.

a. The following agencies may provide supported employment services:

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider, a community employment service provider, or a provider of a similar service.

(2) An agency that is accredited by the Council on Accreditation of Services for Families and Children for similar services.

(3) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations for similar services.

(4) An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities for similar services.

(5) An agency that is accredited by the International Center for Clubhouse Development.

~~*a. b.* Providers responsible for the payroll of consumer members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:~~

~~(1) Consumer Member vacation, sick leave and holiday compensation.~~

~~(2) Procedures for payment schedules and pay scale.~~

~~(3) Procedures for provision of workers' compensation insurance.~~

~~(4) Procedures for the determination and review of commensurate wages.~~

~~(5) Department of labor requirements.~~

~~*b. c.* The department will contract only with public or private agencies to provide supported employment services. The department does not recognize individuals as service providers under the supported employment program.~~

ITEM 29. Amend subrule 77.37(21) as follows:

77.37(21) Consumer-directed attendant care service providers. The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer~~ member to provide attendant care service and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the ~~consumer's member's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse of the ~~consumer member~~ or a parent or stepparent of a ~~consumer member~~ aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on the behalf of a ~~consumer member~~ who receives home- and community-based services.

~~*b.* Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135). Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.~~

c. to f. No change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

g. Assisted living programs that are ~~voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~

h. Adult day service providers ~~which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 30. Amend subrule 77.37(22) as follows:

77.37(22) *Interim medical monitoring and treatment providers.*

a. The following providers may provide interim medical monitoring and treatment services:

(1) Child care facilities, which are defined as child care centers licensed pursuant to 441—Chapter 109, preschools, or child development homes registered pursuant to 441—Chapter 110.

(2) to (5) No change.

b. Staff requirements. Staff members providing interim medical monitoring and treatment services to ~~consumers members~~ shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Not be the spouse of the ~~consumer member~~ or a parent or stepparent of the ~~consumer member~~ if the ~~consumer member~~ is aged 17 or under.

(3) Not be a usual caregiver of the ~~consumer member~~.

(4) Be qualified by training or experience, ~~as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team and documented in the service plan,~~ to provide medical intervention or intervention in a medical emergency necessary to carry out the ~~consumer's member's~~ plan of care. The training or experience required must be determined by the member's usual caregivers and a licensed medical professional on the member's interdisciplinary team and must be documented in the member's service plan.

c. Service documentation. Providers shall maintain clinical and fiscal records necessary to fully disclose the extent of services furnished to ~~consumers members~~. Records shall specify by service date the procedures performed, together with information concerning progress of treatment.

ITEM 31. Amend subrule 77.37(25) as follows:

77.37(25) *Adult day care providers.* Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs ~~adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

ITEM 32. Rescind paragraph **77.39(13)“e”** and adopt the following **new** paragraph in lieu thereof:

e. The department shall approve living units designed to serve up to four persons except as necessary to prevent an overconcentration of supported community living units in a geographic area.

ITEM 33. Adopt the following **new** paragraph **77.39(13)“f”**:

f. The department shall approve a living unit designed to serve five persons if both of the following conditions are met:

(1) Approval will not result in an overconcentration of supported community living units in a geographic area.

(2) The county in which the living unit is located provides to the bureau of long-term care verification in writing that the approval is needed to address one or more of the following issues:

1. The quantity of services currently available in the county is insufficient to meet the need;

2. The quantity of affordable rental housing in the county is insufficient to meet the need; or

3. Approval will result in a reduction in the size or quantity of larger congregate settings.

ITEM 34. Amend subrule 77.39(15) as follows:

77.39(15) *Supported employment providers.*

a. The following agencies may provide supported employment services:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider, a community employment service provider or a provider of a similar service.

(2) An agency that is accredited by the Council on Accreditation of Services for Families and Children for similar services.

(3) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations for similar services.

(4) An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities for similar services.

(5) An agency that is accredited by the International Center for Clubhouse Development.

~~a. b.~~ Providers responsible for the payroll of ~~consumers~~ members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

(1) ~~Consumer~~ Member vacation, sick leave and holiday compensation.

(2) Procedures for payment schedules and pay scale.

(3) Procedures for provision of workers' compensation insurance.

(4) Procedures for the determination and review of commensurate wages.

~~(5) Both state and federal department of labor requirements.~~

~~b. c.~~ The department shall ~~certify~~ will contract only with public or private agencies to provide supported employment services. The department does not recognize individuals as service providers under the supported employment program.

ITEM 35. Amend subrule 77.39(20) as follows:

77.39(20) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs ~~adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

ITEM 36. Amend subrule 77.39(24) as follows:

77.39(24) Consumer-directed attendant care service providers. The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer~~ member to provide attendant care service and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the ~~consumer's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse of the ~~consumer~~ member or a parent or stepparent of a ~~consumer~~ member aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on the behalf of a ~~consumer~~ member who receives home- and community-based services.

~~b. Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135). Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.~~

~~c. to f.~~ No change.

~~g.~~ Assisted living programs that are ~~voluntarily accredited or~~ certified by the department of elder affairs inspections and appeals under 481—Chapter 69.

~~h.~~ Adult day service providers that meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and that have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 37. Amend subrule 77.39(25) as follows:

77.39(25) Interim medical monitoring and treatment providers.

a. The following providers may provide interim medical monitoring and treatment services:

(1) Child care facilities, which are defined as child care centers licensed pursuant to 441—Chapter 109, preschools, or child development homes registered pursuant to 441—Chapter 110.

(2) to (5) No change.

b. Staff requirements. Staff members providing interim medical monitoring and treatment services to ~~consumers~~ members shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Not be the spouse of the ~~consumer member~~ or a parent or stepparent of the ~~consumer member~~ if the ~~consumer member~~ is aged 17 or under.

(3) Not be a usual caregiver of the ~~consumer member~~.

(4) Be qualified by training or experience, ~~as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team and documented in the service plan,~~ to provide medical intervention or intervention in a medical emergency necessary to carry out the ~~consumer's member's~~ member's plan of care. The training or experience required must be determined by the member's usual caregivers and a licensed medical professional on the member's interdisciplinary team and must be documented in the member's service plan.

c. Service documentation. Providers shall maintain clinical and fiscal records necessary to fully disclose the extent of services furnished to ~~consumers~~ members. Records shall specify by service date the procedures performed, together with information concerning progress of treatment.

ITEM 38. Amend subrule 77.41(2) as follows:

77.41(2) Consumer-directed attendant care providers. The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer member~~ to provide consumer-directed attendant care and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the ~~consumer's member's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse or guardian of the ~~consumer member~~ or a parent or stepparent of a member aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on behalf of a ~~consumer member~~ who receives home- and community-based services.

b. ~~Home care providers that have a contract with the department of public health or have written certification from the department of public health stating that they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

c. to f. No change.

g. Assisted living programs that are ~~voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~

h. Adult day service providers ~~which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 39. Amend subparagraphs **77.46(5)“a”(6)** and **(7)** as follows:

(6) ~~Home care agencies that meet the requirements set forth in department of public health rule 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the department

HUMAN SERVICES DEPARTMENT[441](cont'd)

of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

(7) Adult day care providers that are certified in good standing by the department of inspections and appeals as being in compliance with the standards for adult day services programs ~~adopted by the department of elder affairs at 321—Chapter 24~~ at 481—Chapter 70.

ARC 9138B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4 and 2010 Iowa Acts, House File 2526, section 11(22), the Department of Human Services proposes to amend 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 83, “Medicaid Waiver Services,” Iowa Administrative Code.

The proposed amendments add coverage for assisted living services under the Medicaid home- and community-based services (HCBS) elderly waiver. Currently, members who live in an assisted living facility may receive consumer-directed attendant care services from the facility. However, consumer-directed attendant care services do not include supervision, and there is no process in place to identify the member’s service needs or the number of hours of personal care and support services the member may require each month that exceeds what is covered by the monthly payment for consumer-directed attendant care.

Under these amendments, when a member who receives elderly waiver services lives in a certified assisted living facility, the facility could receive Medicaid payment through the waiver for assisted living services. The services would have to be identified in the member’s plan of care and be within the \$1,117 monthly cap on the cost of waiver services. Payment would be made using a two-tier system based on the personal care and support service needs of the member, with an add-on payment if the member has a diagnosis of dementia or another cognitive impairment and a score of 4 or higher on the Global Deterioration Scale.

The member may also receive in-home health-related care under the State Supplementary Assistance program when those services are not provided as part of the assisted living service. The cost of in-home health-related care would not be counted toward the waiver cap.

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

Any interested person may make written comments on the proposed amendments on or before October 26, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4 and 2010 Iowa Acts, House File 2526, section 11(22).

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Rescind and reserve paragraph **77.33(15)“g.”**

ITEM 2. Adopt the following **new** subrule 77.33(23):

77.33(23) Assisted living service providers. Providers of assisted living services shall be assisted living programs that are certified by the department of inspections and appeals pursuant to 481—Chapter 69.

ITEM 3. Amend paragraph **78.37(15)“c”** as follows:

c. A unit of service provided by an individual or an agency, ~~other than an assisted living program,~~ is 1 hour, or one 8- to 24-hour day. ~~When provided by an assisted living program, a unit of service is one calendar month. If services are provided by an assisted living program for less than one full calendar month, the monthly reimbursement rate shall be prorated based on the number of days service is provided. Except for services provided by an assisted living program, each~~ Each service shall be billed in whole units.

ITEM 4. Adopt the following **new** subrule 78.37(18):

78.37(18) Assisted living services. Assisted living services are services available to residents of assisted living programs certified by the department of inspections and appeals pursuant to 481—Chapter 69.

a. Scope. Assisted living services shall include 24-hour response staff to meet a member's scheduled and unpredictable needs in a manner that promotes the member's maximum dignity and independence and to provide supervision, safety, and security. Assisted living services must also include personal care or supportive services or both. Supportive services may include:

- (1) Homemaker services,
- (2) Chore services,
- (3) Meal preparation,
- (4) Medication oversight,
- (5) Attendant care,
- (6) Companion services,
- (7) Therapeutic social and recreational programming, and
- (8) Provision of medically necessary transportation within the member's community.

b. Need for service. To qualify for assisted living services, a member must require one or more hours of personal care or supportive services per month.

(1) The assessment of a member's level of service need shall be based on the following three categories of need:

1. Activities of daily living, including physical care, medication management, and behavioral support;

2. Supportive service needs for housekeeping, laundry, meal preparation, or supervision; and

3. Dementia or other cognitive impairments.

(2) The member's level of service need shall be determined by a point system using the results of:

1. Form 470-4694, Targeted Case Management Comprehensive Assessment Tool, administered by the case manager; and

2. Form 470-4979, Assisted Living Service Tier Rate Calculation, completed by the case manager.

(3) The member's level of service need shall be ranked into one of two tiers:

1. Tier 1: The member has 1 to 8 total points in the activities of daily living category and 0 to 40 points in the supportive service category.

2. Tier 2: The member has 9 or more total points in the activities of daily living category and 10 to 40 points in the supportive service category.

(4) No tier change shall be made based on an acute episode that does not persist or is not expected to persist longer than 21 calendar days. When a significant change in the member's condition persists for more than 21 days, the case manager shall reassess the level of care required by the member and make a determination as to whether the member requires a tier change. The case manager shall notify the assisted living provider of the tier change by issuing a Notice of Decision.

c. Unit. A unit of service is one month.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) A member with Tier 1 service needs must receive 1 to 21 hours of personal care, supervision, or other supportive services per month.

(2) A member with Tier 2 service needs must receive 22 or more hours of personal care, supervision, or other supportive services per month.

d. Relationship to other services.

(1) A member may not receive consumer-directed attendant care while receiving assisted living services.

(2) A member may access other elderly waiver services that are not duplicative of the assisted living services or other services provided by the assisted living program as outlined in the tenant occupancy agreement completed pursuant to rule 481—69.21(231C).

(3) A member may also receive in-home health-related care under the state supplementary assistance program when the in-home health-related care provides services that are not provided as part of the assisted living service.

ITEM 5. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” numbered paragraph “15” as follows:

| <u>Provider category</u> | <u>Basis of reimbursement</u> | <u>Upper limit</u> |
|--|--|--|
| 15. Consumer-directed attendant care provided by: | | |
| Agency (other than an elderly waiver assisted living program) | Fee agreed upon by consumer and provider | \$19.70 per hour not to exceed the daily rate of \$113.80 per day. |
| Assisted living program (for elderly waiver only) | Fee agreed upon by consumer and provider | For elderly waiver only: \$1,089.08 per calendar month. Rate must be prorated per day for a partial month, at a rate not to exceed \$35.79 per day. |
| Individual | Fee agreed upon by consumer and provider | Effective July 1, 2010, \$13.47 per hour not to exceed the daily rate of \$78.56 per day. |

ITEM 6. Adopt the following **new** numbered paragraph “35” in subrule **79.1(2)**, provider category “HCBS waiver service providers”:

| <u>Provider category</u> | <u>Basis of reimbursement</u> | <u>Upper limit</u> |
|------------------------------|-------------------------------|---|
| 35. Assisted living services | Fee schedule | Tier 1: \$609.31 per month or \$799.48 per month with dementia add-on. See 79.1(26). Tier 2: \$910.14 per month or \$1,117 per month with dementia add-on. See 79.1(26). |

ITEM 7. Adopt the following **new** subrule 79.1(26):

79.1(26) Reimbursement for home- and community-based assisted living services. Reimbursement for assisted living services under the HCBS elderly waiver program is based on a fee schedule, subject to the maximums provided below.

a. The level of payment shall be based on:

(1) The member’s level of service need determined pursuant to 441—subparagraph 78.37(18)“b”(3), and

(2) The member’s cognitive needs, as measured by the Global Deterioration Scale administered by the facility pursuant to 481—subrule 69.22(1). The Global Deterioration Scale is used to assess the magnitude of cognitive, functional and behavioral decline pursuant to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV).

