



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
Nov. 10	Dec. 1	Dec. 21	Jan. 5 '11	Jan. 7 '11	Jan. 26 '11	Mar. 2 '11	May 30 '11
Nov. 24	Dec. 15	Jan. 4 '11	Jan. 19 '11	Jan. 21 '11	Feb. 9 '11	Mar. 16 '11	June 13 '11
Dec. 8	Dec. 29	Jan. 18 '11	Feb. 2 '11	Feb. 4 '11	Feb. 23 '11	Mar. 30 '11	June 27 '11
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
10	Wednesday, October 27, 2010	November 17, 2010
11	Wednesday, November 10, 2010	December 1, 2010
12	Wednesday, November 24, 2010	December 15, 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*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 9, 2010, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the November 3, 2010, Iowa Administrative Bulletin.

ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"

Applicants for reinstatement—fees, 12.2(3) Filed **ARC 9123B** 10/6/10

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Cattle and bison—pre-entry permits and tuberculosis tests, 65.2(3), 65.4(3)

Filed Emergency After Notice **ARC 9151B** 10/20/10

Grain transaction participation fee for grain dealers and warehouse operators, amendments to chs 90 to 94 Notice **ARC 9165B** 10/20/10

EARLY CHILDHOOD IOWA STATE BOARD[249]

Early childhood Iowa initiative, ch 1 Notice **ARC 9137B** 10/6/10

EDUCATION DEPARTMENT[281]

Open enrollment—supplementary weighting for concurrent enrollment classes, 17.10(8)

Notice **ARC 9143B** 10/6/10

Extracurricular interscholastic competition, 36.1, 36.14 to 36.17, 36.20 Notice **ARC 9144B** 10/6/10

Special education—enforcement actions, 41.604 Notice **ARC 9147B** 10/6/10

Type A-2 bus tow hooks, 44.3(7)"f" Notice **ARC 9145B** 10/6/10

Restraint, physical confinement and detention of students, 103.6"5," 103.8, 103.9 Notice **ARC 9146B** 10/6/10

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Air quality, 23.1(2), 23.1(4), 23.1(5), 24.1(2), 24.1(3), 28.1 Filed **ARC 9154B** 10/20/10

Water quality certification, 61.2(2)"g" Notice **ARC 9153B** 10/20/10

Underground storage tanks—review procedures and acceptance of reports from certified groundwater professionals, 135.9(11), 135.10(11), 135.12 Notice **ARC 9152B** 10/20/10

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Iowa hazard mitigation plan, 9.3 Notice **ARC 9150B**, also Filed Emergency **ARC 9149B** 10/6/10

HUMAN SERVICES DEPARTMENT[441]

Health care access assessment, ch 36 div II and III preambles, 36.6, 36.7, 36.10 to 36.12,

79.1 Filed **ARC 9127B** 10/6/10

Iowa disaster aid individual assistance grant program—vouchers, 58.2, 58.3, 58.6

Notice **ARC 9129B**, also Filed Emergency **ARC 9128B** 10/6/10

Iowans helping Iowans unmet needs disaster assistance program, 58.51 to 58.58

Notice **ARC 9131B**, also Filed Emergency **ARC 9130B** 10/6/10

Replacement of electronic benefits transfer (EBT) cards, 65.4(2)"b"

Notice of Termination **ARC 9155B** 10/20/10

Medicaid HCBS programs—provider qualifications updated, amendments to ch 77

Notice **ARC 9112B** 10/6/10

HCBS elderly waiver—assisted living services, 77.33, 78.37, 79.1, 83.26 Notice **ARC 9138B** 10/6/10

Home health agency plan of care—physician signature, 78.9(1)"p" Notice **ARC 9111B** 10/6/10

HCBS waiver services, amendments to chs 78 to 80 Notice **ARC 9170B** 10/20/10

Pharmacies administering influenza vaccine to children, 78.42, 79.1

Notice **ARC 9133B**, also Filed Emergency **ARC 9132B** 10/6/10

HCBS waiver—consumer-directed attendant care, 79.1(2) Filed Emergency **ARC 9134B** 10/6/10

Nursing facilities; quality improvement initiative grants, 81.50(7), 81.52(4), ch 166

Notice **ARC 9157B** 10/20/10

IowaCare—premiums, provider network, services, 92.1 to 92.3, 92.6(1), 92.7 to 92.9, 92.13

Filed Emergency After Notice **ARC 9135B** 10/6/10

INSPECTIONS AND APPEALS DEPARTMENT[481]

Recognized hospital accreditation organizations, 51.2, 51.6, 51.53(7) Notice **ARC 9120B** 10/6/10

Hospital food and nutrition services, 51.20 Notice **ARC 9121B** 10/6/10

Construction standards for hospitals and off-site premises, 51.50 to 51.52 Notice **ARC 9119B** 10/6/10

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Individual accident and health insurance—rate hearings, 36.20	
<u>Notice</u> ARC 9168B , also <u>Filed Emergency</u> ARC 9158B	10/20/10
Coordination of benefits, rescind 38.1 to 38.11, 38.19; amend 38.12(1) <u>Filed</u> ARC 9164B	10/20/10
Securities regulation—duties, procedures, electronic filing of forms, amendments to ch 50	
<u>Filed</u> ARC 9169B	10/20/10

IOWA FINANCE AUTHORITY[265]

Low-income housing tax credit program—qualified allocation plan, 12.1, 12.2 <u>Notice</u> ARC 9160B	10/20/10
HOME partnership program, 39.2 to 39.9 <u>Notice</u> ARC 9159B	10/20/10
Shelter assistance fund, ch 41 <u>Notice</u> ARC 9163B , also <u>Filed Emergency</u> ARC 9162B	10/20/10
Emergency shelter grants program, ch 42 <u>Notice</u> ARC 9167B , also <u>Filed Emergency</u> ARC 9166B	10/20/10

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Boating, special events, ch 44 <u>Filed Emergency</u> ARC 9114B	10/6/10
Boat motor regulations—horsepower limitations, 45.4, 45.5 <u>Notice</u> ARC 9117B	10/6/10
State parks and recreation and camping areas—reservations, 61.3, 62.4 <u>Notice</u> ARC 9118B	10/6/10

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Office of drug control policy—address change, 100.4(4)"a" <u>Filed Emergency</u> ARC 9161B	10/20/10
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PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Board of chiropractic, 41.2(1), 43.5, 43.10(3), 44.1, 44.3(2)"a," 45.2(2)"g" <u>Filed</u> ARC 9109B	10/6/10
Physical therapists and physical therapist assistants; occupational therapists and occupational therapy assistants, amendments to chs 200, 202, 203, 207, 209 <u>Notice</u> ARC 9156B	10/20/10

PUBLIC HEALTH DEPARTMENT[641]

Iowa domestic abuse death review team, 91.1 to 91.11 <u>Filed</u> ARC 9110B	10/6/10
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REVENUE DEPARTMENT[701]

Valuation of agricultural real estate, 71.3, 71.12(1) <u>Notice</u> ARC 9113B	10/6/10
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SCHOOL BUDGET REVIEW COMMITTEE[289]

EDUCATION DEPARTMENT[281]"umbrella"

Composition of committee; hearings, 1.1, 1.2, 1.4 <u>Notice</u> ARC 9122B	10/6/10
Hearings, rescind 6.2 <u>Notice</u> ARC 9124B	10/6/10
On-time funding for increased enrollment, rescind ch 7 <u>Notice</u> ARC 9125B	10/6/10
Waiver requests handled by committee, amendments to ch 8 <u>Notice</u> ARC 9126B	10/6/10

SECRETARY OF STATE[721]

Election forms and instructions, amendments to ch 21 <u>Notice of Termination</u> ARC 9142B	10/6/10
Election forms and instructions, 21.7(4), 21.320(2)"g" <u>Notice of Termination</u> ARC 9141B	10/6/10
Satellite absentee voting, 21.300 <u>Notice</u> ARC 9140B , also <u>Filed Emergency</u> ARC 9139B	10/6/10

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Description of organization, 1.5(2) <u>Filed</u> ARC 9148B	10/6/10
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UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Exterior flood lighting efficiency standards—LED and solid-state lighting, 35.15(3), 36.8(3)	
<u>Filed</u> ARC 9136B	10/6/10

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

EDITOR'S NOTE: Terms ending April 30, 2011.

Senator Merlin Bartz
2081 410th Street
Grafton, Iowa 50440

Senator Thomas Courtney
2200 Summer Street
Burlington, Iowa 52601

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

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Senator James Seymour
901 White Street
Woodbine, Iowa 51579

Joseph A. Royce
Legal Counsel
Capitol
Des Moines, Iowa 50319
Telephone (515)281-3084
Fax (515)281-8451

Representative Marcella R. Frevert
P.O. Box 324
Emmetsburg, Iowa 50536

Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641

Representative Tyler Olson
P.O. Box 2389
Cedar Rapids, Iowa 52406

Representative Nathan Reichert
1155 Iowa Avenue
Muscatine, Iowa 52761

Representative Linda Upmeyer
2175 Pine Avenue
Garner, Iowa 50438

James Larew
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319
Telephone (515)281-0208

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.
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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.
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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.
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State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	November 2, 2010 2 to 3 p.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Water quality certification, 61.2(2)“g” IAB 10/20/10 ARC 9153B	Fifth Floor West Conference Room (5W) Wallace State Office Bldg. Des Moines, Iowa	November 9, 2010 1 p.m.
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Underground storage tanks—review procedures and acceptance of reports from certified groundwater professionals, 135.9(11), 135.10(11), 135.12 IAB 10/20/10 ARC 9152B	Meeting Room B, Public Library 1401 5th St. Coralville, Iowa	November 9, 2010 1 p.m.
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Norelius Community Library 1403 1st Ave. South Denison, Iowa	November 10, 2010 1 p.m.
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Fourth Floor West Conference Room Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	November 15, 2010 1 p.m.
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HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Iowa hazard mitigation plan, 9.3 IAB 10/6/10 ARC 9150B (See also ARC 9149B)	Division Conference Room Camp Dodge W-4 7105 NW 70th Ave. Johnston, Iowa	October 26, 2010 10 a.m.
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HUMAN SERVICES DEPARTMENT[441]

Nursing facilities; quality improvement initiative grants, 81.50(7), 81.52(4), ch 166 IAB 10/20/10 ARC 9157B	Rooms 128 and 129 Iowa Medicaid Enterprise 100 Army Post Rd. Des Moines, Iowa	November 10, 2010 2 to 4 p.m.
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INSURANCE DIVISION[191]

Individual accident and health insurance—rate hearings, 36.20 IAB 10/20/10 ARC 9168B	Insurance Division Offices 330 Maple St. Des Moines, Iowa	November 16, 2010 10 a.m.
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IOWA FINANCE AUTHORITY[265]

Low-income housing tax credit program—qualified allocation plan, 12.1, 12.2 IAB 10/20/10 ARC 9160B	Authority Offices 2015 Grand Ave. Des Moines, Iowa	November 9, 2010 9 to 11 a.m.
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HOME partnership program, 39.2 to 39.9 IAB 10/20/10 ARC 9159B	Authority Offices 2015 Grand Ave. Des Moines, Iowa	November 9, 2010 2 p.m.
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NATURAL RESOURCE COMMISSION[571]

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.
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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.
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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.
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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.
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PROFESSIONAL LICENSURE DIVISION[645]

Physical and occupational therapy—licensure, amendments to chs 200, 202, 203, 207, 209 IAB 10/20/10 ARC 9156B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	November 9, 2010 8 to 8:30 a.m.
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PUBLIC SAFETY DEPARTMENT[661]

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.
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The following list will be updated as changes occur.