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. For a member with service needs in Tier 1, the maximum reimbursement is \$609.31 per calendar month or \$799.48 per calendar month if the member has:

- (1) Received a score of 4 or higher on the Global Deterioration Scale, and
- (2) Been diagnosed with dementia or another cognitive impairment.

c. For a member with service needs in Tier 2, the maximum reimbursement is \$910.14 per calendar month or \$1,117 per calendar month if the member has:

- (1) Received a score of 4 or higher on the Global Deterioration Scale, and
- (2) Been diagnosed with dementia or another cognitive impairment.

ITEM 8. Amend rule 441—83.26(249A) as follows:

441—83.26(249A) Allowable services. Services allowable under the elderly waiver are case management, adult day care, emergency response system, homemaker, home health aide, nursing, respite care, chore, home-delivered meals, home and vehicle modification, mental health outreach, transportation, nutritional counseling, assistive devices, senior companions, consumer-directed attendant care, assisted living, financial management, independent support brokerage, self-directed personal care, self-directed community supports and employment, and individual-directed goods and services as set forth in rule 441—78.37(249A).

ARC 9111B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

This amendment extends the time in which the physician may sign a home health agency plan of care to conform to Medicare policy. The current Medicaid standard is that the physician’s signature shall be dated within the certification period. Medicare allows the plan to be signed any time before the claim for home health agency services is submitted for reimbursement. Having different standards for Medicare and Medicaid is confusing for physicians and home health agencies.

This amendment does not provide for waivers in specified situations because the amendment provides a benefit to home health agencies.

Any interested person may make written comments on the proposed amendment on or before October 26, 2010. Comments should be directed to Mary Ellen Imlau, 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.

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

The following amendment is proposed.

Amend paragraph **78.9(1)“1”** as follows:

l. Physician’s signature and date. ~~The date of the signature shall be within the certification period.~~
The plan of care must be signed and dated by the physician before the claim for service is submitted for reimbursement.

ARC 9133B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 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 allow pharmacies that administer the influenza vaccine available through the Vaccines for Children (VFC) program to receive reimbursement for administration of the vaccine to Medicaid members.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9132B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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

Any interested person may make written comments on the proposed amendments on or before October 26, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4.

ARC 9120B**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 135B.7, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 51, “Hospitals,” Iowa Administrative Code.

The purpose of the proposed amendments is to add Det Norske Veritas (DNV) to the list of hospital accreditation organizations. Current rules specify only two accreditation organizations, The Joint Commission and the American Osteopathic Association. The third organization, Det Norske Veritas, was recently approved by the federal Centers for Medicare & Medicaid Services (CMS) as a hospital accreditation organization.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity. Rather, adoption of the proposed amendments simply adds DNV to the existing list of hospital accreditation organizations.

The proposed amendments were presented to the Hospital Licensing Board at its July 27, 2010, meeting, at which time the Board approved them.

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

The State Board of Health initially reviewed the proposed amendments at its September 8, 2010, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 26, 2010. 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.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

The following amendments are proposed.

ITEM 1. Amend subrules 51.2(5) and 51.2(6) as follows:

51.2(5) The department shall recognize, in lieu of its own licensure inspection, the comparable inspections and inspection findings of The Joint Commission (JC), ~~or~~ the American Osteopathic Association (AOA), or Det Norske Veritas (DNV), if the department is provided with copies of all requested materials relating to the inspection process. In cases of the initial licensure, the department may require its own inspection when needed in addition to comparable accreditations to allow the hospital to begin operations. The department may also initiate its own inspection when it is determined that the inspection findings of the JC, ~~or the AOA,~~ or DNV are insufficient to address concerns identified as possible licensure issues.

51.2(6) Hospitals not accredited by the JC, ~~or the AOA,~~ or DNV shall be inspected by the department utilizing the current Medicare conditions of participation found in Title XVIII of the federal Social Security Act and 42 CFR Part 482, Subparts A, B, C, D, and E, or 42 CFR Part 485, Subpart F, as of October 1, 2006. Licensed-only hospitals shall be inspected utilizing the requirements of this chapter. The department may promulgate additional standards. The department may recognize, in lieu of its own licensure inspection, the comparable inspection and inspection findings of a Medicare conditions of participation survey.

ITEM 2. Amend rule 481—51.6(135B), introductory paragraph, as follows:

481—51.6(135B) Patient rights and responsibilities. The hospital governing board shall adopt a statement of principles relating to patient rights and responsibilities. In developing a statement of principles, the hospital may use reference statements of patient rights and responsibilities developed by the American Hospital Association, The Joint Commission (JC), the American Osteopathic Association (AOA), Det Norske Veritas (DNV), and other appropriate sources.

ITEM 3. Amend subrule 51.53(7) as follows:

51.53(7) The department shall recognize, in lieu of its own inspection, the comparable inspections and inspections findings of The Joint Commission (JC), ~~or~~ the American Osteopathic Association (AOA), or Det Norske Veritas (DNV) if the department is provided with copies of all requested materials relating to the inspections and the inspection process.

ARC 9121B

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 135B.7, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 51, “Hospitals,” Iowa Administrative Code.

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

The proposed amendment updates the Department's administrative rules dealing with food services provided in hospitals by adopting the Iowa food code as authorized in Iowa Code section 137F.2. Adoption of the Iowa food code will bring hospital food service requirements into conformance with all other food establishment requirements in the state of Iowa. Additionally, federal Medicare regulations require that hospitals use the latest edition of the United States Food and Drug Administration Food Code for food service purposes.

The Department has determined that there is no fiscal impact associated with the proposed amendment as it simply brings hospital food service and preparation techniques into conformance with the requirements for all food service establishments. Neither is any waiver language provided as the federal Medicare regulations require hospitals to use the latest edition of the Food Code for food service purposes.

The proposed amendment was presented to the Hospital Licensing Board at its July 27, 2010, meeting at which time it was approved by the Board.

The State Board of Health initially reviewed the proposed amendment at its September 8, 2010, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 26, 2010. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to david.werning@dia.iowa.gov.

This amendment is intended to implement Iowa Code sections 10A.104(5) and 135B.7.

The following amendment is proposed.

Rescind rule 481—51.20(135B) and adopt the following **new** rule in lieu thereof:

481—51.20(135B) Food and nutrition services.

51.20(1) Food and nutrition service definition. “Food service” means providing safe, satisfying, and nutritionally adequate food for patients through the provision of appropriate staff, space, equipment, and supplies. “Nutrition service” means providing assessment and education to ensure that the nutritional needs of the patients are met.

51.20(2) General requirements.

a. All food shall be handled, prepared, served, and stored in compliance with the requirements of the 2005 Food and Drug Administration Food Code with Supplement adopted under provisions of Iowa Code section 137F.2.

b. The food service shall provide food of the quality and quantity to meet the patient's needs in accordance with physician's orders and, to the extent medically possible, to meet the current Recommended Daily Dietary Allowances, 1989 Edition, adopted by the Food and Nutrition Board of the National Research Council, National Academy of Sciences, and the following:

- (1) Not less than three meals shall be served daily unless contraindicated.
- (2) Not more than 14 hours shall elapse between the evening meal and breakfast of the following day.
- (3) Nourishment between meals shall be available to all patients unless contraindicated by the physician.

(4) Patient food preferences shall be respected as much as possible, and substitutes shall be offered through use of appropriate food groups.

(5) When food is provided by a contract food service, all applicable requirements set forth herein shall be met. The hospital shall maintain adequate space, equipment, and staple food supplies to provide patient food service in emergencies.

c. Policies and procedures shall be developed and maintained in consultation with representatives of the medical staff, nursing staff, food and nutrition service staff, pharmacy staff, and administration to govern the provision of food and nutrition services. Policies and procedures shall be approved by the medical staff, administration, and governing body.

d. A current diet manual approved by the dietitian and the medical staff shall be used as the basis for diet orders and for planning therapeutic diets. The diet manual shall be reviewed, revised and updated

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

at least every five years. Copies of the diet manual shall be readily available to all medical, nursing, and food service personnel.

e. Therapeutic diets shall be provided as prescribed by the attending physician and shall be planned, prepared, and served with supervision or consultation from the licensed dietitian. Persons responsible for therapeutic diets shall have sufficient knowledge of food to make appropriate substitutions when necessary.

f. The patient's diet card shall state likes, dislikes, food allergies, and other pertinent information.

g. Menus.

(1) Menus for regular and therapeutic diets shall be written, approved, dated and available in the food service area at least one week in advance.

(2) If meals served vary from the planned menu, the change shall be noted in writing as part of the available menu. A copy of the menu as served shall be kept on file for at least 30 days.

(3) Menus should be planned with consideration for cultural and religious background and food habits of patients.

(4) Standardized recipes with nutritional analysis adjusted to number of portions shall be maintained and used in food preparation.

h. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance. Food shall be served attractively at appropriate and safe temperatures and in a form to meet individual needs.

i. Nutritional care.

(1) Nutrition screening shall be conducted by qualified hospital staff to determine the patient's need for a comprehensive nutrition assessment by the licensed dietitian.

(2) Nutritional care shall be integrated in the patient care plan, as appropriate, based upon the patient's diagnosis and length of stay.

(3) The licensed dietitian shall record in the patient's medical record any observations and information pertinent to medical nutrition therapy.

(4) Pertinent dietary records shall be included in the patient's transfer discharge record to ensure continuity of nutritional care.

(5) Upon discharge, nutrition counseling and education shall be provided to the patient and family as ordered by the physician, requested by the patient or deemed appropriate by the licensed dietitian.

j. In-service training, in accordance with hospital policies, shall be provided for all food and nutrition service personnel. A record of subject areas covered, date, and duration of each session and attendance lists shall be maintained. In-service records shall be kept for a minimum of one year.

k. On the nursing units, a separate patient food storage area shall be maintained that ensures proper temperature control.

51.20(3) *Food and nutrition service staff.*

a. A licensed dietitian shall be employed on a full-time, part-time or consulting basis. Part-time or consultant services shall be provided on the premises at appropriate times on a regularly scheduled basis. These services shall be of sufficient duration and frequency to provide continuing liaison with medical and nursing staffs, advice to the administrator, patient counseling, guidance to the supervisor and staff of the food and nutrition service, approval of all menus, and participation in the development or revision of departmental policies and procedures and in planning and conducting in-service education programs.

b. If a licensed dietitian is not employed full-time, then one must be employed on a part-time or consultation basis with an additional full-time person who has completed a 250-hour dietary manager course and who shall be employed to be responsible for the operation of the food service.

c. Sufficient food service personnel shall be employed, oriented, trained, and their working hours scheduled to provide for the nutritional needs of the patients and to maintain the food service areas. If food service employees are assigned duties in other service areas, those duties shall not interfere with the sanitation, safety, or time required for food service work assignments.

51.20(4) *Food service equipment and supplies.* Equipment necessary for preparation and maintenance of menus, records, and references shall be provided. At least one week's supply of staple foods and a reasonable supply of perishable foods shall be maintained on the premises. Supplies shall be appropriate to meet the requirements of the menu.

ARC 9119B

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 135B.7, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 51, “Hospitals,” Iowa Administrative Code.

The proposed amendments adopt the 2010 Guidelines for Design and Construction of Health Care Facilities produced by the Facility Guidelines Institute as the minimum construction standards for hospitals and off-site premises licensed under Iowa Code chapter 135B.

The proposed amendments also contain provisions stipulating that hospitals and off-site premises shall be deemed to be in compliance with the minimum construction standards if the buildings met the construction standards in place at the time the buildings were built. Additional language in the proposed amendments requires that all hospitals and off-site premises meet the requirements of the State Building Code and the Life Safety Code.

The proposed rewrite of the minimum construction standards contains requirements for the filing of all construction documents with the State Fire Marshal’s office. The proposed amendments closely follow the submission requirements in the administrative rules of the State Fire Marshal’s office and further require that the responsible design professional certify that the building plans meet the requirements of the 2010 Guidelines unless a variance has been granted.

Proposed subrule 51.50(3) contains the provisions under which variances from the minimum construction standards may be sought. The introductory paragraph is expanded to include some of the components of a variance request, and several factors that the Director shall consider when making a determination.

Additionally, the administrative rules of the State Fire Marshal’s office, Building Code Bureau, contain the inspection standards to be used when existing buildings are inspected; these proposed amendments adopt the administrative rule language of the State Fire Marshal’s office for the inspection of existing hospitals and off-site premises.

Item 2 of the proposed amendments rescinds rules dealing with minimum construction standards in effect for specific periods. With the adoption of the proposed amendments in Item 1, it will not be necessary to differentiate the various construction guidelines used because the amendments in Item 1 contain language which deems existing facilities to be in compliance with previous editions of the guidelines.

The Department is unable to determine whether there is a fiscal impact associated with these proposed amendments. Hospitals and off-site premises are routinely and regularly designed using the latest construction guidelines. Adoption of the proposed amendments simply requires that all new construction plans be designed in accordance with the 2010 Guidelines. The proposed amendments also contain a provision under which any regulated entity may seek a variance from these requirements.

These amendments were approved by the Hospital Licensing Board at its July 27, 2010, meeting.

The State Board of Health initially reviewed the proposed amendments at its September 8, 2010, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 26, 2010. 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.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

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

The following amendments are proposed.

ITEM 1. Rescind rule 481—51.50(135B) and adopt the following **new** rule in lieu thereof:

481—51.50(135B) Minimum standards for construction.

51.50(1) Minimum standards. Hospitals and off-site premises licensed under this chapter shall be built in accordance with the following construction standards.

a. Construction shall be in accordance with the standards set forth in Part 2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, produced by the Facility Guidelines Institute.

Existing hospitals and off-site premises built in compliance with prior editions of the hospital construction guidelines will be deemed in compliance with subsequent regulations, with the exception of any new renovations, additions, functional alterations, or changes in utilization to existing facilities, which shall meet the standards specified in this subrule.

b. In jurisdictions without a local building code enforcement program, the construction shall be in conformance with the state building code, as authorized by Iowa Code section 103A.7, in effect at the time of plan submittal for review and approval. In jurisdictions with a local building code enforcement program, local building code enforcement must include both the adoption and enforcement of a local building code through plan reviews and inspections.

A hospital or off-site premises that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the hospital or off-site premises is in compliance with the provisions of rule 661—205.5(100). In any case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the hospital shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

Rule 661—301.5(103A) shall not be applicable to hospitals and other structures required under this chapter to meet the provisions of the state building code.

c. The design and construction of a hospital or off-site premises shall be in conformance with NFPA 101: Life Safety Code 2000 as published by the National Fire Protection Association.

51.50(2) Submission of construction documents.

a. Submissions of architectural technical documents, engineering documents, and plans and specifications to the building code commissioner are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

b. “Responsible design professional” means a registered architect or licensed professional engineer who signs the documents submitted.

c. Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code.

d. In section 107.2.5 of the International Building Code, 2009 edition, the word “permit” shall be replaced by the words “plan review.”

e. Submittals to the commissioner shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.

f. The responsible design professional shall certify that the building plans meet the requirements specified in subrule 51.50(1), unless a variance has been granted pursuant to subrule 51.50(3).

51.50(3) Variances. The director of the department may grant variances to building and construction guidelines as contained in the 2010 edition of the Guidelines for Design and Construction of Health Care Facilities. The hospital or off-site premises must submit a variance request in writing to the director. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the variance. The facility must demonstrate its ability to completely fulfill all other requirements of the service. The director shall make a written determination of the request. In determining whether a

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

variance request shall be granted, the director shall give consideration to the following conditions and to any other conditions the director deems relevant:

- a. The design and planning for the specific property shall offer improved or compensating features which provide equivalent desirability and utility;
- b. Alternate or special construction methods, techniques, and mechanical equipment shall offer equivalent durability; utility; safety; structural strength and rigidity; sanitation; odor control; protection from corrosion, decay and insect attack; and quality of workmanship;
- c. The health, safety or welfare of any patient shall not be endangered;
- d. The variance shall be limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;
- e. Occupancy and function of the building shall be considered; and
- f. The type of licensing shall be considered.

ITEM 2. Rescind and reserve rules **481—51.51(135B)** and **481—51.52(135B)**.

ARC 9117B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 45, “Boat Motor Regulations,” Iowa Administrative Code.

The proposed amendments replace the use of “no-wake zones” with defined speed restrictions of five miles per hour for the listed areas.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 28, 2010. Such written materials should be directed to Susan Stocker, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail susan.stocker@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-0122.

Also, there will be a public hearing on October 28, 2010, from 1 to 3 p.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 462A.

The following amendments are proposed.

ITEM 1. Amend subrules 45.4(2) and 45.4(3) as follows:

45.4(2) *Horsepower limitation exceptions for artificial lakes of 100 acres or less.* Motors larger than 1½ horsepower may be operated on the following lakes as designated:

Avenue of the Saints Lake, Bremer County—unrestricted horsepower at a ~~no-wake~~ speed not greater than 5 miles per hour.

Banner Lakes at Summerset State Park, Warren County—motor boats of outboard or inboard/outdrive type and unrestricted horsepower at a ~~no-wake~~ speed not greater than 5 miles per hour.

NATURAL RESOURCE COMMISSION[571](cont'd)

Beaver Lake, Dallas County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Beeds Lake, Franklin County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Black Hawk Pits, Sac County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Crawford Creek Recreation Area Lake, Ida County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Deer Creek Lake, Plymouth County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Fogle Lake, Ringgold County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

George Wyth Lake, Black Hawk County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Lake Iowa, Iowa County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Lake of Three Fires, Taylor County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Loch Ayr, Ringgold County—outboard motors not greater than 100 horsepower.

Meadow Lake, Adair County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Otter Creek Lake, Tama County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Silver Lake, Delaware County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Thayer Lake, Union County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

Williamson Pond, Lucas County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour.

45.4(3) *Horsepower limitations for artificial lakes of more than 100 acres in size.* On artificial lakes of more than 100 acres, vessels may be operated with unrestricted horsepower at a ~~no-wake~~ speed not greater than 5 miles per hour except as otherwise permitted by subrule 45.4(2). The following artificial lakes have special horsepower restrictions:

a. Green Valley Lake, Union County—no inboard or racing-type craft are permitted. Vessels must be operated at a ~~no-wake~~ speed not greater than 5 miles per hour except in designated ski areas as established in 571—36.7(462A).

b. Lake Icaria, Adams County—motorboats of outboard or inboard/outdrive type. Vessels must be operated at a ~~no-wake~~ speed not greater than 5 miles per hour when within 50 feet of another vessel which is not underway or is operating at a ~~no-wake~~ speed not greater than 5 miles per hour. Additional speed and distance regulations apply as established in 571—40.20(462A).

c. Lake McBride, Johnson County—unrestricted horsepower operated at a ~~no-wake~~ speed not greater than 5 miles per hour only from September 8 through May 20 of each year. A motorboat with a power unit exceeding 10 horsepower shall not be permitted the remainder of the year.

d. Three Mile Lake, Union County—motorboats of outboard or inboard/outdrive type with power not to exceed 200 horsepower. Vessels must be operated at a ~~no-wake~~ speed not greater than 5 miles per hour when within 50 feet of another vessel which is not underway or is operating at a ~~no-wake~~ speed not greater than 5 miles per hour. Additional speed and distance regulations apply as established in 571—40.44(462A).

ITEM 2. Amend rule 571—45.5(462A), introductory paragraph, as follows:

571—45.5(462A) Artificial marshes. A motorboat equipped with any power unit mounted or carried aboard the vessel may be operated on the following listed artificial marshes under the jurisdiction of the

NATURAL RESOURCE COMMISSION[571](cont'd)

department of natural resources at a ~~no-wake~~ speed not greater than 5 miles per hour between January 1 and August 31 and with no speed restrictions between September 1 and December 31.

ARC 9118B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, “State Parks and Recreation Areas,” and Chapter 62, “State Forest Camping,” Iowa Administrative Code.

The proposed amendments:

1. Increase the percentage of campsites that may be reserved to 75 percent.
2. Remove the 3 percent credit card processing fee referenced throughout the rules.
3. Establish an online reservation change fee of \$5 and increase the call center change fee to \$7.
4. Establish an online cancellation fee of \$5 and increase the call center cancellation fee to \$7.
5. Change the last day to make a rental facility reservation during the off season to seven days prior to the arrival date.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 26, 2010. Such written material should be directed to Sherry Arntzen, State Parks Bureau, Department of Natural Resources, Wallace State Office Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0334. Comments may be sent by fax to (515)281-6794 or by E-mail to Sherry.Arntzen@dnr.iowa.gov. Persons who wish to convey their views orally should contact Sherry Arntzen at (515)242-6233.

There will be a public hearing on October 26, 2010, at 2 p.m. in the Fifth Floor East and West Conference Rooms in the Wallace State Office Building, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code sections 461A.3, 461A.47, 461A.48, 461A.50 and 461A.57.

The following amendments are proposed.

ITEM 1. Amend subparagraph **61.3(2)“b”(2)** as follows:

(2) ~~Fifty~~ Seventy-five percent of the total number of campsites in each individual campground shall be designated as reservable sites on the reservation system. The determination of which campsites shall be included in the ~~50~~ 75 percent reservable designation shall be the responsibility of the park staff in each park. Park staff shall include a combination of electric, nonelectric and sewer/water sites while taking into consideration campsite characteristics such as location, shade and size. The department ~~shall~~ will review the percentage of reservable sites and usage on a biennial basis and determine whether the percentage of reservable campsites should be changed. A reservable campsite ~~shall~~ will be identified with a reservable site marker on the campsite post.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 2. Amend subrule 61.3(4) as follows:

61.3(4) Reservation transaction fees.

a. *Reservation fee.* A nonrefundable reservation fee shall be charged for each reservation made per campsite or rental facility regardless of the length of stay. The one-time fee is per reservation and is not charged per day or night. This fee is in addition to the camping fees or rental fees established in subrules 61.4(1) and 61.5(1). The reservation fee varies depending upon the method used when the reservation is made.

(1) Internet reservation — ~~\$4 + 3 percent credit card processing fee (if applicable).~~

(2) Telephone reservation — ~~\$6 + 3 percent credit card processing fee (if applicable).~~

b. *Change fee.* A fee of ~~\$5 + 3 percent credit card processing fee (if applicable)~~ shall be charged to change an existing reservation.

(1) Reservation change made through the Internet — \$5.

(2) Reservation change made over the telephone — \$7.

c. *Cancellation fee.* A fee of ~~\$5~~ shall be charged to cancel a reservation.

(1) Reservation cancellation made through the Internet — \$5.

(2) Reservation cancellation made over the telephone — \$7.

ITEM 3. Amend subparagraph **61.3(5)“b”(2)** as follows:

(2) Rentals for October 1 to April 30. The reservation window for rental facilities is 12 months to ~~14~~ 7 days prior to the arrival date.

ITEM 4. Amend paragraph **62.4(2)“b”** as follows:

b. ~~Fifty~~ Seventy-five percent of the total number of campsites in each individual campground shall be designated as reservable sites on the reservation system. The determination of which campsites shall be included in the ~~50~~ 75 percent reservable designation shall be the responsibility of the park staff in each park. Park staff shall include a combination of electric, nonelectric and sewer/water sites while taking into consideration campsite characteristics such as location, shade, and size. The department ~~shall~~ will review the percentage of reservable sites and usage on a biennial basis and determine whether the percentage of reservable campsites should be changed. A reservable campsite ~~shall~~ will be identified with a reservable site marker on the campsite post.

ITEM 5. Amend subrule 62.4(4) as follows:

62.4(4) Reservation transaction fees.

a. *Reservation fee.* A nonrefundable reservation fee shall be charged for each reservation made per campsite regardless of the length of stay. The one-time fee is per reservation and is not charged per day or night. This fee is in addition to the camping fees established in 571—subrule 61.4(1). The reservation fee varies depending upon the method used when the reservation is made.

(1) Internet reservation — ~~\$4 + 3 percent credit card processing fee (if applicable).~~

(2) Telephone reservation — ~~\$6 + 3 percent credit card processing fee (if applicable).~~

b. *Change fee.* A fee of ~~\$5 + 3 percent credit card processing fee (if applicable)~~ shall be charged to change an existing reservation.

(1) Reservation change made through the Internet — \$5.

(2) Reservation change made over the telephone — \$7.

c. *Cancellation fee.* A fee of ~~\$5~~ shall be charged to cancel a reservation.

(1) Reservation cancellation made through the Internet — \$5.

(2) Reservation cancellation made over the telephone — \$7.

ARC 9115B

PHARMACY BOARD[657]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives notice that a public hearing will be held on Monday, November 1, 2010, at 2 p.m. at the Board of Pharmacy

PHARMACY BOARD[657](cont'd)

office, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa, in order to receive oral and written comments on proposed amendments to Chapter 3, "Pharmacy Technicians," and Chapter 5, "Pharmacy Support Persons," Iowa Administrative Code.

Notice of Intended Action was published in the June 30, 2010, Iowa Administrative Bulletin as **ARC 8891B**.

The proposed amendments define "uncertified pharmacy technician" and amend the definition of "pharmacy technician" to include pharmacy technician trainee, certified pharmacy technician, and uncertified pharmacy technician; establish the requirements for extension of the deadline for national certification to December 31, 2013, for a qualifying pharmacy technician; specify and clarify the technical functions that may be delegated to each of the pharmacy technician classifications; clarify references to pharmacy technicians or to specific classifications of pharmacy technicians throughout the chapters; and eliminate outdated language and information regarding national certification and registrations issued prior to July 1, 2010.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on November 1, 2010, or may present oral or written comments at the hearing. 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.

ARC 9116B

PHARMACY BOARD[657]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby gives notice that a public hearing will be held on Thursday, November 4, 2010, at 1:30 p.m. at the Board of Pharmacy office, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa, in order to receive oral and written comments on the proposed rescission of current Chapter 11, "Drugs in Emergency Medical Service Programs," Iowa Administrative Code, and adoption of a new Chapter 11 with the same title.

Notice of Intended Action was published in the June 30, 2010, Iowa Administrative Bulletin as **ARC 8923B**. More than 25 interested parties petitioned the Board, as provided in Iowa Code section 17A.4(1)"b," for an opportunity to present oral or written comments regarding the proposed rules.

Any interested person may present written comments, data, views, and arguments on the proposed rules not later than 4:30 p.m. on November 4, 2010, or may present oral or written comments at the hearing. 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.