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

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

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

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ARC 9165B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 203.2, 203C.5, and 203D.4, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 90, “State Licensed Warehouses and Warehouse Operators,” Chapter 91, “Licensed Grain Dealers,” Chapter 92, “Participation in Grain Indemnity Fund,” Chapter 93, “Grain Indemnity Fund Board—Organization and Operations,” and Chapter 94, “Claims Against the Grain Depositors and Sellers Indemnity Fund,” Iowa Administrative Code.

The proposed amendments conform the rules on grain transactions involving grain dealers and warehouse operators to reflect changes made by 2010 Iowa Acts, Senate File 2299, by replacing the annual fee paid by grain dealers and warehouse operators with a participation fee. The annual warehouse participation fee changed generally from \$2.75 per 5,000 bushels of capacity to fourteen thousandths of a cent per bushel of licensed storage capacity with a limit of \$500. The annual grain dealer participation fee changed generally from \$500 to fourteen thousandths of a cent per bushel of grain purchased.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 9, 2010. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by E-mail to Margaret.Thomson@IowaAgriculture.gov.

These proposed amendments are subject to the Department’s general waiver provision.

These amendments are intended to implement 2010 Iowa Acts, Senate File 2299.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **21—90.2(203C)**:

“*Generally accepted accounting principles*” means accounting principles generally accepted in the United States of America, in accordance with the U.S. Financial Accounting Standards Board, or international financial reporting standards, in accordance with the International Accounting Standards Board.

“*Indemnity fund*” means the Iowa grain depositors and sellers indemnity fund created in Iowa Code chapter 203D.

ITEM 2. Amend rule 21—90.4(203C) as follows:

21—90.4(203C) Application for a warehouse operator license. Application to operate a licensed warehouse (Iowa Code chapter 203C) shall be made to the bureau on forms prescribed for that purpose by the bureau. Forms are available from the bureau upon request. All information required by Iowa Code section 203C.7 shall be furnished. The bureau may require the applicant to file updated information if the information on the application is no longer current. The application, insurance certificate, financial statement, tariff, license fee, indemnity fund fee and background information on a person applying for the license and on the managers shall be on file before a license is issued. The bureau chief may require an inspection of the proposed facilities prior to the issuance of a warehouse operator license.

This rule is intended to implement Iowa Code sections 203C.6, ~~and~~ 203C.7, 203C.12, 203C.15, 203C.28 and 203C.33, 2009 Iowa Code Supplement section 203D.3 as amended by 2010 Iowa Acts, Senate File 2299, and 2010 Iowa Acts, Senate File 2299, section 8.

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

ITEM 3. Amend subrule 90.5(2) as follows:

90.5(2) *Surrender of license.* The license shall be surrendered to the bureau immediately upon ~~termination~~, cancellation, suspension, or revocation of such license.

ITEM 4. Amend rule 21—90.7(203C) as follows:

21—90.7(203C) *Renewal, ~~termination~~ expiration and reinstatement of license—payment of license fee.*

90.7(1) *Renewals.* The bureau shall send to each licensed warehouse operator written notice that the application, ~~and the license fee and the indemnity fund fee~~ for annual renewal of the warehouse operator license shall be received in accordance with Iowa Code section 203C.37. If the bureau does not receive the application and ~~fee fees~~ by the due date, the license shall ~~be terminated~~ expire. A license that has ~~been terminated~~ expired may be reinstated within 30 days of the date of ~~termination~~ expiration conditioned on the applicant's meeting all statutory requirements and by the bureau's receipt of the following within 30 days of the ~~termination~~ expiration:

- a. Completed application;
- b. License ~~fee~~; and indemnity fund fees; and
- c. The reinstatement fee prescribed in Iowa Code section 203C.33.

90.7(2) No change.

This rule is intended to implement Iowa Code sections 203C.33 and 203C.37.

ITEM 5. Amend subrule 90.8(2), introductory paragraph, as follows:

90.8(2) *Financial statement requirements.* Financial statements filed pursuant to subrules 90.8(1), 90.8(3), 90.8(4) and 90.8(11) shall be prepared in accordance with generally accepted accounting principles ~~generally accepted in the United States~~ and shall comply with either of the following:

ITEM 6. Amend paragraph **90.8(9)“a”** as follows:

a. Corporations, limited liability companies and partnerships. When the bureau determines the net worth for corporations, limited liability companies and partnerships, related party assets that require financial disclosure per financial accounting standards shall be disallowed. These assets shall be excluded unless the licensee can show the ~~department~~ bureau sufficient documentation to ~~explain why these assets should be allowed~~ assure the bureau that the assets are collectible.

ITEM 7. Amend paragraph **90.11(1)“b”** as follows:

b. Change in name or business address of a warehouse or warehouse operator.

ITEM 8. Amend subrules 90.13(4) and 90.13(5) as follows:

90.13(4) *Surrender of warehouse receipts on cancellation, ~~termination~~ expiration, suspension or revocation of license.* When a warehouse operator license has expired or is canceled, ~~terminated~~, suspended or revoked, all unused warehouse receipts under such license shall be surrendered to the bureau.

The bureau shall notify the warehouse operator that all outstanding warehouse receipts shall be returned to the bureau's office no later than 120 days from the date of cancellation, ~~termination~~ expiration, or revocation of the license.

90.13(5) *Purchase or return of grain, replacement receipt issued, or cancellation of outstanding receipts, upon cancellation, ~~termination~~ expiration, or revocation of warehouse operator license.* When a warehouse operator license has expired or is canceled, ~~terminated~~, or revoked, all stored grain shall be either purchased and payment made, or returned within 30 days to the holders of warehouse receipts or unpriced scale tickets, except when the warehouse is continuing operation under new ownership or when storage obligations are assumed by another licensee. Upon completion of delivery to the receipt holder or the reissuance of the receipt under a new license, the warehouse operator shall immediately mark “canceled,” sign or initial and date such receipt on the face of the original copy, and forward such receipt to the bureau's office to be stamped with the department's cancellation stamp. When the storage obligations are assumed by a new licensee from a warehouse whose license is expired or has been canceled, ~~terminated~~, or revoked, replacement warehouse receipts shall be issued.

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

ITEM 9. Amend rule 21—90.14(203C), introductory paragraph, as follows:

21—90.14(203C) Lost or destroyed receipt. If a warehouse receipt is lost or destroyed, one of three methods shall be used in canceling the receipt. The following procedures shall be adhered to:

ITEM 10. Amend subrule 90.14(1) as follows:

90.14(1) Depositor's lost warehouse receipt release. If the depositor or warehouse receipt holder has lost the receipt and is either selling all of the grain to the warehouse operator or removing all of the grain from storage, a Lost Warehouse Receipt Release shall be used. The release shall be completed in duplicate and signed by the receipt holder and shall be notarized. Both copies shall be retained in the warehouse records in lieu of the original copy of the receipt, which shall be given to the bureau at the time of an examination. One copy of the release shall be filed with the bureau at the time of an examination.

ITEM 11. Amend subrule 90.15(1) as follows:

90.15(1) Warehouse receipt forms. Warehouse receipt forms shall be 8.25 inches wide by 7 inches long or 8.5 inches wide by 11 inches long and shall be printed in not less than triplicate. The original receipt shall be white, and the weight of the paper shall not be less than 20-pound base; the warehouse operator's copy shall be yellow and the weight of the paper shall not be less than 16-pound base; and the owner's copy shall be green and the weight of the paper shall not be less than 16-pound base. Receipts issued for bulk grain and receipts issued for agricultural products other than bulk grain shall be in a form prescribed by the department. The bureau shall have control over the printing of warehouse receipts.

ITEM 12. Amend paragraph **90.15(3)“e”** as follows:

e. Provisions to cease issuing electronic warehouse receipts. Upon notice by the department that a warehouse operator license issued under Iowa Code chapter 203C has expired or has been terminated, canceled, suspended or revoked, a provider shall prohibit the warehouse operator from issuing any electronic warehouse receipts until further notice from the department.

ITEM 13. Amend subrule 90.16(1) as follows:

90.16(1) Application of tariff. The tariff rates applicable to stored products shall be those as contained in the tariff on file with the bureau at the time the product is received for storage. The tariff rates shall be applicable on an annual basis from date of deposit. If a tariff is amended, the charges shall be applied in accordance with subrule 90.16(3). Tariff charges shall cease upon cancellation, ~~termination~~ expiration, or revocation of a warehouse operator license. Tariff charges shall continue in accordance with the rates as filed by the successor warehouse operator. In the determination of the applicable rates to be applied under the successor warehouse operator's tariff, the date of deposit under the new tariff shall be the actual date of deposit. No charges shall apply to grain held for less than 30 days and for which no warehouse receipt has been issued unless the warehouse operator has a posted policy which provides for a shorter time period.

ITEM 14. Amend subrule 90.17(7) as follows:

90.17(7) Retention of records. All records shall be kept for a period of not less than six years. Such records shall be kept for the stated time period even if a license has expired or has been canceled, ~~terminated~~ or revoked.

ITEM 15. Amend rule 21—90.20(203C) as follows:

21—90.20(203C) Monthly grain statements. A grain statement shall be prepared at the close of business at the end of each calendar month and filed with the bureau by the tenth of the following month. This grain statement shall be on a form or in a format prescribed by the bureau, ~~which~~. The bureau shall be furnished furnish forms to the warehouse operator upon request. A grain statement shall be filed for each calendar month regardless of whether or not the warehouse operator has products in storage.

This rule is intended to implement Iowa Code section 203C.2.

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

ITEM 16. Amend rule 21—90.23(203C), introductory paragraph, as follows:

21—90.23(203C) Storing of products. Bulk grain in storage shall be stored in such a manner that the amount of grain in the storage facility can be readily determined. ~~The warehouse operator may be required to level the grain before completion of the examination if the amount of bulk grain in a storage facility cannot be readily measured by the examiner.~~ A product other than bulk grain shall be stored in such a manner that it can be readily inspected and the amount and kind thereof determined. The maintenance, conditioning, care, or surveillance shall be given to stored products as is required to maintain the quality, grade, and safe storage of the products. Nothing shall be placed or stored in a licensed facility that will in any way contaminate the stored products or cause any degrading of grade or value. Storage facilities shall not be overfilled. There shall be sufficient overhead airspace to provide adequate ventilation and to allow the examiner to readily determine the quality and quantity of the grain. The bureau chief may require the installation of overhead ventilation fans in facilities when in the bureau chief's judgment such fans are needed to preserve the quality of stored products. The bureau chief may require the installation of aeration equipment in storage facilities when it is deemed necessary to preserve the quality of stored products.

ITEM 17. Amend subrule 90.26(1) as follows:

90.26(1) License period. A license for a temporary storage facility may be issued at any time but shall be effective for the storage of grain only from August 1 to May 1 of the following year. A temporary storage facility license shall ~~terminate~~ expire each May 1 unless the licensee requests and obtains an extension in accordance with subrule 90.26(2).

ITEM 18. Amend subrule 90.28(1) as follows:

90.28(1) License period. A license for polyvinyl bag storage space shall be effective from August 1 to May 1 of the following year. A polyvinyl bag storage space license shall ~~terminate~~ expire May 1 unless the licensee requests and obtains an extension in accordance with subrule 90.28(2).