ARC 9113B

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 section 421.17, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 71, "Assessment Practices and Equalization," Iowa Administrative Code.

Item 1 amends rule 701—71.3(421,428,441), valuation of agricultural real estate, to remove the Iowa Crop and Livestock Reporting Service as a potential source of data for assessors, which is no longer an

REVENUE DEPARTMENT[701](cont'd)

applicable agency. The rule lists other sources of data derived from the United States Department of Agriculture (USDA).

Item 2 rescinds subrule 71.12(1), determination of aggregate actual values, and adopts a new subrule from which references to the Iowa Crop and Livestock Reporting Service and specific divisions of the USDA have been removed. The subrule lists other sources of data derived from the USDA. In addition, the new subrule incorporates the numbering system required in the Iowa Administrative Code.

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

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

The Department has determined that these proposed amendments 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 8, 2010, to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 26, 2010. Such written comments should be directed to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by October 26, 2010.

These amendments are intended to implement Iowa Code chapter 441.

The following amendments are proposed.

ITEM 1. Amend rule 701—71.3(421,428,441) as follows:

701—71.3(421,428,441) Valuation of agricultural real estate. Agricultural real estate shall be assessed at its actual value as defined in Iowa Code section 441.21 by giving exclusive consideration to its productivity and net earning capacity. In determining the actual value of agricultural real estate, city and county assessors shall use the “Iowa Real Property Appraisal Manual” and any other guidelines issued by the department of revenue pursuant to Iowa Code section 421.17(18).

71.3(1) Productivity. In determining the productivity and net earning capacity of agricultural real estate, the assessor shall also use available data from Iowa State University, ~~the Iowa crop and livestock reporting service;~~ the United States Department of Agriculture (USDA) National Agricultural Statistics Service, the USDA Farm Service Agency, the Iowa department of revenue, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed. The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and spread such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

71.3(2) Agricultural factor. In order to determine a productivity value for agricultural buildings and structures, assessors must make an agricultural adjustment to the market value of these buildings and structures by developing an “agricultural factor” for the assessors’ jurisdictions. The agricultural factor for each jurisdiction is the product of the ratio of the productivity and net earning capacity value per acre as determined under subrule 71.12(1) over the market value of agricultural land within the assessing jurisdiction. The resulting ratio is then applied to the actual value of the agricultural buildings and structures as determined under the Iowa Real Property Appraisal Manual prepared by the department. The agricultural factor must be applied uniformly to all agricultural buildings and structures in the

REVENUE DEPARTMENT[701](cont'd)

assessing jurisdiction. As an example, if a building’s actual value is \$500,000 and the agricultural factor is 30 percent, the productivity value of that building is \$150,000. See *H & R Partnership v. Davis County Board of Review*, 654 N.W.2d 521 (Iowa 2002). The 2007, 2008, and 2009 average of the market value of land will be used in determining the agricultural factor for assessment year 2011. A five-year market value average of land for years used to determine the productivity formula will be used to determine the agricultural factor for assessment year 2013 and subsequent assessment years.

71.3(3) Classification. Land classified as agricultural real estate includes the land beneath any dwelling and appurtenant structures located on that land and shall be valued by the assessor pursuant to rule 701—71.3(421,428,441). An assessor shall not value a part of the land as agricultural real estate and a part of the land as if it is residential real estate.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

ITEM 2. Rescind subrule 71.12(1) and adopt the following **new** subrule in lieu thereof:

71.12(1) Agricultural real estate.

a. *Use of income capitalization study.* The equalized valuation of agricultural realty shall be based upon its productivity and net earning capacity and shall be determined in accordance with the provisions of this subrule. Data used shall pertain to crops harvested during the five-year period ending with the calendar year in which assessments were last equalized. The equalized valuation of agricultural realty shall be determined for each county as follows:

(1) Computation of county acres. This information shall be obtained from the USDA National Agricultural Statistics Service.

1. Total acres in farms: Total acreage used for agricultural purposes.
2. Corn acres: Sum of corn acres harvested including silage, popcorn and acres planted for sorghum.
3. Oats and wheat acres: Sum of oats and wheat acres harvested.
4. Soybean acres: Soybean acres harvested.
5. Hay acres: All hay acres harvested.
6. Pasture acres: All pasture acres. Total pasture acres shall be determined by multiplying the total acres in farms reported by the USDA National Agricultural Statistics Service by the percentage which total pasture land as reported in the most recent U.S. Census of Agriculture bears to the total acreage in farmland also reported in the most recent U.S. Census of Agriculture. The amount of tillable and nontillable pasture acres shall be determined as follows:

| | | | |
|----|--|-------|-------|
| 1. | From the most recent U.S. Census of Agriculture obtain the following: | | |
| | Cropland used only for pasture and grazing | _____ | acres |
| | Woodland pasture | _____ | acres |
| | Pasture land and rangeland (other than cropland and woodland pasture) | _____ | acres |
| | TOTAL PASTURE LAND (total of above): | _____ | acres |
| | | | |
| 2. | Determine what percentage of the total pasture land is cropland used only for pasture: | _____ | % |
| | | | |
| 3. | Apply the percentage in “2” above to the 5-year average total acres of pasture as determined above to determine the pasture acres to be classified as tillable pasture. The remainder of the 5-year average shall be classified as nontillable pasture land. | _____ | acres |

REVENUE DEPARTMENT[701](cont'd)

7. Government programs: Determine the 5-year average acres participating in applicable government programs. Obtain data from the USDA Farm Service Agency, including but not limited to acreage devoted to the Payment-In-Kind (PIK), diverted and deficiency programs.

8. Other acres: The difference between the total acreage for land uses listed above and the total of all land in farms. Add the total of the corn, oats, soybeans, hay, tillable and nontillable pasture and diverted acres. Subtract this total from total acres in farms. The residual is classified as other acres.

(2) Computation of county yields. This information shall be obtained for each county from the USDA National Agricultural Statistics Service.

1. Corn yield (including silage): Number of bushels of corn harvested for grain per acre.

2. Oat yield (including wheat): Number of bushels of oats harvested per acre.

3. Soybean yield: Number of bushels per acre harvested.

4. Hay yield in tons: Number of tons per acre harvested.

(3) Computation of county gross income.

1. Corn: One-half of the 5-year average production multiplied by the 5-year average price received for corn.

2. Silage: One-half of the 5-year average number of acres devoted to the production of silage multiplied by the 5-year average production per acre for corn. The amount of production so determined shall be added to the 5-year average production for corn and included in the determination of the gross income for corn.

3. Soybeans: One-half of the 5-year average production multiplied by the 5-year average price received.

4. Oats: One-half of the 5-year average production of oats and wheat multiplied by the 5-year average price received for oats.

5. Price adjustment: For corn, soybeans, hay, and oats, the prices used shall be as obtained from the USDA National Agricultural Statistics Service and shall be adjusted to reflect any individual county price conditions prior to the 2007 crop year. For the 2007 crop year and later, the USDA National Agricultural Statistics Service district prices shall be used and shall be adjusted to reflect any individual county price conditions.

6. Government programs: Gross income shall be one-half of the 5-year average amount of cash payments or equivalent (such as PIK bushels) including but not limited to diverted, deficiency and PIK programs as reported by the USDA Farm Service Agency.

7. Hay: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to hay by the product obtained by multiplying one-fourth of the 5-year average hay yield by the 5-year average price received for all types of hay.

8. Tillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to tillable pasture by the product obtained in "hay" above.

9. Nontillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to nontillable pasture by one-half the product obtained in "hay" above.

10. Other acres: Income shall be the product of the number of other acres multiplied by 17 percent of the net income per acre for all other land uses.

(4) Computation of county production costs. The following data and procedures shall be used to determine specific county production costs.

1. Basic average landlord production costs. Landlord production costs for corn, soybeans, oats, diverted acres, hay, tillable pasture, nontillable pasture, fertilizer costs, and facilities' costs shall be obtained for each year from Iowa State University.

2. Production cost adjustment. The production costs for corn, soybeans, oats, and hay are adjusted for each county by multiplying the difference between the 5-year state average yield per acre and the 5-year county average yield per acre by the 5-year average facilities' costs. If a county's yield exceeds the state yield, production costs are increased by this amount. If a county's yield is less than the state yield, production costs are reduced by this amount.

REVENUE DEPARTMENT[701](cont'd)

3. Fertilizer cost adjustment. The adjustment for fertilizer costs is determined as follows: Multiply the difference between the 5-year state average corn yield per acre and the 5-year county average corn yield per acre obtained from the USDA National Agricultural Statistics Service by the fertilizer cost amount per bushel determined by dividing the statewide average cost of landlord's share of fertilizer cost per acre from Iowa State University by the statewide average corn yield per acre to produce the corn fertilizer cost per bushel adjustment. This amount is then multiplied by the 5-year county average corn acres determined in (2) above.

4. Expense adjustments. If a county's 5-year average corn yield is greater than the state 5-year average corn yield, this amount is allowed as an additional expense. If the county's average is less than the state average, this amount is an expense reduction.

5. Liability insurance cost adjustment. The 5-year average per acre cost of obtaining tort liability insurance shall be determined.

(5) Computation of county net income. From the total gross income, subtract the total expenses. Divide the resulting total by the total number of acres.

(6) Computation of dwelling adjustment factor. The amount determined in (5) above shall be reduced by 10.6 percent.

(7) Computation of county tax adjustment. Subtract the 5-year average per acre real estate taxes levied for land and structures including drainage and levee district taxes but excluding those levied against agricultural dwellings from the amount determined in (6) above. Taxes shall be the tax levied for collection during the 5-year period as reported by county auditors, and reduced by the amount of the agricultural land tax credit.

(8) Calculation of county valuation per acre. Divide the net income per acre ((7) above) for each county as determined above by the capitalization rate specified in Iowa Code section 441.21. The quotient shall be the actual per acre equalized valuation of agricultural land and structures for the current equalization year.

b. Use of other relevant data. The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue, to determine the level of assessment of agricultural real estate.

c. Determination of value. The aggregate actual value of agricultural real estate in each county shall be determined by multiplying the equalized per acre value by the number of acres of agricultural real estate reported on the abstract of assessment for the current year, adjusted where necessary by the results of any field investigations conducted by the department of revenue and any other relevant data available.

ARC 9122B**SCHOOL BUDGET REVIEW COMMITTEE[289]****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 257.30, the School Budget Review Committee hereby proposes to amend Chapter 1, “Organization,” Iowa Administrative Code.

2010 Iowa Acts, House File 2030, changes the composition of the Committee and makes the Director of the Department of Education a nonvoting member of the Committee. Proposed Items 1 and 2 incorporate these changes. The amendment in Item 3 adds the street address for the Committee. Item 4 incorporates a rule similar to rule 289—6.2(257) into Chapter 1 and proposes to change the number of meetings from four to three because the May meeting is not held a majority of the time.

A waiver provision is provided in 289—Chapter 8.

SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

Interested individuals may make written comments on the proposed amendments on or before October 26, 2010, at 4:30 p.m. Comments on the proposed amendments should be directed to Su McCurdy, Administrative Consultant, Iowa Department of Education, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0146; telephone (515)281-4738; E-mail su.mccurdy@iowa.gov; or fax (515)281-7700.

These amendments are intended to implement Iowa Code section 282.31 and 2009 Iowa Code Supplement sections 273.2, 273.3 and 282.30 and section 257.30 as amended by 2010 Iowa Acts, House File 2030, section 2.

The following amendments are proposed.

ITEM 1. Amend **289—Chapter 1**, title, as follows:

ORGANIZATION AND ADMINISTRATIVE PROCEDURES

ITEM 2. Amend rule 289—1.1(257) as follows:

289—1.1(257) School budget review committee. ~~The school budget review committee (SBRC) is established in the department of education for administrative purposes to review and make recommendations on any rules, regulations, directives, or forms relating to budgeting and accounting in school districts and area education agencies (AEA); to confer with local school districts and make recommendations on any budgeting or accounting matters; and to grant supplemental aid or to grant a modified allowable growth in the budget year for any school district or AEA that has unusual circumstances that create a need for additional funds for operations or that must abate an environmental hazard due to a state or federal regulation. The SBRC may grant use of the unexpended general fund for facilities under certain circumstances specified in the Iowa Code. The SBRC has the authority to direct the director of the department of education or the director of the department of management to make studies and investigations of school costs in any school district.~~

1.1(1) Membership. The SBRC shall be composed of the following ~~five~~ six members:

a. The director of the department of education who shall serve as chairperson and conduct all meetings unless another member of the committee is asked by the director of the department of education to assume this role. The director of the department of education is a nonvoting member of the committee.

b. The director of the department of management who shall serve as secretary unless ~~direction is given~~ another member of the committee or department of education staff or department of management staff is asked by the director of the department of management ~~to another person~~ to assume this role. The designated secretary shall not be a voting member, unless the designee is a regular member of the committee.

c. ~~Three~~ Four public members who are knowledgeable in the areas of school finance or public finance issues shall be appointed by the governor to represent the public. All committee members shall perform their assigned duties until a replacement has been appointed.

d. No change.

1.1(2) Qualifications of public members. The ~~three~~ four public members shall have general knowledge in the areas of Iowa school finance or public finance. At least one of the public members shall possess a master's or doctoral degree in which areas of school finance, economics or statistics are an integral component, or shall have equivalent experience in an executive administrative or senior research position in the education or public administration field.

1.1(3) and 1.1(4) No change.