ITEM 19. Amend rule 21—90.31(203C) as follows:

21—90.31(203C) Review proceedings. A warehouse ~~licensee~~ operator or applicant may file a formal written complaint with the department if the licensee or applicant contests any finding or decision of the bureau chief. Any such complaints shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of 21—Chapter 2.

ITEM 20. Adopt the following new definitions in rule **21—91.2(203)**:

“Generally accepted accounting principles” means accounting principles generally accepted in the United States of America, in accordance with the U.S. Financial Accounting Standards Board, or international financial reporting standards, in accordance with the International Accounting Standards Board.

“Indemnity fund” means the Iowa grain depositors and sellers indemnity fund created in Iowa Code chapter 203D.

ITEM 21. Amend rule 21—91.3(203) as follows:

21—91.3(203) Application for a grain dealer license. Application for a grain dealer license (Iowa Code chapter 203) shall be made to the bureau on forms prescribed for that purpose by the bureau. Forms are available from the bureau upon request. All information required by Iowa Code chapter 203 shall be furnished. The bureau may require the applicant to file updated information if the information on the application is no longer current. ~~The background information on a person applying for the license and on the managers must be on file before a license is issued.~~ The application, financial statement, license fee, indemnity fund fee and background information on a person applying for a license and on the managers shall be on file before a license is issued.

This rule is intended to implement Iowa Code sections ~~203.2 and 203.3~~, 203.5 and 203D.3 and 2010 Iowa Acts, Senate File 2299, section 8.

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

ITEM 22. Amend rule 21—91.6(203) as follows:

21—91.6(203) Surrender of license. The grain dealer license and all unused credit-sale contracts shall be forwarded to the bureau immediately upon cancellation, ~~termination~~ suspension, or revocation of such license. A grain dealer's letter requesting cancellation of the grain dealer license shall also state whether or not there are any unpaid obligations.

This rule is intended to implement Iowa Code sections 203.2, 203.3 and 203.7.

ITEM 23. Amend rule 21—91.7(203), catchwords, as follows:

21—91.7(203) Renewal, ~~termination~~ expiration and reinstatement of license—payment of license fee.

ITEM 24. Amend subrule 91.7(1) as follows:

91.7(1) Renewals. The bureau shall send to each licensed grain dealer written notice that the application, ~~and~~ the license fee ~~and the indemnity fund fee~~ for annual renewal of the grain dealer license shall be received in accordance with Iowa Code section 203.5. If the bureau does not receive the application and ~~fee fees~~ by the due date, the license shall ~~be terminated~~ expire. A license that has ~~been terminated~~ expired may be reinstated within 30 days of the date of ~~termination~~ expiration conditioned on the applicant's meeting all statutory requirements and the bureau's receipt of the following within 30 days of the ~~termination~~ expiration:

- a. Completed application;
- b. License fee ~~and indemnity fund fees~~;
- c. The reinstatement fee prescribed in Iowa Code section 203.6.

ITEM 25. Amend subrule 91.8(2), introductory paragraph, as follows:

91.8(2) Financial statement requirements. Financial statements filed pursuant to subrules 91.8(1), 91.8(3), 91.8(4) and 91.8(11) shall be prepared in accordance with ~~accounting principles~~ generally accepted ~~in the United States~~ accounting principles and shall comply with either of the following:

ITEM 26. Amend paragraph **91.8(9)“a”** as follows:

a. *Corporations, limited liability companies and partnerships.* When the bureau determines the net worth, current assets to current liabilities ratio and total debts to total assets ratio requirements for corporations, limited liability companies and partnerships, related party assets that require financial disclosure per financial accounting standards shall be disallowed. These assets shall be excluded unless the licensee can show the ~~department~~ bureau sufficient documentation to ~~explain why these assets should be allowed~~ assure the bureau that the assets are collectible. If assets are classified as current in the financial statements, the documentation shall also assure that the assets are collectible within one year.

ITEM 27. Amend subrules 91.11(6) and 91.11(7) as follows:

91.11(6) Direct shipment records. When grain is delivered by a producer or the producer's agent to a third party in accordance with an agreement between the producer and the grain dealer and the grain is weighed, at the destination or is custom weighed, the ~~following shall apply:~~

a. ~~The grain dealer shall maintain one copy of every direct shipment scale ticket in daily order as part of the grain records. These scale tickets shall have the name of the producer recorded on them.~~

b. The direct shipment is to be considered an obligation of the grain dealer on the date stated on the destination scale ticket, and the direct shipment shall be reflected in the daily position record on the date when the grain dealer is able to obtain the load weights.

c. ~~If the destination weights are transferred to the grain dealer's scale tickets, the tickets shall contain a minimum of the producer's name and the destination scale ticket number and weights.~~

d. A grain dealer who also holds a warehouse operator license may maintain a separate daily position record for each kind of direct shipment grain. The grain dealer shall notify the bureau in writing if the grain dealer elects to maintain such a daily position record.

91.11(7) Credit-sale contracts. One copy of every outstanding credit-sale contract shall be maintained in numerical order as part of the records.

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

a. No change.

b. Notice of credit-sale contract acknowledgment. A licensed grain dealer who purchases grain by credit-sale contract shall obtain from the seller's signature on a notice of credit-sale contract seller a signed acknowledgment, stating that the seller has received notice that grain purchased by credit-sale contract is not protected by the grain depositors and sellers indemnity fund. Failure of the grain dealer to obtain the acknowledgment of the seller is a violation of Iowa Code section 203.15 and may result in license suspension or revocation under Iowa Code section 203.10. Failure of the grain dealer to obtain the acknowledgment does not alter the fact that the seller shall be unable to recover from the grain depositors and sellers indemnity fund any loss incurred under credit-sale contract. The acknowledgment shall comply with one of the following:

(1) Be a separate form, which shall be in a form prescribed by the bureau. The notice shall state that the seller has received notice that the grain is not protected by the grain depositors and sellers indemnity fund. A copy of the notice shall be attached to the grain dealer's copy and seller's copy of the credit-sale contract. Failure of the grain dealer to obtain the acknowledgment of the seller is a violation of Iowa Code section 203.15 and may result in license suspension or revocation under Iowa Code section 203.10. Failure of the grain dealer to obtain the acknowledgment of the seller does not alter the fact that the seller shall be unable to recover from the grain depositors and sellers indemnity fund any loss incurred under the credit-sale contract; or

e. (2) In lieu of obtaining the separate credit-sale acknowledgment form, the The grain dealer may add the following wording to the credit-sale contract directly above the signature of the buyer and seller in bold size print of equal size or larger than the body of the contract: "By their signature hereto, the undersigned aver that the seller has been orally advised by the buyer that this transaction is not covered by the grain depositors and sellers indemnity fund."; or

(3) The grain dealer may add the following wording to the credit-sale contract directly above the signature of the buyer and seller in bold print of equal size or larger than the body of the contract: "By their signature hereto, the undersigned acknowledges that the seller has received notice that this credit-sale transaction is not protected by the grain depositors and sellers indemnity fund."

~~d. c.~~ If someone other than the seller indicated on a credit-sale contract signs the contract, the grain dealer shall be able to provide the bureau with proof of business relationship between the indicated seller and the person who signed the contract. This document shall be signed by the person who produced the grain or caused the grain to be produced. The document is required for but not limited to contracts signed by the following:

(1) to (7) No change.

If a contract is issued to two or more sellers, all must sign the contract.

e. ~~d.~~ A licensee's purchases of grain by credit-sale contract from a person licensed as a grain dealer in any jurisdiction are not subject to the requirements of 91.11(7). Any grain purchased from a grain dealer is not eligible for recovery from the grain depositors and sellers indemnity fund.

ITEM 28. Amend rule 21—91.12(203) as follows:

21—91.12(203) Assignment of contracts. Upon cancellation, ~~termination~~ expiration, suspension or revocation of the license, credit-sale contracts may be assigned to another grain dealer licensed under Iowa Code chapter 203 unless strictly prohibited in the terms of the credit-sale contract. The assignee shall notify all affected producers in writing of the assignment. A copy of the assignment shall be forwarded to the bureau showing the contracts assigned and to whom they are assigned within 30 days of cancellation, ~~termination~~ expiration, suspension or revocation of the license. All credit-sale contracts shall be paid for or reassigned within 30 days of cancellation, ~~termination~~ expiration, or revocation of the license.

This rule is intended to implement Iowa Code sections 203.2 and 203.15.

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

ITEM 29. Amend rule 21—91.13(203) as follows:

21—91.13(203) Filing of monthly grain statement and reports. A grain statement shall be prepared at the close of business at the end of each calendar month and filed with the bureau by the tenth of the following month. The grain statement shall be on a form or in a format prescribed by the bureau, and furnished. The bureau shall furnish forms to the dealer upon request. A grain statement shall be filed for each calendar month regardless of whether or not the dealer has conducted any business during that period.

The bureau may require the dealer to file other types of reports, and the dealer shall file with the bureau any such report requested by the bureau within the time period as is specified by the bureau.

This rule is intended to implement Iowa Code section 203.2.

ITEM 30. Amend rule 21—91.16(203) as follows:

21—91.16(203) Requirements for Class 2 licensees. A Class 2 licensee whose purchases from producers during the fiscal year exceed \$500,000, and who is thereby required by Iowa Code section 203.3 to apply for a Class 1 license, shall file the application with the bureau within 30 days after the purchases exceed \$500,000. ~~The application shall include the additional \$250 annual assessment for Class 1 licensees required under rule 21—92.2(203D).~~

This rule is intended to implement Iowa Code section 203.3.

ITEM 31. Amend subrule 91.21(2) as follows:

91.21(2) Notice. The bureau shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location, and in a newspaper of general circulation in the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the bond on account of the licensee shall be ~~sent by certified mail to~~ received by the bureau within 120 days after the incurrence date, and that the failure to make a timely claim relieves the department from liability to the claimant. This notice may be incorporated by the bureau with the notice required by Iowa Code section 203.12.

ITEM 32. Amend subrule 91.23(4) as follows:

91.23(4) Provisions to cease issuing electronic grain contracts. Upon notice by the department that a grain dealer license issued under Iowa Code chapter 203 has expired or has been terminated, canceled, suspended or revoked, a provider shall prohibit the licensee from entering into any electronic grain contracts until further notice from the department. Upon notice by the department that a licensee has had its right to purchase grain by credit-sale contract suspended or denied under rule 21—91.17(203), a provider shall prohibit the licensee from entering into any electronic credit-sale grain contracts until further notice from the department.

ITEM 33. Amend rule 21—92.1(203D) as follows:

21—92.1(203D) Mandatory participation in fund. All grain dealers and ~~state~~ warehouse operators shall participate in the grain depositors and sellers indemnity fund (the fund) through the remission of the fees required in rule 21—92.2(203D). Failure to participate shall result in license suspension or revocation. As used in this chapter, “grain dealer” shall mean a licensed grain dealer pursuant to Iowa Code section 203.3 and “warehouse operator” shall mean a licensed warehouse operator pursuant to Iowa Code section 203C.6. “Licensee” shall mean either a licensed grain dealer or a licensed warehouse operator.

ITEM 34. Amend rule 21—92.2(203D) as follows:

21—92.2(203D) Required fees. Until the amounts are amended or waived by the grain indemnity fund board pursuant to 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299, in accordance with Iowa Code chapter 17A, fees shall be assessed as follows:

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

92.2(1) A per-bushel fee on all purchased grain, in an amount of one-quarter cent per bushel, remitted by ~~the licensee~~. grain dealers. However, if the grain dealer provides documentation satisfactory to the department, the following transactions shall be excluded from the per-bushel fee:

- a. Grain purchased from the United States government or any of its subdivisions or agencies.
- b. Grain purchased from a person licensed as a grain dealer in any jurisdiction.
- c. Grain purchased under a credit-sale contract.

92.2(2) An annual ~~grain dealer/warehouse participation~~ fee, remitted by ~~the licensee~~ licensees, as follows:

a. For Class 1 grain dealers, ~~\$500~~, a participation fee of fourteen thousandths of a cent per bushel on all purchased grain entered into the company-owned paid position during the grain dealer's last fiscal year. However, a grain dealer shall pay a minimum participation fee of \$50. Redemptions of collateral warehouse receipts entered into the company-owned paid position shall not be considered as a purchase.

~~b. For Class 2 grain dealers, \$250.~~

~~e. b.~~ For warehouse operators, a participation fee of fourteen thousandths of a cent per bushel of bulk grain storage capacity, or \$500, whichever is less. However, a warehouse operator shall pay a minimum participation fee of \$50.

~~(1) For intended storage of bulk grain in any quantity less than 20,000 bushels, \$42 plus \$7 for each 2,000 bushels or fraction thereof in excess of 20,000 bushels.~~

~~(2) For intended storage of bulk grain in any quantity not less than 20,000 bushels and not more than 50,000 bushels, \$70 plus \$4.50 for each 3,000 bushels or fraction thereof in excess of 20,000 bushels.~~

~~(3) For intended storage of bulk grain in any quantity not less than 50,000 bushels and not more than 70,000 bushels, \$115 plus \$4.50 for each 4,000 bushels or fraction thereof in excess of 50,000 bushels.~~

~~(4) For intended storage of bulk grain in any quantity not less than 70,000 bushels, \$137.50 plus \$2.75 for each 5,000 bushels or fraction thereof in excess of 70,000 bushels.~~

92.2(3) A grain dealer may pass on the cost of a per-bushel fee paid in accordance with 92.2(1) to the grain sellers by an itemized discount on the grain dealer's settlement sheet.

This rule is intended to implement 2009 Iowa Code Supplement sections 203D.3 and 203D.5 as amended by 2010 Iowa Acts, Senate File 2299.

ITEM 35. Rescind rule 21—92.3(203D) and adopt the following **new** rule in lieu thereof:

21—92.3(203D) New license applicants. Persons applying for a new grain dealer license or warehouse operator license shall pay a full annual participation fee in accordance with 2010 Iowa Acts, Senate File 2299, section 8, and 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299. This payment shall be made without regard to whether or not the grain indemnity fund board has otherwise waived or adjusted the per-bushel or participation fees for licenses. Payment of the fees shall be made before a new license is issued. A participation fee paid by an applicant shall be refunded if the license is not issued by the department. A participation fee paid by a grain dealer applicant shall be recalculated by the end of the first state fiscal quarter after completion of the grain dealer's first year of operation. The grain dealer participation fee shall be recalculated based upon all actual purchased grain entered into the company-owned paid position in the dealer's first year of operation. However, redemptions of collateral warehouse receipts entered in the company-owned paid position shall not be considered as a purchase. Underpayments shall be paid by the licensee in accordance with rule 21—92.4(203D) and overpayments shall be refunded by the department.

This rule is intended to implement 2010 Iowa Acts, Senate File 2299, section 8, and 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299.

ITEM 36. Amend rule 21—92.4(203D) as follows:

21—92.4(203D) Due date for payment of the per-bushel fee.

92.4(1) Quarterly payments. The per-bushel fee and the participation fee installment payment established in ~~Iowa Code section 203D.3~~ 2010 Iowa Acts, Senate File 2299, section 8, as adjusted

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

by rule 21—92.2(203D), and the quarterly report are due, except as provided in subrule 92.4(2), on the fifteenth day of the calendar fiscal month succeeding the calendar fiscal quarter in which the fee accrued. The calendar fiscal quarters are as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31; January 1 through March 31; and April 1 through June 30.

92.4(2) *Payments for licensees out of business.* If a state grain dealer or warehouse operator license has expired or is revoked, terminated, or canceled during the term of a calendar fiscal quarter, the quarterly report and per-bushel fee for that quarter are due 15 days after the date of license expiration, revocation, termination, or cancellation.

92.4(3) *Holidays.* If the due date determined under subrules 92.4(1) and 92.4(2) falls on a Saturday, Sunday, a legal holiday as provided in Iowa Code section 4.1(34), or a Monday following a Sunday which is a named legal holiday, the due date is the following day.

92.4(4) *Forms and payment.* The quarterly report shall be submitted on forms or in a format prescribed and by the bureau. Required forms shall be provided by the grain warehouse bureau. The amount of the per-bushel fee, as calculated in the quarterly report, shall accompany the report. Checks shall be made payable to the Iowa Department of Agriculture and Land Stewardship (abbreviated as IDALS).

92.4(5) No change.

This rule is intended to implement 2009 Iowa Code Supplement section 203D.3 as amended by 2010 Iowa Acts, Senate File 2299, and 2010 Iowa Acts, Senate File 2299, section 8.

ITEM 37. Amend rule 21—92.5(203D) as follows:

21—92.5(203D) Penalty for delinquent submission of per-bushel fee quarterly fees.

92.5(1) *Delinquent payments defined.* In regard to the submission of the quarterly report, and per-bushel fee and the participation fee installment payment, the licensee is deemed to be delinquent if any of the following apply:

a. to c. No change.

d. The participation fee installment payment is not received on or before the due date.

92.5(2) *Penalty amount.* The amount of penalty for a delinquent submission is the lesser of the amount of the deficiency or \$10 per day for each day after the due date for the quarter in question, through the earlier of the date the underpayment is received or the date the licensee's license has expired or has been revoked or canceled. However, a delinquent payment is subject to a minimum penalty amount of \$10.

92.5(2) 92.5(3) *Penalty when no assessment is due.* If the licensee is delinquent because the quarterly report is not received until after the due date, but no per-bushel fee was due for that quarter, there is a one-day penalty of \$10.

92.5(3) 92.5(4) *License suspension and revocation for failure to pay.* If the delinquency is not cured within 30 days after the due date, the grain dealer's or warehouse operator's license shall be suspended. If the delinquency is not cured within 30 days after suspension, the license shall be revoked.

92.5(4) 92.5(5) *Overpayments.* If, upon review of the quarterly report, the grain warehouse bureau determines that there has been an overpayment of \$1 or more, the bureau shall issue a credit to the licensee which may be applied against the amount of assessment due in succeeding quarters. Overpayments of less than \$1 are negated.

This rule is intended to implement Iowa Code section 203D.3 and 2010 Iowa Acts, Senate File 2299, section 8.

ITEM 38. Amend subrule 92.6(3) as follows:

92.6(3) *Penalty amount.* If the licensee is delinquent, the penalty is the lesser of the amount of the deficiency or \$10 per day for each day after the due date for the quarter in question, through the earlier of the date the underpayment is received or the date the licensee's license is has expired or has been revoked, terminated, or canceled. However, a delinquent payment is subject to a minimum penalty amount of \$10.

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

ITEM 39. Amend rule **21—92.6(203D)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 203D.3 and 2010 Iowa Acts, Senate File 2299, section 8.

ITEM 40. Amend rule 21—93.2(203D) as follows:

21—93.2(203D) The board. The grain indemnity fund board consists of seven members: the secretary of agriculture or the secretary's designee who shall serve as chairperson, ~~the commissioner of insurance or the commissioner's designee who shall serve as secretary~~, the state treasurer or the state treasurer's designee who shall serve as treasurer, a representative of the banking industry and four representatives of the grain trade (two producers and two operators) industry. Grain industry representatives shall consist of two grain producers, one representative of warehouse operators licensed in accordance with Iowa Code section 203C.6 and one representative of grain dealers licensed in accordance with Iowa Code section 203.3. Each industry representative shall be appointed by the governor from a list of three nominees made by the secretary of agriculture.

This rule is intended to implement Iowa Code section 203D.4.

ITEM 41. Amend rule 21—93.3(203D) as follows:

21—93.3(203D) Authority of the board. The board has authority to determine the amount and validity of claims made against the fund, to review and adjust the per-bushel fee and the ~~dealer-warehouse grain dealer and warehouse operator participation~~ fee, and to approve costs of administering the fund. In addition, the board has the authority to act as an advisor to the secretary of agriculture on administrative matters affecting the fund, and as a result the board will make only policy recommendations in regard to the areas of administration delegated to the department in Iowa Code chapter 203D.

This rule is intended to implement Iowa Code section 203D.4.

ITEM 42. Amend subrule 93.4(2) as follows:

93.4(2) General conduct of meetings. The chairperson, ~~or secretary in the absence of the chairperson~~, presides at all board meetings. Only individuals recognized by the presiding officer may address the board; in general, Robert's Rules of Order will govern the meeting unless otherwise stated in this chapter or by special action of the board.

In all discussions before the board, members of the public shall address any questions for the board to the presiding officer. Individual questioning of board members will not be allowed without the explicit consent of the presiding officer and the board members in question.

ITEM 43. Amend rule 21—93.5(203D) as follows:

21—93.5(203D) Minutes. The minutes of all board meetings are recorded and kept by the ~~secretary grain warehouse bureau~~ in the board's office.

This rule is intended to implement Iowa Code section 203D.4.

ITEM 44. Amend rule 21—93.8(203D) as follows:

21—93.8(203D) Waiver of per-bushel and annual grain dealer and warehouse operator fees. Pursuant to 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299, the per-bushel and the annual grain dealer and warehouse operator fees are suspended ~~and waived effective July 1, 1988~~, until reinstated by rule or statute. ~~This waiver applies to all fees which would have accrued on or after July 1, 1988.~~ To this extent, this rule supersedes rules 21—92.2(203D) and 21—92.4(203D). ~~However, this rule does not waive any fees or penalties which accrued before July 1, 1988, including annual fees which became due and payable on or before June 30, 1988. Penalties on delinquent per-bushel fees arising prior to July 1, 1988, shall continue to run until the delinquency is cured.~~ Further, this rule does not alter the requirement of ~~Iowa Code section 203D.3(4)~~ 2010 Iowa Acts, Senate File 2299, section 8, that new licensees must pay the annual grain dealer and warehouse

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

operator fees for the first year, as set out in ~~Iowa Code section 203D.3~~ 2010 Iowa Acts, Senate File 2299, section 8, and in rule 21—subrule 92.2(2) 92.3(203D).

This rule is intended to implement Iowa Code sections 203D.3; and 203D.4 and 2009 Iowa Code Supplement section 203D.5 as amended by 2010 Iowa Acts, Senate File 2299.

ITEM 45. Adopt the following new definitions in rule **21—94.1(203D)**:

“*Credit-sale contract*” means a contract for the sale of grain pursuant to which the sale price is to be paid more than 30 days after the delivery of the grain to the buyer, or a contract which is titled as a credit-sale contract, including but not limited to those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

“*Department*” means the Iowa department of agriculture and land stewardship.