ITEM 3. Amend rule 289—1.2(257) as follows:

289—1.2(257) Mailing address. The mailing address for all operations of the SBRC is: Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-0146.

SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

ITEM 4. Adopt the following new rule 289—1.4(257):

289—1.4(257) Hearings.

1.4(1) Number. The committee shall meet and hold hearings each year and shall continue in session until it has reviewed budgets of school districts and completed the other duties as found in 2009 Iowa Code Supplement sections 257.30 and 257.31 as amended by 2010 Iowa Acts, House File 2030, and Iowa Code sections 257.32 and 260C.18B. A minimum of three sessions to hold hearings shall be scheduled each fiscal year and shall be held during the months of October, December, and March. Revisions to these regularly scheduled sessions may be made if there are scheduling conflicts, if the SBRC determines that additional sessions are necessary, or if there are not sufficient hearing requests to hold a session.

1.4(2) Notification to legislators and others.

a. Legislators shall be notified of hearings of the SBRC for specific school districts, area education agencies, or community colleges in their constituencies. Such notification may be written, oral, or electronic.

b. Public notice of all hearings scheduled by the SBRC shall be posted by the department of education on the department's Web site and on the public notice bulletin board on the first floor of the Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa.

1.4(3) Hearing procedures. The chairperson shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

1.4(4) Quorum.

a. Three voting members present shall constitute a quorum of the SBRC, and a quorum must be present to conduct a hearing at which official action is taken. Members may be present by electronic media.

b. If only three members are present, three favorable votes are necessary to pass a motion.

ARC 9124B**SCHOOL BUDGET REVIEW COMMITTEE[289]****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 257.30, the School Budget Review Committee hereby proposes to amend Chapter 6, “Duties and Operational Procedures,” Iowa Administrative Code.

The Committee is proposing changes to its organizational chapter, 289—Chapter 1, in Notice **ARC 9122B** published herein. The rule proposed to be rescinded in this rule making will be incorporated into Chapter 1.

A waiver provision is provided in 289—Chapter 8.

Interested individuals may make written comments on the proposed amendment on or before October 26, 2010, at 4:30 p.m. Comments on the proposed amendment should be directed to Su McCurdy, Administrative Consultant, Iowa Department of Education, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0146; telephone (515)281-4738; E-mail su.mccurdy@iowa.gov; or fax (515)281-7700.

This amendment is intended to implement 2010 Iowa Acts, House File 2030.

The following amendment is proposed.

Rescind and reserve rule **289—6.2(257)**.

ARC 9125B**SCHOOL BUDGET REVIEW COMMITTEE[289]****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 257.30, the School Budget Review Committee hereby proposes to rescind Chapter 7, “On-Time Funding for Increased Enrollment,” Iowa Administrative Code.

Chapter 7 was adopted in 1999 to implement Iowa Code section 257.13, subsections 4 through 6. Funding for increased enrollment has never been provided, and these subsections were rescinded by 2000 Iowa Acts, chapter 1055. The rules in Chapter 7 now serve no purpose and should be rescinded.

A waiver provision is provided in 289—Chapter 8.

Interested individuals may make written comments on the proposed amendment on or before October 26, 2010, at 4:30 p.m. Comments on the proposed amendment should be directed to Su McCurdy, Administrative Consultant, Iowa Department of Education, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0146; telephone (515)281-4738; E-mail su.mccurdy@iowa.gov; or fax (515)281-7700.

This amendment is intended to implement Iowa Code section 257.30.

The following amendment is proposed.

Rescind and reserve **289—Chapter 7**.

ARC 9126B**SCHOOL BUDGET REVIEW COMMITTEE[289]****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 257.30, the School Budget Review Committee hereby proposes to amend Chapter 8, “Waivers or Variances from Administrative Rules,” Iowa Administrative Code.

During a routine review of rules, Department of Education staff discovered that Chapter 8 should be amended to reflect that waiver requests are handled by the Committee and not by the Department. The proposed amendments in Items 1 to 3 address this discrepancy. Item 4 also adds more detail to the mailing address of the Committee.

A waiver provision is provided in 289—Chapter 8.

Interested individuals may make written comments on the proposed amendments on or before October 26, 2010, at 4:30 p.m. Comments on the proposed amendments should be directed to Su McCurdy, Administrative Consultant, Iowa Department of Education, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0146; telephone (515)281-4738; E-mail su.mccurdy@iowa.gov; or fax (515)281-7700.

These amendments are intended to implement Iowa Code sections 257.30 and 282.31.

The following amendments are proposed.

SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

ITEM 1. Rescind the definitions of “Board,” “Department” and “Director” in rule **289—8.1(17A,ExecOrd11)**.

ITEM 2. Strike “department” wherever it appears in rules **289—8.3(17A,ExecOrd11)**, **289—8.6(17A,ExecOrd11)**, **289—8.7(17A,ExecOrd11)**, **289—8.8(17A,ExecOrd11)** and **289—8.12(17A,ExecOrd11)** and insert “committee” in lieu thereof.

ITEM 3. Strike “director” wherever it appears in rules **289—8.4(17A,ExecOrd11)**, **289—8.10(17A,ExecOrd11)**, **289—8.11(17A,ExecOrd11)**, **289—8.13(17A,ExecOrd11)**, **289—8.15(17A,ExecOrd11)** and **289—8.16(17A,ExecOrd11)** and insert “committee” in lieu thereof.

ITEM 4. Amend rule 289—8.5(17A,ExecOrd11) as follows:

289—8.5(17A,ExecOrd11) Filing of petition. All petitions for waiver must be submitted in writing to the ~~Director, Department of Education~~ School Budget Review Committee, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

ARC 9142B

SECRETARY OF STATE[721]

Notice of Termination

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” the Secretary of State hereby terminates the rule making initiated by its Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” published in the Iowa Administrative Bulletin as **ARC 8780B** on June 2, 2010. The amendments were also Adopted and Filed Emergency as **ARC 8779B** and published on the same date.

The period for comments passed without the Secretary’s receiving any comments requiring changes to the amendments as they appeared in the Iowa Administrative Bulletin on June 2, 2010. The Secretary of State finds no further need to proceed with rule making for **ARC 8780B**.

ARC 9141B

SECRETARY OF STATE[721]

Notice of Termination

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” the Secretary of State hereby terminates the rule making initiated by its Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” published in the Iowa Administrative Bulletin as **ARC 8778B** on June 2, 2010. The amendments were also Adopted and Filed Emergency as **ARC 8777B** and published on the same date.

The period for comments passed without the Secretary’s receiving any comments requiring changes to the amendments as they appeared in the Iowa Administrative Bulletin on June 2, 2010. The Secretary of State finds no further need to proceed with rule making for **ARC 8778B**.

ARC 9140B**SECRETARY OF STATE[721]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

These amendments give county commissioners the ability to use the statewide voter registration system at satellite voting stations and provide security procedures that must be followed.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 26, 2010. Written suggestions or comments should be directed to Sarah Reisetter, Elections Director, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by October 26, 2010.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9139B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement 2009 Iowa Code Supplement section 53.11.

USURY

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

| | |
|--|-------|
| September 1, 2009 — September 30, 2009 | 5.50% |
| October 1, 2009 — October 31, 2009 | 5.50% |
| November 1, 2009 — November 30, 2009 | 5.50% |
| December 1, 2009 — December 31, 2009 | 5.50% |
| January 1, 2010 — January 31, 2010 | 5.50% |
| February 1, 2010 — February 28, 2010 | 5.50% |
| March 1, 2010 — March 31, 2010 | 5.75% |
| April 1, 2010 — April 30, 2010 | 5.75% |
| May 1, 2010 — May 31, 2010 | 5.75% |
| June 1, 2010 — June 30, 2010 | 5.75% |
| July 1, 2010 — July 31, 2010 | 5.50% |
| August 1, 2010 — August 31, 2010 | 5.25% |
| September 1, 2010 — September 30, 2010 | 5.00% |

ARC 9149B**HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DIVISION[605]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Homeland Security and Emergency Management Division hereby amends Chapter 9, "Iowa Comprehensive Plan," Iowa Administrative Code.

Iowa Code section 29C.8(3) requires the Administrator of the Homeland Security and Emergency Management Division to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state. This amendment formally adopts the updated Part B: Iowa Hazard Mitigation Plan, which is part of the Iowa Comprehensive Plan.

In compliance with Iowa Code section 17A.4(3), the Homeland Security and Emergency Management Division finds that notice and public participation are impracticable because of the immediate need to formally adopt the Plan so as to be in compliance with federal regulations and funding guidelines.

The Homeland Security and Emergency Management Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and this amendment should be made effective on September 17, 2010, as it confers a benefit upon the citizens of Iowa.

This amendment is also published herein under Notice of Intended Action as **ARC 9150B** to allow for public comment.

The Homeland Security and Emergency Management Division adopted this amendment on September 17, 2010.

This amendment became effective September 17, 2010.

This amendment is intended to implement Iowa Code chapter 29C.

The following amendment is adopted.

Amend rule 605—9.3(29C), introductory paragraph, as follows:

605—9.3(29C) Part B: Iowa Hazard Mitigation Plan. The Part B: Iowa Hazard Mitigation Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted on September 17, ~~2007~~ 2010, published, and maintained by the division. Part B details the state government goals, objectives, and strategies to mitigate a wide range of natural, technological or human-caused disasters in accordance with Section 322 of the Stafford Act, 42 U.S.C. 5165.

[Filed Emergency 9/17/10, effective 9/17/10]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

ARC 9128B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of 2009 Iowa Code Supplement section 29C.20A(2), the Department of Human Services amends Chapter 58, "Emergency Assistance," Iowa Administrative Code.

These amendments add a voucher system for the administration of benefits under the Iowa Disaster Aid Individual Assistance Grant Program as directed by the Iowa General Assembly.

Program rules have required that applicants for assistance first purchase the goods or services they need for disaster recovery and then present receipts for reimbursement. This requirement presents a barrier to applicants who have insufficient resources to make the purchases. Issuance of assistance

HUMAN SERVICES DEPARTMENT[441](cont'd)

through a purchase voucher to the seller of goods or services will enable applicants to replace or repair items without an initial outlay of funds.

These amendments require the county board of supervisors to designate a local administrative entity to administer a voucher system for issuing state individual disaster assistance to county residents. The designated entity must enter into a contract with the Department for determining eligibility of applicants, issuing vouchers to eligible applicants to purchase needed goods and services, and receiving from the Department reimbursement for the voucher purchases. There is no reimbursement for the administrative expenses of the local administrative entity.

These amendments do not provide for waivers in specified situations. Management of a voucher system for residents of a county affected by a disaster is best achieved locally.

The Council on Human Services adopted these amendments September 15, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are contrary to the public interest because the state has experienced recent disasters that have created an immediate need for this assistance.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that these amendments confer a benefit upon the disaster victims affected. Therefore, the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 9129B** to allow for public comment.

These amendments are intended to implement 2009 Iowa Code Supplement section 29C.20A as amended by 2010 Iowa Acts, House File 2294.

These amendments became effective on October 1, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 441—58.2(29C) as follows:

441—58.2(29C) Program implementation.

58.2(1) *Disaster declaration.* The Iowa individual assistance grant program (IIAGP) shall be implemented when the governor issues a declaration of a state of disaster emergency ~~and~~ that authorizes individual assistance. The program shall be in effect only in those counties named in the declaration. Assistance shall be provided for a period not to exceed 120 days from the date of declaration.

58.2(2) *Voucher system.* To implement a voucher system for IIAGP, the county board of supervisors shall authorize a local administrative entity to administer the system.

a. The local administrative entity may be, but is not limited to:

(1) A local community organization active in disaster (COAD),

(2) A local long-term recovery committee (LTRC),

(3) A nonprofit organization,

(4) A faith-based organization, or

(5) A regional or statewide LTRC.

b. The local administrative entity shall enter into a contract with the department of human services using Form FA 09-15-2010, Fiscal Agent Contract. The contract shall specify the terms for the administration of IIAGP benefits through a voucher system.

ITEM 2. Amend rule 441—58.3(29C), introductory paragraph, as follows:

441—58.3(29C) Application for assistance. To request ~~reimbursement~~ assistance for disaster-related expenses, the household shall complete Form 470-4448, Individual Disaster Assistance Application, and submit it within 45 days of the disaster declaration to the county emergency management coordinator along with: (1) receipts for the claimed expenses, or (2) a request to participate in a voucher system.

ITEM 3. Amend rule 441—58.6(29C) as follows:

441—58.6(29C) Eligibility determination and payment.

58.6(1) The county emergency management coordinator or designee shall:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- a. No change.
- b. ~~Submit~~ If receipts are included, submit the household's application form and receipts to the Homeland Security and Emergency Management Division, Camp Dodge, Building W-4, 7105 NW 70th Avenue, Johnston, Iowa 50131. The envelope shall be marked "IIAGP application."
- c. If the applicant requests to participate in the voucher system, forward the application to the local administrative entity for the county.

58.6(2) For applications with receipts:

- a. The homeland security and emergency management division of the department of public defense shall:
 - ~~a-~~ (1) Review the application.
 - ~~b-~~ (2) Submit the household's application form and receipts to the DHS ~~Division of Results-Based Accountability~~ Office of the Deputy Director for Administration, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. The envelope shall be marked "IIAGP application."

~~58.6(3)~~ b. Designated disaster staff in the department of human services shall:

- ~~a-~~ (1) Determine eligibility and the amount of payment.
- ~~b-~~ (2) Notify the applicant household of the eligibility decision.
- ~~c-~~ (3) Authorize payment to an eligible household.
- ~~d-~~ (4) Process appeals.