“*Licensed warehouse*” means a warehouse, the operation for which the department has issued a license in accordance with Iowa Code section 203C.6.

“*Warehouse receipt*” means a warehouse receipt issued for bulk grain in accordance with Iowa Code chapter 203C.

ITEM 46. Amend rule **21—94.1(203D)**, definition of “Warehouse operator,” as follows:

“*Warehouse operator*” ~~shall mean~~ means a licensed warehouse operator pursuant to Iowa Code section 203C.6.

ITEM 47. Amend rule 21—94.2(203D) as follows:

21—94.2(203D) By whom claims can be made. Claims shall be made only by a depositor or seller. Claims shall derive from a covered transaction. A claim shall not be made on grain which was initially eligible as a covered transaction but became not covered as a result of a new credit-sale contract transaction, as defined by rule 21—92.3(203D).

ITEM 48. Amend rule 21—94.4(203D) as follows:

21—94.4(203D) Time limitations. A claim against the fund may be made ~~anytime after the earlier of the license revocation, termination, or cancellation of a grain dealer’s or warehouse operator’s license or the grain dealer’s or warehouse operator’s filing a petition for bankruptcy.~~ for a covered transaction when either of the following incurrence dates occurs:

1. The expiration, revocation or cancellation of the license of a grain dealer or warehouse operator;
or
2. The filing of a petition in bankruptcy by a grain dealer or warehouse operator.

A claim shall be filed within a claim period that begins on an incurrence date and ends 120 days after that incurrence date. A claim is not timely unless ~~the claim~~ it is postmarked or delivered within 120 days after the revocation, termination, or cancellation of a license, or the filing of a petition for bankruptcy incurrence.

ITEM 49. Amend rule 21—94.5(203D) as follows:

21—94.5(203D) Claims by depositors where bureau is receiver. In regard to claims by depositors arising against a warehouse operator whose license has expired or has been revoked, ~~terminated~~, or canceled and who has not filed a petition for bankruptcy and where the bureau has been appointed by the court as the receiver of the grain assets of the warehouse, a claim properly filed with the bureau as receiver within 120 days of the license expiration, revocation, ~~termination~~, or cancellation also is deemed to be a properly filed claim against the fund.

ITEM 50. Renumber subrule **94.10(2)** as **94.10(3)**.

ITEM 51. Adopt the following new subrule 94.10(2):

94.10(2) Time limitation on claims. A claim shall expire five years after the board determines a claim is payable if the claimant has failed to execute and return the subrogation and hold-harmless documents required by subrule 94.10(1). The fund is not liable for payment of expired claims.

ARC 9153B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

The proposed amendment will provide water quality certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Section 1341) for Regional Permit 27 (RP 27) and the reissued Regional Permits 33 and 34 (RP 33 and RP 34).

Section 404 of the Clean Water Act requires a permit from the U.S. Army Corps of Engineers (Corps) for the discharge of dredged or fill materials into the nation’s waters. Section 401 of the Act requires that before the Corps can issue a Section 404 permit, the state water quality agency must certify that the proposed activity will not violate state water quality standards.

Section 404 authorizes the Corps to issue general permits on a state, regional or nationwide basis for categories of activities where such activities will have minimal adverse effects. The Corps has used its general permit authority to issue a number of general permits on a nationwide basis. General permits, including regional permits, may be issued for a period not exceeding five years, and a state water quality agency must provide Section 401 certification for a Section 404 general permit before the general permit is valid for that particular state. The Commission previously provided Section 401 certification for RP 33 and RP 34 permits. These permits are referenced in paragraph 61.2(2)“g.”

The Corps issued the public notice for the regional permits on June 23, 2010, and the notice expired on July 22, 2010. Copies of the June 23, 2010, public notices may be obtained from the Department. This amendment will provide Section 401 certification for RP 27 and the reissued RP 33 and RP 34.

Any interested person may submit written comments on the proposed amendment on or before November 12, 2010. Written comments or questions regarding the proposed amendment should be directed to Christine Schwake, Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail christine.schwake@dnr.iowa.gov. Persons who wish to convey their views orally should contact Christine Schwake at (515)281-6615.

Oral or written comments will also be accepted at a public hearing to be held on November 9, 2010, at 1 p.m. in the Fifth Floor West Conference Room (5W) of the Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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 and advise of specific needs.

This amendment may have an impact on small businesses.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendment is proposed.

Amend paragraph **61.2(2)“g”** as follows:

g. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31,

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 as well as Corps regional permits 7, 27, 33, and 34 as promulgated ~~October 29, 2008~~ February 16, 2011, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

(4) For discharges of dredged or fill material resulting in the permanent loss of more than 1/10 acre of waters of the United States (including jurisdictional wetlands), a compensatory mitigation plan to offset those losses will be required. In addition, a preconstruction notice to the Corps of Engineers in accordance with general condition 27 will be required.

(5) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

(6) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

(7) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

(8) For projects that impact an outstanding national resource water, outstanding Iowa water, fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition). Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permit or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require preconstruction notice under nationwide permit conditions.

ARC 9152B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 135, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,” Iowa Administrative Code.

The General Assembly enacted legislation in 2010 Iowa Acts, House File 2531, sections 169 to 174, that made changes in review procedures and acceptance of reports from certified groundwater professionals on investigation and cleanup of petroleum contamination from underground storage tanks. A groundwater professional’s site investigation, classification, and corrective action design reports must be accepted unless, within 90 days of receipt, the Department identifies material information in the report that is inaccurate or incomplete. From July 1, 2010, through June 30, 2011, the Department has 120 days rather than 90 days to review and comment on the reports.

The proposed amendments revise existing rules to include the changes in review procedures and acceptance of reports from certified groundwater professionals on investigation and cleanup of petroleum contamination from underground storage tanks.

Any interested person may submit written comments on the proposed amendments on or before November 16, 2010. Written comments should be sent to Paul Nelson, Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail paul.nelson@dnr.iowa.gov.

Three public hearings will be held at 1 p.m. on the dates indicated at the following locations, at which time persons may present their views either orally or in writing.

November 9, 2010	Coralville Public Library Meeting Room B 1401 5th Street Coralville
November 10, 2010	Norelius Community Library 1403 1st Avenue South Denison
November 15, 2010	Wallace State Office Building Fourth Floor West Conference Room 502 E. 9th Street Des Moines

Any persons who intend to attend a public hearing and have special requirements, 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 2009 Iowa Code Supplement section 455B.474 as amended by 2010 Iowa Acts, House File 2531, sections 169 to 174.

The following amendments are proposed.

ITEM 1. Rescind paragraphs **135.9(11)“e”** to **“g”** and adopt the following **new** paragraphs in lieu thereof:

e. Upon receipt of the groundwater professional’s certified Tier 1 report, the groundwater professional’s proposed site classification for the site shall be determinative unless, within 90 days of

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

receipt, the department identifies material information in the report that is inaccurate or incomplete. Material information may be data found to be inaccurate or incomplete or a report that lacks information which, if correct and complete, would result in a different site classification than proposed by the certified groundwater professional. If the department determines that the site cleanup report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within 90 days of receipt of the report and shall work with the groundwater professional and the party responsible for cleanup to obtain correct information or additional information necessary to appropriately classify the site. If the groundwater professional recommends proceeding to Tier 2, or a Tier 2 site cleanup report is required pursuant to 135.7(5)“g,” 135.8(5), or 567—135.9(455B), the groundwater professional’s site classification and pathway classification recommendations shall not be considered determinative until the Tier 2 report is submitted for review as provided in 135.10(11).

f. If a “no action required” site classification is proposed, the department shall review the report in accordance with 135.12(6) and the review standards in paragraph 135.9(11)“e.”

g. From July 1, 2010, through June 30, 2011, the department shall have 120 days rather than 90 days as provided in paragraphs 135.9(11)“e” and “f” to review and respond to the report.

ITEM 2. Rescind paragraphs **135.10(11)“d”** to **“f”** and adopt the following **new** paragraphs in lieu thereof:

d. Upon receipt of the groundwater professional’s certified Tier 2 report, the groundwater professional’s proposed site classification for the site shall be determinative unless, within 90 days of receipt, the department identifies material information in the report that is inaccurate or incomplete. Material information may be data found to be inaccurate or incomplete or a report that lacks information which, if accurate and complete, would result in a different site or pathway classification than proposed by the certified groundwater professional. If the department determines that the site cleanup report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within 90 days of receipt of the report and shall work with the groundwater professional and the party responsible for cleanup to obtain correct information or additional information necessary to appropriately classify the site. If the groundwater professional recommends proceeding to Tier 3, the groundwater professional’s site classification and any pathway classification recommendations subject to or influenced by a Tier 3 assessment shall not be considered determinative until the Tier 3 report is submitted for review as provided in 567—135.11(455B).

e. If a “no action required” site classification is proposed, the department shall review the report in accordance with 135.12(6) and the review standards in paragraph 135.10(11)“d.”

f. From July 1, 2010, through June 30, 2011, the department shall have 120 days rather than 90 days as provided in paragraph 135.10(11)“d” to review and respond to the report.

ITEM 3. Amend paragraph **135.12(6)“c”** as follows:

c. ~~For reclassification from high or low risk, a~~ A groundwater pathway shall be classified as reclassified from high risk to no action required if all field data is below the site-specific target level line and if exit monitoring criteria have been met, except as provided in 135.12(6)“g.” ~~To satisfy exit~~ Exit monitoring criteria; means that the three most recent consecutive groundwater samples from all monitoring wells must show a steady or declining trend and the most recent samples must be are below the site-specific target level line. Other criteria include the following: The first of the three samples for the source well and transition well must be more than detection limits; concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

ITEM 4. Reletter paragraphs **135.12(6)“d”** to **“g”** as **135.12(6)“e”** to **“h.”**

ITEM 5. Adopt the following **new** paragraph **135.12(6)“d”**:

d. A low risk site shall be reclassified as “no action required” if field data is below the site-specific target level and if exit monitoring criteria have been met pursuant to 135.12(6)“c” or if the site has maintained less than the applicable target level for four consecutive sampling events separated by at least six months as defined in the monitoring plan regardless of exit monitoring criteria and guidance.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 6. Amend relettered paragraph **135.12(6)“f”** as follows:

~~f. Upon~~ As a condition of obtaining site classification as no action required, all groundwater monitoring wells must be properly plugged in accordance with 567—Chapters 39 and 49 unless the department requires selected wells to be maintained or written approval to maintain the well is obtained by the department a written request with justification and a plan for properly maintaining the wells are submitted to the department for approval. Approval to maintain wells shall be deemed granted if not disapproved with reason within 30 days of request.

ITEM 7. Rescind paragraphs **135.12(9)“d”** and **“e”** and adopt the following new paragraphs in lieu thereof:

d. Review. A CADR submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if within 90 days of receipt of a CADR, the department identifies material information in the CADR that is inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based on industry standards, the department may reject the report and require modifications. If the department does not reject the report within 90 days of receipt, the report shall be deemed approved as submitted unless changes to the report are requested by the groundwater professional. The department shall work with the groundwater professional and the owner or operator to correct any materially inaccurate information or to obtain the additional information necessary to determine the appropriate corrective action response as soon as practicable. However, from July 1, 2010, through June 30, 2011, the department shall have 120 days to notify the certified groundwater professional when a report is not accepted based on material information that is found to be inaccurate or incomplete.

e. Memorandums of agreement. Owners or operators that fail to implement the actions or meet the activity schedule in a memorandum of agreement resulting from a corrective action meeting or other written corrective action plan agreement or that fail to implement the actions or meet the schedule outlined in an approved CADR are subject to legal action.

ITEM 8. Amend paragraph **135.12(10)“b”** as follows:

b. No further action certificate. When the no action required site classification has been determined based on a recommendation of the certified groundwater professional as provided in 135.9(11), 135.10(11) and 135.12(12) (see also 2009 Iowa Code Supplement section 455B.474(1) “h”(1) and (3) as amended by 2010 Iowa Acts, House File 2531, section 174), the department shall issue a no further action certificate.

The department will issue a no further action certificate to an owner or operator of an underground storage tank from which a release has occurred, the current property owner, or other responsible party who has undertaken the corrective action warranting classification of the site as no action required. ~~The person requesting the certificate shall provide the department with~~ Prior to the issuance of a no further action certificate, an accurate legal description of the property on which the underground storage tanks are or were formerly located shall be submitted to the department. The following conditions apply:

(1) If free product is present, the department shall not issue a no further action certificate until the department has approved termination of all free product assessment and recovery in accordance with 135.7(5).

~~(1) (2)~~ (2) The site has been determined by a certified groundwater professional to not present an unreasonable risk to the public health and safety or the environment;

~~(2) (3)~~ (3) A person issued the certificate or a subsequent purchaser of the site cannot be required to perform further corrective action solely because action standards are changed at a later date. Action standards refer to applicable site-specific standards under this rule;

(4) The certified groundwater professional has certified that all groundwater monitoring wells have been permanently closed in accordance with 135.12(6)“f” with the exception of wells that are allowed to be maintained pursuant to 135.12(6)“f.” Wells not properly maintained shall be referred to the water supply section of the department that enforces 567—Chapter 39 and 567—Chapter 49.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~(3)~~ (5) The certificate shall not prevent the department from ordering remediation of a ~~new~~ release ~~or~~ identified subsequent to the release for which the no further action certificate was issued. The certificate shall not prevent the department from requiring corrective action of a release of a regulated substance from an unregulated tank;

~~(4)~~ (6) The certificate will not constitute a warranty of any kind to any person as to the condition, marketability or value of the described property;

~~(5)~~ (7) The certificate shall reflect any institutional control utilized to ensure compliance with any applicable Tier 2 level; and may include a notation that the classification is based on the fact that designated potential receptors are not in existence;

~~(6)~~ (8) The certificate shall be in a form which is recordable in accordance with Iowa Code section 558.1 et seq., and substantially in the form as provided in Appendix C.

(9) The owner or operator or other persons conducting corrective action shall be responsible for recording the no further action certificate with the county recorder and return a file-stamped copy to the department within 30 days of the issue date. At its discretion, the department may record the no further action certificate with the appropriate county recorder as authorized in 2009 Iowa Code Supplement section 455B.474(1) "h"(3) as amended by 2010 Iowa Acts, House File 2531, section 174.

ARC 9155B**HUMAN SERVICES DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rule making relating to Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 5, 2010, as **ARC 8719B** proposing that the Department would replace a Food Assistance electronic benefits transfer card when three consecutive transactions have been made by manually keyed entry. The Department received one comment on the Notice of Intended Action. The commenter requested that the household be notified before a card is replaced so that the household would not unknowingly try to use a card that has been deactivated.

The Department is not proceeding with further rule making on **ARC 8719B** and is looking for alternatives that will not have a negative impact on households that use electronic benefits transfer cards.

ARC 9170B**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," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 80, "Procedure and Method of Payment," Iowa Administrative Code.

The proposed amendments update, streamline, and clarify Medicaid policy for home- and community-based services to achieve uniform application of policy and to reduce the number of policy exceptions requested. These amendments:

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Require service workers and case managers to sign and date service plans for the habilitation program (Item 1).
- Change the name of the mental retardation (MR) waiver to the intellectual disability waiver (Items 2, 20 to 22, 25, 28, and 29).
- Eliminate obsolete references to adult day care service components (Items 3, 10, 18, and 35).
- Limit respite care provided when the usual caregiver is working to care in a 24-hour residential camp and clarify that respite care shall not be used as a substitute for a child's day care (Items 4, 12, 16, 22, 31, and 44).
- Change the word "consumer" to "member" where applicable in the rules amended (Items 4 to 8, 12, 14 to 16, 19 to 22, 24 to 30, 32, 34, 37 to 40, 43, and 44).
- Clarify for consumer-directed attendant care that meal preparation may only occur in the member's home (Items 5, 15, 19, 26, 37, and 39).
- Clarify the use of Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, and Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement (Items 5, 15, 19, 26, 37, and 39). The provider shall complete one Form 470-4389 for each date that CDAC service is provided.
- Clarify the use of interim medical monitoring treatment (IMMT) services (Items 6, 27, and 38). IMMT services are not intended to provide day care for children or adults. The parent or guardian of the member is responsible for the nonmedical usual and customary cost of day care during the time when the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost.
- Exclude payments for purchase, repair, and leasing of motorized vehicles under home and vehicle modification (Items 7, 14, 24, 32, and 40).
- Clarify that, whenever possible, three itemized, competitive bids shall be obtained for each home or vehicle modification project and shall be reviewed by the case manager or service worker before approval of the project. The contract shall include the scope of work to be performed, the time involved, the supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license (Items 7, 14, 24, 32, and 40).
- Remove the requirement for home and vehicle modification expenses to be encumbered at the dollar amount of \$505 per month (Items 7 and 32).
- Add coverage of a portable locator system as a type of personal emergency response system (PERS) (Items 8, 11, 23, 33, 41, and 45).
- Remove limits on four-person supported community living units and allow a mix of waiver and nonwaiver residents (Items 21 and 30).
- Clarify the definition of "physiological treatment" for supported community living services (Items 21 and 30). Physiological treatment includes medication regimens carried out under the supervision of a health professional.
- Clarify that supported community living services to children who live with their parents, guardians, or foster parents are limited to intermittent services (Items 21 and 30). Intermittent services may be provided from one to three hours a day for not more than four days a week.
- Specify that the unit of supported community living services is a calendar day when the member's service plan reflects a need for on-site staff supervision for an average of 8 or more hours per day over a calendar month (Items 21 and 30). Only providers whose service to a member does not meet this threshold may bill using an hourly unit. The current threshold is an average of 14 hours of service per day over a week for the intellectual disability waiver and 19 hours per day for the brain injury waiver.
- Specify the possible units for purchase of prevocational services (Items 29 and 36).
- Remove the requirement for specialized medical equipment expenses to be encumbered at the dollar amount of \$505 per month and further clarify the use of this service (Items 34 and 42).
- Raise the upper limit for prevocational services under the brain injury waiver to the same amount as allowed under the intellectual disability waiver (\$47.01 per day) and add rate limits for half-day and hourly units (Item 45).

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- Add the rate methodology and upper limits for interim medical monitoring and treatment when provided by a supported community living provider (Item 45).
- Clarify who may sign the claim form for targeted medical care when services were delivered but the member dies before the claim is submitted (Item 46).

These amendments apply to individual home- and community-based programs as follows:

- AIDS/HIV waiver: Items 16 to 19 and 46.
- Brain injury waiver: Items 30 to 38, 45, and 46.
- Children's mental health waiver: Items 43 and 44.
- Elderly waiver: Items 10 to 15, 45, and 46.
- Habilitation services: Item 1.
- Ill and handicapped waiver: Items 3 to 9, 45, and 46.
- Intellectual disability waiver (formerly the mental retardation or MR waiver): Items 20 to 29, 45, and 46.
- Physical disability waiver: Items 39 to 42, 45, and 46.

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 November 9, 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. Adopt the following **new** subparagraphs **78.27(4)“a”(9)** and **(10)**:

(9) The initial service plan and annual updates to the service plan must be approved by the Iowa Medicaid enterprise in the individualized services information system before services are implemented. Services provided before the approval date are not payable. The written case plan must be completed, signed and dated by the case manager or service worker within 30 calendar days after plan approval.

(10) Any changes to the service plan must be approved by the Iowa Medicaid enterprise in the individualized services information system before the implementation of services. Services provided before the approval date are not payable.

ITEM 2. Strike “HCBS MR waiver” wherever it appears in paragraph **78.33(1)“c”** and insert “HCBS intellectual disability waiver” in lieu thereof.

ITEM 3. Amend subrule 78.34(3) as follows:

78.34(3) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a half day (1 to 4 hours), a full day (4 to 8 hours), or an extended day (8 to 12 hours). Components of the service ~~are as set forth in rule 441—171.6(234) or the department of elder affairs rule 321—24.7(231)~~ include health-related care, social services, and other related support services.

ITEM 4. Amend subrule 78.34(5) as follows:

78.34(5) Respite care services. Respite care services are services provided to the ~~consumer~~ member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that ~~time~~ period. The purpose of respite care is to enable the ~~consumer~~ member to remain in the ~~consumer's~~ member's current living situation.

a. Services provided outside the ~~consumer's~~ member's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer~~ member as determined by the ~~consumer's~~ member's interdisciplinary team.

c. A unit of service is one hour.

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d. Respite care is not to be provided to ~~persons~~ members during the hours in which the usual caregiver is employed except when the ~~consumer~~ member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite cannot be provided to a ~~consumer~~ member whose usual caregiver is a consumer-directed attendant care provider for the ~~consumer~~ member.

e. The interdisciplinary team shall determine if the ~~consumer~~ member will receive basic individual respite, specialized respite, or group respite as defined in rule 441—83.1(249A).

f. and *g.* No change.

ITEM 5. Amend subrule 78.34(7) as follows:

78.34(7) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities performed by a person to help a ~~consumer~~ member with self-care tasks which the ~~consumer~~ member would typically do independently if the ~~consumer~~ member were otherwise able.

a. The service activities may include helping the ~~consumer~~ member with any of the following nonskilled service activities:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the ~~consumer's~~ member's health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the ~~consumer~~ member is on the job site. The cost of transportation for the ~~consumer~~ member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a ~~consumer~~ member in using transportation essential to the health and welfare of the ~~consumer~~ member. The cost of the transportation is not included.

b. The service activities may include helping the ~~consumer~~ member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program before accessing the HCBS waiver.

(1) Tube feedings of ~~consumers~~ members unable to eat solid foods.

(2) to (13) No change.

c. A unit of service is 1 hour, or one 8- to 24-hour day ~~provided by an individual or an agency~~. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

d. The ~~consumer~~ member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided~~.

e. The ~~consumer~~ member, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the ~~consumer~~ member.

f. The service activities ~~may~~ shall not include parenting or child care for or on behalf of the ~~consumer~~ member or on behalf of the provider.

g. The ~~consumer~~ member, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and~~ sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached

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to the service plan, ~~which is signed by the service worker prior to the initiation of services,~~ and kept in the ~~consumer's and department's member's~~ records.

h. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the ~~consumer's member's~~ needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer member~~, indicating that the service has been provided as presented on the claim.

j. to m. No change.