58.6(3) For applications with a voucher request:

- a. The local administrative entity for the county shall:
 - (1) Determine eligibility and the amount of payment.
 - (2) Notify the applicant household of the eligibility decision.
 - (3) Authorize vouchers to an eligible household to purchase needed goods and services.
 - (4) Pay vendors for goods and services purchased with vouchers.
 - (5) Submit a claim to the department of human services for reimbursement for voucher purchases.
- b. Designated staff in the department of human services shall:
 - (1) Process reimbursement to the local administrative entity for claims.
 - (2) Process appeals.

ITEM 4. Amend **441—Chapter 58**, Division I, implementation sentence, as follows:

These rules are intended to implement 2009 Iowa Code Supplement chapter 29C as amended by 2007 2010 Iowa Acts, House File 896 2294.

[Filed Emergency 9/15/10, effective 10/1/10]

[Published 10/6/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

ARC 9130B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 58, "Emergency Assistance," Iowa Administrative Code.

These amendments implement the Iowans Helping Iowans Unmet Needs Disaster Assistance Program for the counties which were presidentially declared as disaster areas after June 1, 2010. Funding for the program is established by the Governor of Iowa through the Iowans Helping Iowans Program. The Rebuild Iowa Office will establish a methodology to distribute the funding among the counties in the presidentially declared disaster areas. The program will end when funds are exhausted or on June 30, 2011, whichever occurs first.

The program will be administered through a local administrative entity designated by the county board of supervisors in each of the affected counties. The local administrative entity shall enter into a contract with the Department that delineates the entity's responsibilities for the administration of the

HUMAN SERVICES DEPARTMENT[441](cont'd)

program. The local administrative entity will receive applications from households and determine each household's eligibility for the program.

The local administrative entity shall disburse the funds allocated to the county by the Rebuild Iowa Office through direct reimbursement of documented expenses or issuance of vouchers for purchase of approved goods or services. The local administrative entity may keep up to 5 percent of the amount of benefits issued as administrative expense. The local administrative entity is required to submit weekly reports on program expenditures and to return any unused funds from its allocation when the program ends.

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

The Council on Human Services adopted these amendments September 15, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are contrary to the public interest because the state has experienced recent disasters that have created an immediate need for this assistance.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that these amendments confer a benefit upon the disaster victims affected. Therefore, the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 9131B** to allow for public comment.

These amendments are intended to implement Iowa Code section 234.6.

These amendments became effective on September 15, 2010.

The following amendments are adopted.

ITEM 1. Rescind **441—Chapter 58**, Division IV title and preamble, and adopt a new Division IV title and preamble as follows:

DIVISION IV
IOWANS HELPING IOWANS UNMET NEEDS DISASTER ASSISTANCE PROGRAM

PREAMBLE

This division implements a program of state assistance to address unmet disaster-related expenses that cannot be met by other financial assistance. The program provides assistance for repair or replacement of personal property, home repair, food assistance, child care, and temporary housing to households whose income is less than 300 percent of the federal poverty level. The amount of assistance available to a household is capped at \$2,500.

The program is administered by the department of human services in coordination with the rebuild Iowa office and local administrative entities designated by the county boards of supervisors.

ITEM 2. Rescind rules 441—58.51(83GA,HF64) to 441—58.58(83GA,HF64) and adopt the following new rules in lieu thereof:

441—58.51(234) Definitions.

“Department” means the Iowa department of human services.

“Household” means all adults and children who lived in the pre-disaster residence who request individual assistance (not including landlords or other businesses), as well as any persons, such as infants, spouses, or part-time residents, who were not present at the time of the disaster but who are expected to return during the assistance period.

“Local administrative entity” means a county-appointed fiscal entity that performs direct work with households seeking assistance for unmet needs. The local administrative entity certifies the assistance that each household may receive and issues direct reimbursement or purchase vouchers for certified goods or services.

“Unmet need” means an item or service needed to overcome a disaster-related hardship, injury, or adverse condition due to an eligible federally declared disaster resulting in costs or damages related to

HUMAN SERVICES DEPARTMENT[441](cont'd)

personal property, home repair, food assistance, child care, or temporary housing for which the household has not received adequate assistance from any federal, state, nonprofit, or faith-based agency.

441—58.52(234) Program implementation. The Iowans helping Iowans unmet needs disaster assistance program shall be in effect September 15, 2010. This program is available for households affected by natural disasters occurring after June 1, 2010, in areas that the President of the United States declared a disaster area for individual assistance.

58.52(1) Funding. Funding for the program is established by the governor of Iowa through the Iowans helping Iowans program. The rebuild Iowa office will establish a methodology to distribute the funding among the counties in presidentially declared disaster areas.

58.52(2) Local administration. To implement the program, the county board of supervisors shall appoint a local administrative entity to administer the program for that county.

a. The local administrative entity may be, but is not limited to:

- (1) A local community organization active in disaster (COAD),
- (2) A local long-term recovery committee (LTRC),
- (3) A nonprofit organization,
- (4) A faith-based organization, or
- (5) A regional or statewide LTRC.

b. The appointed local administrative entity shall enter into a contract with the department on Form FA 08-30-2010, Fiscal Agent Contract. The contract shall specify the terms for the administration of unmet needs benefits.

441—58.53(234) Application for assistance. To request financial assistance for unmet disaster needs expenses, the household shall complete Form 470-4689, Iowans Helping Iowans Unmet Needs Disaster Assistance Program, and submit the form to the local administrative entity.

58.53(1) Application forms are available from the local administrative entity. Individuals can find their local administrative entity by calling the rebuild Iowa office toll-free at (866)849-0323.

58.53(2) The application shall include:

- a.* A declaration of the household's annual gross income.
- b.* A release of confidential information to personnel involved in administering the program.
- c.* An assurance that the household had no insurance coverage for claimed items or services.
- d.* A commitment to refund any part of a grant awarded that is duplicated by insurance or by any other assistance program, such as but not limited to other state assistance, local community development groups, charities or faith-based agencies, the Small Business Administration, or the Federal Emergency Management Administration.
- e.* A copy of a photo identification document for each adult applicant.
- f.* When vehicle damage is claimed, current copies of the vehicle registration and liability insurance card.

441—58.54(234) Eligibility criteria. To be eligible for assistance, an applicant household must meet all of the following conditions:

58.54(1) The household's residence was located in the disaster area identified by a presidential declaration as described in rule 441—58.52(234), and the household verifies occupancy at that residence.

58.54(2) Household members are citizens of the United States or are legally residing in the United States.

58.54(3) The household's self-declared annual income is at or less than 300 percent of the federal poverty level for a household of that size.

a. Poverty level guidelines are updated annually.

b. All income available to the household is counted, including wages, child support, interest from investments or bank accounts, social security benefits, and retirement income.

HUMAN SERVICES DEPARTMENT[441](cont'd)

58.54(4) The household has disaster-related expenses not covered by insurance, or the claim is less than or equal to the deductible amount. This program will not reimburse the amount of the insurance deductible when the claim exceeds the deductible amount.

58.54(5) The household has not previously received assistance from this program or another program, such as but not limited to other state assistance, local community development groups, charities or faith-based agencies, the Small Business Administration, or the Federal Emergency Management Administration, for the same loss. The applicant has applied with the Small Business Administration and the Federal Emergency Management Administration but did not receive an award for the items or services included in the unmet needs application.

441—58.55(234) Eligible categories of assistance. The maximum assistance available to a household for a single disaster is \$2,500. Assistance is available under the program for the following disaster-related expenses:

1. Personal property.
2. Home repair.
3. Food assistance.
4. Child care.
5. Temporary housing.

441—58.56(234) Eligibility determination and payment.

58.56(1) Duties of local administrative entity. The local administrative entity shall perform the following duties:

- a. Accept the household's application.
- b. Certify that:
 - (1) The address provided on the application is a valid address in the disaster-affected area,
 - (2) Disaster-related expenses were a result of the covered disaster,
 - (3) The household has presented reasonable documentation or receipts for expenses incurred or has reasonable estimates for eligible costs for issuance of a voucher to secure specific eligible goods or services, and
 - (4) Funds remain available.
- c. Determine the amount of assistance the household is eligible to receive by category of assistance and provide the rationale for that amount.
- d. Provide the signature of local administrative entity staff making the certification and the date of certification.
- e. Notify the applicant household of the certification decision and issue to an approved household:
 - (1) Reimbursement for documented expenses, or
 - (2) A voucher to secure specific eligible goods or services.
- f. Retain a copy of the household's Form 470-4689, Iowans Helping Iowans Unmet Needs Disaster Assistance Program, and all documentation.
- g. Report weekly to the rebuild Iowa office regarding expenditures. Weekly reports shall be in the format prescribed in the agreement.
- h. Complete a final reconciliation to substantiate expenditures.
- i. Return any unexpended funds to the department within 30 days of the final expenditure or June 30, 2011.

58.56(2) Local administrative expenses. A local administrative entity may allocate no more than 5 percent of the amount of assistance provided to households as an administrative expense. Administrative expenses shall be detailed on the weekly report of expenditures.

58.56(3) Duties of disaster case management office. Designated staff in the rebuild Iowa disaster case management office shall:

- a. Ensure that a local administrative entity is designated in each county affected.
- b. Coordinate contact between applicants and their local administrative entity.
- c. Support the reconsideration process.

HUMAN SERVICES DEPARTMENT[441](cont'd)

58.56(4) Duties of the department. Designated department staff shall:

- a. Process grant payments to the local administrative entity or its designee.
- b. Process appeals.

441—58.57(234) Contested cases.

58.57(1) Reconsideration. The household may request reconsideration of the local administrative entity's decision regarding certification of eligible unmet needs and the amount of reimbursement awarded.

a. To request reconsideration, the household shall submit a written request to the Rebuild Iowa Office, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319, within 15 days of the date of the local administrative entity's notification to the household of its decision.

b. The rebuild Iowa disaster recovery case management office shall:

- (1) Review any additional evidence or documentation submitted,
- (2) Issue a reconsideration decision within 15 days of receipt of the request, and
- (3) Notify the household of the reconsideration decision.

58.57(2) Appeal. The household may appeal the rebuild Iowa office reconsideration decision according to procedures in 441—Chapter 7.

a. Appeals must be submitted:

(1) In writing, either on Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, or in any form that provides comparable information;

(2) To the DHS Appeals Section, 1305 East Walnut Street, Des Moines, Iowa 50319-0114;

(3) Within 15 days of the date of the reconsideration decision.

b. A written appeal is filed on the date the envelope sent to the department is postmarked or, when the postmarked envelope is not available, on the date the appeal is stamped received by the department.

441—58.58(234) Discontinuance of program. The Iowans helping Iowans unmet needs disaster assistance program administered under this division shall be discontinued upon exhaustion of allocated funds or on June 30, 2011, whichever occurs first.

These rules are intended to implement Iowa Code section 234.6.

[Filed Emergency 9/15/10, effective 9/15/10]

[Published 10/6/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

ARC 9132B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments allow pharmacies that administer the influenza vaccine available through the Vaccines for Children (VFC) program to receive reimbursement for administration of the vaccine to Medicaid members.

Physician offices may run out of the VFC influenza vaccine or may not stock the VFC vaccines and may send the Medicaid member to the pharmacy for administration. Under these amendments, pharmacies will be reimbursed for the administration of the influenza vaccine in the same manner that a physician is reimbursed for vaccine administration. The Department has issued exceptions to policy to allow this practice, but the exception process is administratively burdensome and causes a timeliness issue for the vaccination.

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

The Council on Human Services adopted these amendments on September 15, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because the goal of the amendments is to make influenza vaccine more accessible before the start of the influenza season. Prevention of outbreaks of influenza is in the public interest.

The Department finds that these amendments confer a benefit by providing additional access to influenza vaccine for Medicaid-eligible children. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 9133B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective November 1, 2010.

The following amendments are adopted.

ITEM 1. Adopt the following new rule 441—78.42(249A):

441—78.42(249A) Pharmacies administering influenza vaccine to children. Payment will be made to a pharmacy for the administration of influenza vaccine available through the vaccines for children program administered by the department of public health if the pharmacy is enrolled in the vaccines for children program. No payment will be made for the vaccine.

ITEM 2. Amend subrule **79.1(2)** by adopting the following new provider category:

| <u>Provider category</u> | <u>Basis of reimbursement</u> | <u>Upper limit</u> |
|--|--|--|
| Pharmacy administration of influenza vaccine to children | Physician fee schedule for immunization administration | Fee schedule in effect 11/30/09 less 5%. |

[Filed Emergency 9/15/10, effective 11/1/10]

[Published 10/6/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

ARC 9134B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment restores a 2.5 percent rate reduction for state fiscal year 2011 for individuals providing consumer-directed attendant care (CDAC) services under a Medicaid home- and community-based services waiver. The amendment results from a recent mediation addressing two grievances on rate reductions filed by the American Federation of State, County, and Municipal Employees (AFSCME) on behalf of the providers. The grievance procedure was carried out under the terms of a memorandum of understanding between the Department and AFSCME pursuant to Executive Order 43, which has been in effect since July 4, 2005.

This amendment does not provide for waivers in specified situations since the change is a benefit to the providers and the mediation agreement does not allow for waivers.

The Council on Human Services adopted this amendment September 15, 2010.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department finds that notice and public participation are unnecessary because this amendment is based on a mediated settlement that the Department has agreed to pursuant to its memorandum of understanding with the union. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department finds that this amendment confers a benefit upon the providers affected by raising their reimbursement rates. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

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

This amendment became effective October 1, 2010.