ITEM 6. Amend subrule 78.34(8) as follows:

78.34(8) *Interim medical monitoring and treatment services.* ~~Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature requiring specially trained caregivers beyond what is normally available in a day care setting for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver. Services must be ordered by a physician.~~

a. Need for service. The member must be currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. The service worker or case manager must identify the need for IMMT services after evaluating the member's living environment, family and natural supports, ability to perform activities of daily living, and health care needs. The services must be needed:

- (1) To allow the member's usual caregivers to be employed,
- (2) During a search for employment by a usual caregiver,
- (3) To allow for academic or vocational training of a usual caregiver,
- (4) Due to the hospitalization of a usual caregiver for treatment for physical or mental illness, or
- (5) Due to the death of a usual caregiver.

~~*a- b.*~~ Service requirements. Interim medical monitoring and treatment services shall:

- (1) Provide experiences for each ~~consumer's member's~~ social, emotional, intellectual, and physical development;
- (2) Include comprehensive developmental care and any special services for a ~~consumer member~~ with special needs; and
- (3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Medical intervention means the ability to assess the situation and contact the appropriate medical professional, not the direct application of medical care.

~~*b- c.*~~ Interim medical monitoring and treatment services may include supervision while the member is being transported to and from school.

~~*e- d.*~~ Limitations.

- (1) and (2) No change.
- (3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. Services under the state plan, including home health agency services under rule 441—78.9(249A), must be exhausted before IMMT services are accessed.
- (4) Interim medical monitoring and treatment services may shall be provided only in the consumer's member's home; in a registered group child care home, in a registered family child care development home; in a licensed child care center, residential care facility, or adult day care facility; or during transportation the time when the member is being transported to and from school.

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(5) ~~The staff-to-consumer member-to-staff ratio shall not be less more than one to six members to one staff person.~~

(6) The parent or guardian of the member shall be responsible for the usual and customary nonmedical cost of day care during the time in which the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost. If the cost of care goes above the usual and customary cost of day care services due to the member's medical condition, the costs above the usual and customary cost shall be covered as IMMT services.

~~d. e.~~ A unit of service is one hour.

ITEM 7. Amend subrule 78.34(9) as follows:

78.34(9) Home and vehicle ~~modifications~~ modification. Covered home and vehicle modifications are ~~those~~ physical modifications to the ~~consumer's member's~~ home or vehicle ~~listed below~~ that directly address the ~~consumer's member's~~ medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the ~~consumer member~~ and enable the ~~consumer member~~ to function with greater independence in the home or vehicle.

a. Modifications that are necessary or desirable without regard to the ~~consumer's member's~~ medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, ~~roof repair~~, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Repairs Home and vehicle repairs are also excluded.

b. Only the following modifications are covered:

(1) to (6) No change.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the ~~consumer's member's~~ disability.

(8) to (24) No change.

c. and d. No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the ~~consumer member~~. Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

f. ~~The contract shall include, at a minimum, the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.~~

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications.

(1) Payment of up to \$6,060 per year may be made to certified providers upon satisfactory completion of the service.

(2) ~~The case manager or service worker shall encumber up to \$505 per a portion of the cost of a modification every month within the monthly dollar cap allowed for the consumer member until the amount entire cost of the modification is reached encumbered within the a consecutive 12-month period.~~

h. Services shall be included in the ~~consumer's member's~~ service plan and shall exceed the Medicaid state plan services.

ITEM 8. Amend subrule 78.34(10) as follows:

78.34(10) Personal emergency response or portable locator system.

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency ~~when the consumer is alone.~~

~~a. (1)~~ The required components of the system are:

~~(1) 1.~~ An in-home medical communications ~~transmitter and receiver~~ transceiver.

~~(2) 2.~~ A remote, portable activator.

~~(3) 3.~~ A central monitoring station with backup systems staffed by trained attendants at all times.

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~~(4)~~ 4. Current data files at the central monitoring station containing response protocols and personal, medical, and emergency information for each ~~consumer~~ member.

~~b.~~ (2) The service shall be identified in the ~~consumer's~~ member's service plan.

~~e.~~ (3) A unit of service is a one-time installation fee or one month of service.

~~d.~~ (4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

ITEM 9. Amend subrule 78.34(11) as follows:

78.34(11) Home-delivered meals. Home-delivered meals ~~means~~ are meals prepared elsewhere and delivered to a ~~waiver recipient~~ member at the ~~recipient's~~ member's residence.

a. Each meal shall ensure the ~~recipient~~ member receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement that meets the minimum one-third standard.

b. When a restaurant provides the home-delivered meal, the ~~recipient~~ member is required to have a nutritional consultation. The nutritional consultation includes contact with the restaurant to explain the dietary needs of the ~~client~~ member and what constitutes the minimum one-third daily dietary allowance.

c. A maximum of ~~14~~ two meals is allowed per ~~week~~ day. A unit of service is a meal.

ITEM 10. Amend subrule 78.37(1) as follows:

78.37(1) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a half day (1 to 4 hours), a full day (4 to 8 hours), or an extended day (8 to 12 hours). Components of the service ~~are set forth in rule 441—171.6(234) or as indicated in the Iowa department of elder affairs Annual Service and Fiscal Reporting Manual~~ include health-related care, social services, and other related support services.

ITEM 11. Amend subrule 78.37(2) as follows:

78.37(2) Emergency Personal emergency response or portable locator system. ~~The emergency response system allows a person experiencing a medical emergency at home to activate electronic components that transmit a coded signal via digital equipment over telephone lines to a central monitoring station.~~

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The necessary components of a system are:

~~a.~~ 1. An in-home medical communications transceiver.

~~b.~~ 2. A remote, portable activator.

~~c.~~ 3. A central monitoring station with backup systems staffed by trained attendants ~~24 hours per day, seven days per week at all times.~~

~~d.~~ 4. Current data files at the central monitoring station containing ~~preestablished~~ response protocols and personal, medical, and emergency information for each ~~client~~ member.

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(2) The service shall be identified in the member's service plan.

(3) A unit of service is a one-time installation fee or one month of service.

(4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

ITEM 12. Amend subrule 78.37(6) as follows:

78.37(6) Respite care services. Respite care services are services provided to the ~~consumer~~ member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that ~~time~~ period. The purpose of respite care is to enable the ~~consumer~~ member to remain in the ~~consumer's~~ member's current living situation.

a. Services provided outside the ~~consumer's~~ member's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer~~ member as determined by the ~~consumer's~~ member's interdisciplinary team.

c. A unit of service is one hour.

d. The interdisciplinary team shall determine if the ~~consumer~~ member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.21(249A).

e. to g. No change.

h. Respite care is not to be provided to ~~persons~~ members during the hours in which the usual caregiver is employed except when the ~~consumer~~ member is attending a 24-hour residential camp. Respite cannot be provided to a ~~consumer~~ member whose usual caregiver is a consumer-directed attendant care provider for the ~~consumer~~ member.

ITEM 13. Amend subrule 78.37(8) as follows:

78.37(8) Home-delivered meals. Home-delivered meals ~~means~~ are meals prepared elsewhere and delivered to a ~~waiver recipient~~ member at the ~~recipient's~~ member's residence.

a. Each meal shall ensure the ~~recipient~~ member receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement which meets the minimum one-third standard.

b. When a restaurant provides the home-delivered meal, the ~~recipient~~ member is required to have a nutritional consultation. The nutritional consultation includes contact with the restaurant to explain the dietary needs of the ~~client~~ member and ~~explain~~ explain what constitutes the minimum one-third daily dietary allowance.

c. A maximum of ~~14~~ two meals is allowed per ~~week~~ day. A unit of service is a meal.

ITEM 14. Amend subrule 78.37(9) as follows:

78.37(9) Home and vehicle modification. Covered home and vehicle modifications are ~~those~~ physical modifications to the ~~consumer's~~ member's home or vehicle ~~listed below~~ that directly address the ~~consumer's~~ member's medical or remedial need. Covered modifications must be necessary to

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provide for the health, welfare, or safety of the consumer member and enable the consumer member to function with greater independence in the home or vehicle.

a. Modifications that are necessary or desirable without regard to the consumer's member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, ~~roof repair~~, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Repairs Home and vehicle repairs are also excluded.

b. Only the following modifications are covered:

(1) to (6) No change.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the consumer's member's disability.

(8) to (24) No change.

c. and *d.* No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the consumer member. Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

f. The contract shall include, at a minimum, the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. No change.

h. Services shall be included in the consumer's member's service plan and shall exceed the Medicaid state plan services.

ITEM 15. Amend subrule 78.37(15) as follows:

78.37(15) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities performed by a person to help a consumer member with self-care tasks which the consumer member would typically do independently if the consumer member were otherwise able.

a. The service activities may include helping the consumer member with any of the following nonskilled service activities:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the consumer's member's health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the consumer member is on the job site. The cost of transportation for the consumer member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a consumer member in using transportation essential to the health and welfare of the consumer member. The cost of the transportation is not included.

b. The service activities may include helping the consumer member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program ~~before accessing the HCBS waiver.~~

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(1) Tube feedings of ~~consumers~~ members unable to eat solid foods.

(2) to (13) No change.

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. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

d. The ~~consumer member, parent,~~ guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided.~~

e. The ~~consumer member, parent,~~ guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the ~~consumer member.~~

f. The service activities ~~may~~ shall not include parenting or child care ~~for or~~ on behalf of the ~~consumer member or on behalf of the provider.~~

g. The ~~consumer member, parent,~~ guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, and sign, and date Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker prior to the initiation of services,~~ and kept in the ~~consumer's and department's~~ member's records.

h. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the ~~consumer's member's~~ needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer member,~~ indicating that the service has been provided as presented on the claim.

j. to l. No change.

m. Services may be provided in the absence of a ~~parent or~~ guardian if the ~~parent or~~ guardian has given advanced direction for the service provision.

ITEM 16. Amend subrule 78.38(5) as follows:

78.38(5) Respite care services. Respite care services are services provided to the ~~consumer member~~ that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that ~~time~~ period. The purpose of respite care is to enable the ~~consumer member~~ to remain in the ~~consumer's member's~~ current living situation.

a. Services provided outside the ~~consumer's member's~~ home shall not be reimbursable if the living unit where respite is provided is ~~otherwise~~ reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer member~~ as determined by the ~~consumer's member's~~ interdisciplinary team.

c. A unit of service is one hour.

d. The interdisciplinary team shall determine if the ~~consumer member~~ will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.41(249A).

e. to g. No change.

h. Respite care is not to be provided to ~~persons~~ members during the hours in which the usual caregiver is employed except when the ~~consumer member~~ is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite cannot be provided to a ~~consumer member~~ whose usual caregiver is a consumer-directed attendant care provider for the ~~consumer member.~~

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ITEM 17. Amend subrule 78.38(6) as follows:

78.38(6) Home-delivered meals. Home-delivered meals ~~means~~ are meals prepared elsewhere and delivered to a ~~waiver recipient member~~ member at the ~~recipient's member's~~ member's residence.

a. Each meal shall ensure the ~~recipient member~~ member receives a minimum of one-third of the daily recommended dietary allowance as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. The meal may also be a liquid supplement which meets the minimum one-third standard.

b. When a restaurant provides the home-delivered meal, the member is required to have a nutritional consultation. The nutritional consultation includes contact with the restaurant to explain the dietary needs of the member and what constitutes the minimum one-third daily dietary allowance.

c. A maximum of ~~14~~ two meals is allowed per ~~week~~ day. A unit of service is a meal.

ITEM 18. Amend subrule 78.38(7) as follows:

78.38(7) Adult day care services. Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a half day (1 to 4 hours), a full day (4 to 8 hours), or an extended day (8 to 12 hours). Components of the service ~~are as set forth in rule 441—171.6(234) or the department of elder affairs rule 321—24.7(231)~~ include health-related care, social services, and other related support services.