The following amendment is adopted.

Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” numbered paragraph “15,” as follows:

| <u>Provider category</u> | <u>Basis of reimbursement</u> | <u>Upper limit</u> |
|---|--|---|
| 15. Consumer-directed attendant care provided by: | | |
| Agency (other than an elderly waiver assisted living program) | Fee agreed upon by consumer and provider | \$19.70 per hour not to exceed the daily rate of \$113.80 per day. |
| Assisted living program (for elderly waiver only) | Fee agreed upon by consumer and provider | For elderly waiver only: \$1,089.08 per calendar month. Rate must be prorated per day for a partial month, at a rate not to exceed \$35.79 per day. |
| Individual | Fee agreed upon by consumer and provider | \$13.13 <u>Effective July 1, 2010,</u> \$13.47 per hour not to exceed the daily rate of \$76.60 <u>\$78.56</u> per day. |

[Filed Emergency 9/15/10, effective 10/1/10]

[Published 10/6/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

ARC 9135B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249J.24 and 2010 Iowa Acts, Senate File 2356, section 1, and House File 2531, section 201, the Department of Human Services amends Chapter 92, “IowaCare,” Iowa Administrative Code.

These amendments make the following changes in IowaCare premium policies to satisfy federal requirements:

- Recalibrate premium amounts to provide that no premium payment is required for households with income at or below 150 percent of the federal poverty level and that premiums are limited to 3.5 percent of the applicable income level. A single premium will be set for the household, rather than a separate premium for each IowaCare member. A separate table is used to determine the premium for a household containing two or more IowaCare members.
- Delay cancellation of benefits for failure to pay a premium until 60 days after the premium due date.
- Allow IowaCare members whose benefits have been canceled due to nonpayment of premiums to reapply and be approved even if payments from a previous certification period remain unpaid.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The amendments also make the following changes to the IowaCare provider network and services as directed by state legislation:

- Add federally qualified health centers as IowaCare providers. Centers will be phased in as IowaCare providers as funding permits.
- Add coverage of emergency medical services rendered by providers that do not participate in IowaCare, under limited and specified conditions.
- Add requirements for “medical home” services and corresponding reimbursement.
- Clarify reimbursement methodologies for participating and nonparticipating providers.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 28, 2010, as **ARC 8977B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

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

The Council on Human Services adopted these amendments on September 15, 2010.

The Department finds that these amendments confer a benefit on IowaCare members by reducing premiums and adding providers and medical home services. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code chapter 249J as amended by 2010 Iowa Acts, Senate File 2356, section 1, and House File 2531, section 201.

These amendments became effective on October 1, 2010.

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 [92.1 to 92.3, 92.6(1), 92.7 to 92.9, 92.13] is being omitted. These amendments are identical to those published under Notice as **ARC 8977B**, IAB 7/28/10.

[Filed Emergency After Notice 9/15/10, effective 10/1/10]

[Published 10/6/10]

[For replacement pages for IAC, see IAC Supplement 10/6/10.]

ARC 9114B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 321G.2, 321I.2, and 462A.16, the Natural Resource Commission hereby rescinds Chapter 44, “Special Events,” and adopts new Chapter 44, “Boating, Special Events,” Iowa Administrative Code.

On May 13, 2010, the Commission adopted amendments to Chapter 44; the amendments were published in the June 2, 2010, Iowa Administrative Bulletin as **ARC 8815B** and were scheduled to become effective July 7, 2010. The Administrative Rules Review Committee reviewed the amendments to Chapter 44 at its meeting held on June 8, 2010. At that meeting, concerns were voiced by both the public and the Committee regarding the effect some of the amendments would have on frequent users of the permit system. The Committee delayed the effective date of the amendments for 70 days to allow the Department to meet with the concerned public to discuss the effects of the amendments. Discussions with the public have taken place during the 70-day delay. However, the public continues to express concerns regarding the implementation of the amendments.

Due to the 70-day delay, the amendments would have become effective on September 15, 2010. The Commission decided to rescind Chapter 44, as published in the June 2, 2010, Iowa Administrative Bulletin, before the amendments became effective and to adopt Chapter 44 as it existed immediately prior to May 13, 2010. This expedited action required that this rule making be Adopted and Filed Emergency.

NATURAL RESOURCE COMMISSION[571](cont'd)

The Commission finds, pursuant to Iowa Code subsection 17A.4(3), that notice and public participation are impracticable due to the need to rescind the amendments adopted on May 13, 2010, before they would have become effective in order to continue discussions with stakeholders and rewrite the amendments.

The Commission also finds, pursuant to Iowa Code subsection 17A.5(2)“b”(2), that the normal effective date of this amendment should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on September 10, 2010. This rule-making action confers a benefit on the public by allowing the Department to further address the concerns of the public and those of the Administrative Rules Review Committee.

This amendment became effective September 10, 2010.

This amendment is intended to implement Iowa Code section 462A.16.

The following amendment is adopted.

Rescind 571—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44
BOATING, SPECIAL EVENTS

571—44.1(462A) Registration exemption. Vessels entered in special events as defined in Iowa Code section 462A.16 shall not be required to be registered as stated in 462A.4 and 462A.5, subject to the following regulations.

44.1(1) *Vessel and participant list.* Sponsors of the special event shall maintain a list of the names and addresses of all persons participating in the event and a description of each vessel in the event.

44.1(2) *Vessels identified.* Each vessel in the special event will be labeled with an identifying number or letter, clearly visible, and such will be recorded with the names and addresses of vessel passengers on the list as provided for in 44.1(1).

44.1(3) *Exemption period.* Any vessel entered into a special event may be exempted from state registration requirements for the full 24-hour period of each day covered by the permit to conduct such event and as issued under Iowa Code section 462A.16.

571—44.2(462A) Sponsoring organizations. The individuals or organizations responsible for sponsoring a special event are responsible to assure regulations of this chapter are fully complied with.

These rules are intended to implement Iowa Code section 462A.16.

[Filed Emergency 9/10/10, effective 9/10/10]

[Published 10/6/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

ARC 9139B

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State amends Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

These amendments are necessary due to the number of satellite voting petitions that are being received by county commissioners for the 2010 general election.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary because these amendments provide for the secure use of the statewide voter registration system at satellite voting locations.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Secretary of State further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective upon filing. The normal effective date should be waived because the change is necessary

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before satellite voting is allowed to begin on September 23, 2010. These amendments confer a benefit on the voting public by allowing county commissioners conducting satellite voting to securely use the statewide voter registration system at satellite voting locations.

These amendments are also published herein under Notice of Intended Action as **ARC 9140B** to allow for public comment.

These amendments are intended to implement 2009 Iowa Code Supplement section 53.11.

These amendments became effective September 16, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 21.300(10) as follows:

21.300(10) Voter registration at the satellite absentee voting station. Each satellite absentee voting station shall provide forms necessary to register voters, including the oaths necessary to process voters registering pursuant to Iowa Code section 48A.7A, and to record changes in voter registration records. Workers shall also be provided with a method of verifying whether people applying for absentee ballots are registered voters.

The commissioner may provide a list of registered voters in the precincts served by the station. The list may be on paper or contained in a computerized data file.

As an alternative, the commissioner may provide a computer connection with the commissioner's office. ~~Satellite absentee voting stations shall not be directly connected to the I-Voters statewide voter registration database.~~

ITEM 2. Adopt the following **new** subrule 21.300(13):

21.300(13) Use of I-Voters at satellite absentee voting stations. Any county commissioner who wants to use the I-Voters statewide voter registration database at a satellite absentee voting station shall:

a. Complete an application to use I-Voters at a satellite absentee voting station. A separate application shall be completed for each satellite absentee voting station. The application is available on the state commissioner's Web site. The application shall be submitted at least seven days before the opening of the satellite absentee voting station. If it is not possible to submit an application at least seven days before the station opens due to the receipt of a petition, the application shall be submitted as soon as possible. The application will be considered by the state commissioner as soon as practicable after it is received. The state commissioner reserves the right to reject an application for any reason or to limit the number of users at any satellite absentee voting station.

b. Use a cellular telephone service or a wired Internet connection to connect to the Internet from the satellite absentee voting station. If the county uses a wired Internet connection, the commissioner shall use either a regular or a wireless router between the wired Internet connection and the county's computers. Connection to a facility's wireless network is not permitted.

c. Configure any wireless routers to be used between the facility's wired Internet connection and the county's laptop computers as follows:

- (1) A minimum 10-character password must be assigned to the router administration screens.
- (2) WPA (AES) security for wireless connections with a minimum 10-character password must be used.

- (3) Remote management of the router must be prohibited.

- (4) Universal Plug & Play must be turned off.

- (5) Port forwarding on the router must not be disabled.

- (6) Unauthorized connections shall be prohibited, including smartphones, personal digital assistants (PDAs) and laptops.

d. Configure any wired routers to be used between the facility's wired Internet connection and the county's laptop computers as follows:

- (1) Remote management of the router must be prohibited.

- (2) Universal Plug & Play must be turned off.

- (3) Port forwarding on the router must not be disabled.

- (4) Unauthorized connections shall be prohibited, including smartphones, PDAs and laptops.

SECRETARY OF STATE[721](cont'd)

- (5) Administrator passwords for the routers must be changed from the default passwords, and standard county password policies shall be followed.
- e.* Laptops used at a satellite absentee voting station shall be configured as follows:
- (1) The hard drives must be encrypted.
 - (2) The operating system must be fully supported by the operating system vendor.
 - (3) The operating system must be fully patched.
 - (4) Antivirus software and anti-spyware must be installed and up to date.
 - (5) A full antivirus and anti-spyware scan must be done during the week before a laptop is used at a satellite absentee voting station and at least once a week thereafter while the laptop is being used at satellite absentee voting stations.
 - (6) The administrator password must be changed from the default password.
 - (7) Guest user accounts must be disabled or renamed.
 - (8) File/print sharing must be turned off, and remote access must be disabled.
 - (9) Bluetooth must be turned off.
 - (10) The Windows firewall must be turned on.
- f.* Laptops connected to I-Voters at a satellite absentee voting station shall never be left unattended.
- g.* Laptops connected to I-Voters at a satellite absentee voting station shall not have any USB memory sticks or CDs/DVDs inserted in the computer after the virus scan is conducted pursuant to subrule 21.300(13), paragraph “*e.*”
- h.* Laptops connected to I-Voters at a satellite absentee voting station shall not be used to visit any other Web sites.
- i.* No software applications, other than I-Voters, shall be used while the I-Voters application is in use at a satellite absentee voting station.

[Filed Emergency 9/16/10, effective 9/16/10]

[Published 10/6/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

ARC 9123B**ACCOUNTANCY EXAMINING BOARD[193A]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542.4, the Accountancy Examining Board hereby amends Chapter 12, "Fees," Iowa Administrative Code.

This amendment adopts new subrule 12.2(3), which eliminates the \$25 per month fee only for applicants for reinstatement who have not engaged in acts or services requiring an active license, certificate or permit.

Notice of Intended Action for this amendment was published August 11, 2010, in the Iowa Administrative Bulletin as **ARC 8988B**. No comments were received. This amendment is identical to that published under Notice of Intended Action.

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

This amendment will become effective November 10, 2010.

The following amendment is adopted.

Adopt the following **new** subrule 12.2(3):

12.2(3) Applicants for reinstatement. All applicants for reinstatement shall be assessed the \$100 reinstatement fee. The \$25 per month penalty fee described in subrules 12.2(1) and 12.2(2) shall not be assessed if the applicant for reinstatement did not, during the period of lapse, engage in any acts or practices for which an active CPA certificate, LPA license, or firm permit to practice as a CPA or LPA firm is required in Iowa. Falsely claiming an exemption from the monthly penalty fee is a ground for discipline; in addition, other grounds for discipline may arise from practicing on a lapsed certificate, license or permit to practice.

[Filed 9/15/10, effective 11/10/10]

[Published 10/6/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

ARC 9127B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4 and 2010 Iowa Acts, Senate File 2388, section 5(4), the Department of Human Services amends Chapter 36, "Facility Assessments," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on June 30, 2010, as **ARC 8894B**. Notice of Intended Action on these amendments was published as **ARC 8896B** on the same date. The Department received no comments on the Notice of Intended Action.

Legislation in 2010 Iowa Acts, Senate File 2388, directed the Department to implement a hospital assessment. After reviewing several models of a hospital assessment and revising parameters in consultation with hospital industry representatives, the Department has chosen the model described in these amendments for hospitals other than state-owned hospitals and critical access hospitals. Implementation of the amendments is conditional upon federal approval by the Centers for Medicare and Medicaid Services.

The health care access assessment rate for a participating hospital is calculated as 1.26 percent of net patient revenue as specified in the hospital's Medicare cost report for fiscal year 2008. The hospital shall pay the assessment to the Department on a quarterly basis, no later than 30 days following the end of each calendar quarter. The reimbursement methodology for participating hospitals is modified to provide

HUMAN SERVICES DEPARTMENT[441](cont'd)

a health care access assessment inflation factor that is applied to the inpatient diagnosis-related group (DRG) rates and outpatient ambulatory patient classification (APC) base rates.

These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 15, 2010.

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

These amendments shall become effective on November 10, 2010, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code section 249A.4, 2009 Iowa Code Supplement chapter 249L, and 2010 Iowa Acts, Senate File 2388.

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 [Ch 36 div II preamble, 36.6, 36.7, Ch 36 div III, 36.10 to 36.12, 79.1] is being omitted. These amendments are identical to those published under Notice as **ARC 8896B** and Adopted and Filed Emergency as **ARC 8894B**, IAB 6/30/10.

[Filed 9/15/10, effective 11/10/10]

[Published 10/6/10]

[For replacement pages for IAC, see IAC Supplement 10/6/10.]

ARC 9109B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic amends Chapter 41, "Licensure of Chiropractic Physicians," Chapter 43, "Practice of Chiropractic Physicians," Chapter 44, "Continuing Education for Chiropractic Physicians," and Chapter 45, "Discipline for Chiropractic Physicians," Iowa Administrative Code.

These amendments adopt changes to remove a provision requiring that picture identification be submitted for licensure, clarify language regarding the final examination for acupuncture, make the conditions for independent study consistent with the other 19 professional boards in the Division of Professional Licensure by requiring a posttest, and remove the continuing education provision that requires OSHA training for licensure and licensure renewal. In addition, subrule 43.10(3) and paragraph 45.2(2)"g" are revised to make them consistent.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 2, 2010, as **ARC 8782B**. A public hearing was held on June 22, 2010, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

The amendments were adopted by the Board of Chiropractic on July 14, 2010.

These amendments will become effective November 10, 2010.

These amendments are intended to implement Iowa Code chapters 21, 147, 151 and 272C.

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 [41.2(1), 43.5, 43.10(3), 44.1, 44.3(2)"a," 45.2(2)"g"] is being omitted. These amendments are identical to those published under Notice as **ARC 8782B**, IAB 6/2/10.

[Filed 9/3/10, effective 11/10/10]

[Published 10/6/10]

[For replacement pages for IAC, see IAC Supplement 10/6/10.]

ARC 9110B**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.112, the Department of Public Health hereby amends Chapter 91, "Iowa Domestic Abuse Death Review Team," Iowa Administrative Code.

The rules in this chapter outline the duties and responsibilities for the Iowa Domestic Abuse Death Review Team. These amendments are intended to bring the rules into compliance with Iowa Code changes, including the composition of the team and the frequency with which reports are issued.

Notice of Intended Action was published in the July 28, 2010, Iowa Administrative Bulletin as **ARC 8974B**. No comments were received. The adopted amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on September 8, 2010.

These amendments will become effective on November 10, 2010.

These amendments are intended to implement Iowa Code sections 135.108 to 135.112.

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 [91.1 to 91.11] is being omitted. These amendments are identical to those published under Notice as **ARC 8974B**, IAB 7/28/10.

[Filed 9/8/10, effective 11/10/10]

[Published 10/6/10]

[For replacement pages for IAC, see IAC Supplement 10/6/10.]

ARC 9148B**TELECOMMUNICATIONS AND TECHNOLOGY
COMMISSION, IOWA[751]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 1, "Description of the Organization," Iowa Administrative Code.

This amendment reflects a change made in the organizational structure of the Iowa Communications Network.

Notice of Intended Action for the amendment was published in the Iowa Administrative Bulletin on June 30, 2010, as **ARC 8895B**. A public hearing was held on July 21, 2010, and no comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted at the September 16, 2010, meeting of the Iowa Telecommunications and Technology Commission.

This amendment is intended to implement 2010 Iowa Acts, Senate File 2088, division V.

This amendment will become effective on November 10, 2010.

The following amendment is adopted.

Amend subrule 1.5(2) as follows:

1.5(2) Administrative elements. In order to carry out the functions of the commission, the following divisions/~~bureaus~~ and offices have been established:

a. The office of the deputy director is responsible for agency information systems functions, legislative liaison, public information, maintenance of a circuit database, and administrative support to the commission. The office also provides information and education to the public about the commission and the fiberoptic network and maintains the commission's ~~World Wide Web page on the Internet~~ Web site.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

b. The office of the chief financial officer is responsible for final review of the financial books and records prepared by the finance division prior to providing them to the commission, asset inventory and management, personnel transactions, and purchasing and contracting activities, as well as coordination with the attorney general's office for legal counsel.

~~b. c.~~ The finance division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods and services, processing cash receipts, purchasing and contracting activities, and facilities management and other duties as assigned from time to time.

~~e. d.~~ The network operations bureau and engineering division is responsible for provisioning of video services, data/Internet services, and voice services for authorized users. ~~It~~ The division is responsible for all operational aspects of the fiberoptic network. The division is also responsible for the technical operation of the fiberoptic network, including research and development, and network systems.

~~d.~~ ~~The engineering bureau is responsible for the technical operation of the fiberoptic network, including research and development, and network systems support. It oversees all physical aspects of the network's equipment and circuits and performs other duties as assigned from time to time.~~

~~e.~~ The service delivery bureau division coordinates the activities between the engineers, individual sites, and authorized users. ~~It~~ The division is responsible for providing cost estimates for services; tracking service requests; executing installation services; assisting authorized users in finding the best structure to meet the users' needs; developing new products and services; maintaining price tables; and providing customer service and assistance.

[Filed 9/16/10, effective 11/10/10]

[Published 10/6/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

ARC 9136B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 364.23, 476.1, 476.1A, 476.1B, and 476.62, the Utilities Board (Board) gives notice that on September 15, 2010, the Board issued an order in Docket No. RMU-2010-0002, In re: Exterior Flood Lighting, "Order Adopting Rules." The Board is adopting amendments to 199 IAC 35.15(3) and 36.8(3). The amendments reflect advances in technology that make other forms of outdoor lighting, particularly light-emitting diode (LED) or solid-state lighting, as efficient as some types of high-pressure sodium lighting, which has been used as the standard for energy-efficient exterior flood lighting.

Iowa Code section 476.62, which was enacted in 1989, provides that "[a]ll public utility-owned exterior flood lighting, including but not limited to street and security lighting, shall be replaced ... with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the board." In addition, Iowa Code section 364.23 provides that

[a]ll city-owned exterior flood lighting, including but not limited to street and security lighting but not including era or period lighting which has a minimum efficiency rating of fifty-eight lumens per watt and not including stadium or ball park lighting, shall be replaced, when worn-out, exclusively with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the utilities board

The Board subsequently adopted rules (199 IAC 35.15(476) and 36.8(476)) to implement the statutes. The rules used a schedule of lumens per watt to determine efficiency. While the rules worked well when high-pressure sodium lighting set the efficiency standard, new technology has evolved to the point that some other forms of outdoor lighting are as efficient as, or more efficient than, high-pressure sodium

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and may produce a light quality that works better in some uses. The advancement of new technology in outdoor lighting was highlighted by the recent approval of 15 Iowa cities for American Recovery and Reinvestment Act of 2009 funding for energy-efficient projects, which include outdoor LED lighting.

The changes to the rules reflect the technological advances that have been made.

Notice of Intended Action in Docket No. RMU-2010-0002 was published in IAB Vol. XXXIII, No. 1 (7/14/2010), p. 19, as **ARC 8931B**. Written comments were received from the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Interstate Power and Light Company, MidAmerican Energy Company, the Iowa Association of Electric Cooperatives, and Mayfield Lighting Sales, Inc. An oral presentation was held on August 24, 2010.

The oral and written comments were generally supportive of the proposed amendments. The adopted amendments, like the proposed amendments, provide that outdoor lighting must meet one of five alternative tests to be used in place of high-pressure sodium lighting. There were no comments with respect to the first three tests, which are a simplification of the existing requirement in the rules. The current rules reference Table 26-14 in the Twelfth Edition of the Standard Handbook for Electrical Engineers. The Twelfth Edition handbook was published in 1987 and is no longer available for purchase. Table 26-14 listed the rated initial lumens for nine different high-pressure sodium bulbs. After deducting 10 percent from these values, an efficacy rating in lumens per watt can be calculated for each bulb. (As the bulb size increases, so does the number of lumens per watt.) After examining these values, the Board concluded that several lamps of similar size could be grouped together and assigned a single rating; therefore, the adopted rules will have the same effect as the rules they replace, without relying on a reference book that is no longer widely available. In other words, the mercury vapor and standard efficiency metal halide bulbs that do not meet the requirements of the current rules will not meet any of the first three tests in the newly adopted rules.

The intent of the fourth test in the Noticed rules allowing the use of lighting that uses no more energy per installation than comparable high-pressure sodium lighting was to ensure that the proposed rules will not produce results that are contrary to common sense. With the recent advances in lighting technology, it is impossible to quantify every factor that will lead to a more energy-efficient lighting system. Without the fourth test, well-designed and highly efficient lighting systems might be wrongly excluded if they do not meet the first three tests.

Consumer Advocate was concerned that the fourth test as proposed would unnecessarily limit implementation of new efficient lighting technologies to situations where the new lighting is replacing high-pressure sodium lighting. This was not the intent of the Noticed rule, and the Board will adopt Consumer Advocate's suggestion to replace the fourth test with the following: "The new lighting uses no more energy per installation than comparable, suitably sized high-pressure sodium lighting."

The fifth test is specific to LED or solid-state luminaries. Consumer Advocate recommended in its written comments that the fifth test be eliminated because it could limit the use of high-performing LED lighting. However, after comments made by others at the oral presentation, a consensus developed that the fifth test provides additional flexibility, particularly because only one of the five tests, not all five tests, must be met. The Board has retained the fifth test in the adopted amendments.

The adopted amendments also recognize that a lumens-per-watt efficacy rating may no longer be a good indicator of every lighting system's energy efficiency. Efficacy ratings for outdoor LED lighting systems are measured differently than other lighting systems and should not be directly compared to the efficacy ratings of high-pressure sodium lamps, which do not account for ballast losses or fixture losses. Other factors (such as color quality, lumen maintenance, light distribution, or glare) may also affect a lighting system's performance and ultimately its energy efficiency. As noted by some commenters, there are no nationally adopted standards that account for all of the potential factors that impact the efficiency of exterior flood lighting, making the development of rules more difficult.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these amendments, which would allow the Board to waive the rules' requirements if the applicant could establish that its proposed lighting system, even if it did not meet one of the five tests, was as efficient

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as high-pressure sodium lighting. The ability to waive the rules will allow new technological advances in lighting to be used prior to any future rule changes.

These amendments are intended to implement Iowa Code sections 364.23, 476.1, 476.1A, 476.1B, and 476.62.

These amendments will become effective on November 10, 2010.

The following amendments are adopted.

ITEM 1. Rescind subrule 35.15(3) and adopt the following **new** subrule in lieu thereof:

35.15(3) Efficiency standards. Lighting other than high-pressure sodium has equivalent or better energy efficiency if one or more of the following can be established:

- a. For lamps less than 120 watts, the lumens-per-watt lamp rating is greater than 77.1, or
- b. For lamps between 120 and 500 watts, the lumens-per-watt lamp rating is greater than 96, or
- c. For lamps greater than 500 watts, the lumens-per-watt lamp rating is greater than 126, or
- d. The new lighting uses no more energy per installation than comparable, suitably sized high-pressure sodium lighting, or
- e. The new lighting consists of solid-state lighting (SSL) luminaries that have an efficacy rating equal to or greater than 66 lumens per watt according to a Department of Energy (DOE) Lighting Facts label, testing under the DOE Commercially Available LED Product Evaluation and Reporting Program (CALiPER), or any other test that follows Illuminating Engineering Society of North America LM-79-08 test procedures.

ITEM 2. Rescind subrule 36.8(3) and adopt the following **new** subrule in lieu thereof:

36.8(3) Efficiency standards. Lighting other than high-pressure sodium has equivalent or better energy efficiency if one or more of the following can be established:

- a. For lamps less than 120 watts, the lumens-per-watt lamp rating is greater than 77.1, or
- b. For lamps between 120 and 500 watts, the lumens-per-watt lamp rating is greater than 96, or
- c. For lamps greater than 500 watts, the lumens-per-watt lamp rating is greater than 126, or
- d. The new lighting uses no more energy per installation than comparable, suitably sized high-pressure sodium lighting, or
- e. The new lighting consists of solid-state lighting (SSL) luminaries that have an efficacy rating equal to or greater than 66 lumens per watt according to a Department of Energy (DOE) Lighting Facts label, testing under the DOE Commercially Available LED Product Evaluation and Reporting Program (CALiPER), or any other test that follows Illuminating Engineering Society of North America LM-79-08 test procedures.

[Filed 9/15/10, effective 11/10/10]

[Published 10/6/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/6/10.

| AGENCY | RULE | DELAY |
|-------------------------------|--|---|
| Public Safety Department[661] | 276.3(1) [IAB 8/25/10, ARC 9032B] | Effective date of October 1, 2010, delayed 70 days by the Administrative Rules Review Committee at its meeting held September 14, 2010. [Pursuant to §17A.4(7)] |

Pharmacy Board

At its September 14, 2010 meeting the Administrative Rules Review Committee voted to object to a specific provision of ARC 9009B: subrule 3.22(3) relating to the functions that may be performed by an uncertified pharmacy technician. The filing appears in IAB Vol. XXXIII, No. 03 (08/11/10). The committee takes this action pursuant to the authority of §17A.4(5).

The committee objects to subrule 3.22(3) on the grounds that it is beyond the authority delegated to the agency. The head note to ARC 9009B cites 2010 Iowa Acts, House File 2531, section 112, as the authority for the filing. That provision relates only to extending the timeframe for certain pharmacy technicians or pharmacy technician trainees to obtain national certification. The provisions of subrule 3.22(3) do not relate to national certification and exceed the scope of ARC 9009B.

Objection filed September 21, 2010