ITEM 19. Amend subrule 78.38(8) as follows:

78.38(8) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities performed by a person to help a ~~consumer member~~ member with self-care tasks which the ~~consumer member~~ member would typically do independently if the ~~consumer member~~ member were otherwise able.

a. The service activities may include helping the ~~consumer member~~ member with any of the following nonskilled service activities:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the ~~consumer's member's~~ member's health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the ~~consumer member~~ member is on the job site. The cost of transportation for the ~~consumer member~~ member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a ~~consumer member~~ member in using transportation essential to the health and welfare of the ~~consumer member~~ member. The cost of the transportation is not included.

b. The service activities may include helping the ~~consumer member~~ member with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program ~~before accessing the HCBS waiver.~~

(1) Tube feedings of ~~consumers members~~ members unable to eat solid foods.

(2) to (13) No change.

c. A unit of service is 1 hour, or one 8- to 24-hour day ~~provided by an individual or an agency.~~ Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

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d. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided~~.

e. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the ~~consumer member~~.

f. The service activities ~~may~~ shall not include parenting or child care for or on behalf of the ~~consumer member~~ or on behalf of the provider.

g. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and sign, and date~~ Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker prior to the initiation of services,~~ and kept in the ~~consumer's and department's member's~~ records.

h. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the ~~consumer's member's~~ needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer member~~, indicating that the service has been provided as presented on the claim.

j. to m. No change.

ITEM 20. Amend rule 441—78.41(249A), introductory paragraph, as follows:

441—78.41(249A) HCBS MR intellectual disability waiver services. Payment will be approved for the following services to ~~consumers members~~ members eligible for the HCBS MR intellectual disability waiver services as established in 441—Chapter 83 and as identified in the ~~consumer's member's~~ service plan. All services include the applicable and necessary instruction, supervision, assistance and support as required by the ~~consumer member~~ in achieving the ~~consumer's member's~~ life goals. The services, amount and supports provided under the HCBS MR intellectual disability waiver shall be delivered in the least restrictive environment and in conformity with the ~~consumer's member's~~ service plan. Reimbursement shall not be available under the waiver for any services that the ~~consumer member~~ can obtain through the Medicaid state plan. All services shall be billed in whole units.

ITEM 21. Amend subrule 78.41(1) as follows:

78.41(1) Supported community living services. Supported community living services are provided by the provider within the ~~consumer's member's~~ home and community, according to the individualized ~~consumer member~~ need as identified in the service plan ~~pursuant to rule 441—83.67(249A).~~

a. Available components of the service are personal and home skills training services, individual advocacy services, community skills training services, personal environment support services, transportation, and treatment services.

(1) Personal and home skills training services are ~~those~~ activities which assist a ~~consumer member~~ to develop or maintain skills for self-care, self-directedness, and care of the immediate environment.

(2) “Individual advocacy services” ~~means~~ is the act or process of representing the ~~individual's member's~~ rights and interests in order to realize the rights to which the ~~individual member~~ is entitled and to remove barriers to meeting the ~~individual's member's~~ needs.

(3) “Community skills training services” ~~means~~ are activities which assist a ~~person member~~ to develop or maintain skills allowing better participation in the community. Services shall focus on the following areas as they ~~are applicable~~ apply to ~~individuals~~ the member being served:

1. Personal management skills training services are activities which assist a ~~person member~~ to maintain or develop skills necessary to sustain ~~oneself~~ the member in the physical environment and are essential to the management of ~~one's~~ the member's personal business and property. This

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includes self-advocacy skills. Examples of personal management skills are the ability to maintain a household budget; plan and prepare nutritional meals; ~~ability to~~ use community resources such as public transportation; and libraries, etc.; and ~~ability to~~ select foods at the grocery store.

2. Socialization skills training services are ~~those~~ activities which assist a consumer member to develop or maintain skills which include self-awareness and self-control, social responsiveness, community participation, social amenities, and interpersonal skills.

3. Communication skills training services are activities which assist a person member to develop or maintain skills including expressive and receptive skills in verbal and nonverbal language and the functional application of acquired reading and writing skills.

(4) "Personal and environmental support services" ~~means~~ are activities and expenditures provided to or on behalf of a person member in the areas of personal needs in order to allow the person member to function in the least restrictive environment.

(5) "Transportation services" ~~means~~ are activities and expenditures designed to assist the person member to travel from one place to another to obtain services or carry out life's activities. The service excludes transportation to and from work.

(6) "Treatment services" ~~means~~ are activities designed to assist the person member to maintain or improve physiological, emotional and behavioral functioning and to prevent conditions that would present barriers to a ~~person's~~ the member's functioning. Treatment services include physical or physiological treatment and psychotherapeutic treatment.

1. Physiological treatment ~~means activities including~~ includes medication regimens designed to prevent, halt, control, relieve, or reverse symptoms or conditions ~~which that~~ interfere with the normal functioning of the human body. ~~The activities~~ Physiological treatment shall be provided by or under the direct supervision of a certified or licensed health care professional ~~certified or licensed to provide the treatment activity specified.~~

2. Psychotherapeutic treatment means activities provided to assist a person member in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the person's member's functioning in response to the physical, emotional, and social environment.

b. The supported community living services are intended to provide for the daily living needs of the consumer member and shall be available as needed during any 24-hour period. Activities do not include those associated with vocational services, academics, day care, medical services, Medicaid case management or other case management. Services are individualized supportive services provided in a variety of community-based, integrated settings.

(1) Supported community living services shall be available at a daily rate to consumers members living outside the home of their family, legal representative, or foster family and for whom a provider has primary responsibility for supervision or structure during the month. This service will provide supervision or structure in identified ~~time~~ periods when another resource is not available.

(2) Supported community living services shall be available at an hourly rate to consumers members for whom a daily rate is not established.

c. Services may be provided to a child or an adult. A maximum of ~~three consumers receiving community supported alternative living arrangements or HCBS MR services~~ four persons may reside in a living unit, ~~except providers meeting requirements set forth in 441—paragraph 77.37(14)“e.”~~

(1) ~~Consumers~~ A member may live within the home of ~~their~~ the member's family or legal representative or ~~within other types of~~ in another typical community living arrangements arrangement.

(2) ~~Consumers of services~~ A member living with ~~families~~ the member's family or legal ~~representatives are~~ representative is not subject to the maximum of ~~three consumers~~ four residents in a living unit.

(3) ~~Consumers~~ A member may not live in a licensed medical or health care ~~facilities~~ facility or in ~~settings~~ a setting that is required to be licensed as a medical or health care ~~facilities~~ facility.

(4) d. ~~Consumers~~ A member aged 17 or under living ~~within~~ in the home of ~~their~~ the member's family, legal representative, or foster ~~families~~ family shall receive intermittent services based on development of adaptive, behavior, or health skills. Intermittent services may be provided from one

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to three hours a day for not more than four days a week. Duration of services shall be based on age-appropriateness and individual attention span.

~~d. Rescinded IAB 2/5/03, effective 2/1/03.~~

e. No change.

f. Provider budgets shall reflect all staff-to-consumer member ratios and shall reflect costs associated with consumers' members' specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each consumer member. The specific support needs must be identified in the Medicaid case manager's service plan, the total costs shall not exceed \$1570 per consumer member per year, and the provider must maintain records to support the expenditures. A unit of service is:

(1) One full calendar day when a consumer member residing in the living unit receives on-site staff supervision for 14 eight or more hours per day as an average over a 7-day-week calendar month and the consumer's individual comprehensive plan or case member's service plan identifies and reflects the need for this amount of supervision.

(2) One hour when subparagraph (1) does not apply.

g. The maximum number of units available per consumer member is as follows:

(1) and (2) No change.

h. The service shall be identified in the consumer's individual comprehensive member's service plan.

i. Services Supported community living services shall not be simultaneously reimbursed with other residential services, HCBS MR or with respite, Medicaid or HCBS MR nursing, or Medicaid or HCBS MR home health aide services provided through Medicaid or the HCBS intellectual disability waiver.

ITEM 22. Amend subrule 78.41(2) as follows:

78.41(2) Respite care services. Respite care services are services provided to the consumer member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that time period. The purpose of respite care is to enable the consumer member to remain in the consumer's member's current living situation.

a. Services provided outside the consumer's member's home shall not be reimbursable if the living unit where the respite is provided is reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the consumer member as determined by the consumer's member's interdisciplinary team.

c. A unit of service is one hour.

d. Payment for respite services shall not exceed \$7,050 per the consumer's member's waiver year.

e. The service shall be identified in the consumer's member's individual comprehensive plan.

f. Respite services shall not be simultaneously reimbursed with other residential or respite services, HCBS MR waiver or with supported community living services, Medicaid or HCBS MR nursing, or Medicaid or HCBS MR home health aide services provided through Medicaid or the HCBS intellectual disability waiver.

g. Respite care is not to be provided to persons members during the hours in which the usual caregiver is employed except when the consumer member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite cannot be provided to a consumer member whose usual caregiver is a consumer-directed attendant care provider for the consumer member.

h. The interdisciplinary team shall determine if the consumer member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.60(249A).

i. and j. No change.

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ITEM 23. Amend subrule 78.41(3) as follows:

78.41(3) *Personal emergency response or portable locator system.*

a. The personal emergency response system is an electronic ~~component~~ device that transmits a coded signal ~~via digital equipment~~ to a central monitoring station. ~~The electronic device allows a person to access summon assistance in the event of an emergency when alone.~~

~~a.~~ (1) The necessary components of the system are:

(1) 1. An in-home medical communications transceiver.

(2) 2. A remote, portable activator.

(3) 3. A central monitoring station with backup systems staffed by trained attendants ~~24 hours per day, seven days per week~~ at all times.

(4) 4. Current data files at the central monitoring station containing response protocols and personal, medical and emergency information for each ~~consumer member~~.

b. (2) The service shall be identified in the ~~consumer's individual comprehensive member's~~ service plan.

~~e.~~ (3) A unit of service is a one-time installation fee or one month of service.

~~d.~~ (4) Maximum units per state fiscal year ~~are~~ shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

ITEM 24. Amend subrule 78.41(4) as follows:

78.41(4) *Home and vehicle ~~modifications~~ modification.* Covered home and vehicle modifications are ~~those~~ physical modifications to the ~~consumer's~~ member's home or vehicle ~~listed below~~ that directly address the ~~consumer's~~ member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the ~~consumer member~~ and enable the ~~consumer member~~ to function with greater independence in the home or vehicle.

a. Modifications that are necessary or desirable without regard to the ~~consumer's~~ member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, ~~roof repair~~, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. Repairs Home and vehicle repairs are also excluded.

b. Only the following modifications are covered:

(1) to (6) No change.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the ~~consumer's~~ member's disability.

(8) to (24) No change.

c. and *d.* No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the ~~consumer member~~. Whenever possible, three

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itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

f. The contract shall include, ~~at a minimum,~~ the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. No change.

h. Services shall be included in the ~~consumer's~~ member's service plan and shall exceed the Medicaid state plan services.

ITEM 25. Amend subrule 78.41(6) as follows:

78.41(6) Home health aide services. Home health aide services are personal or direct care services provided to the ~~consumer member~~ which are not payable under Medicaid as set forth in rule 441—78.9(249A). Services shall include unskilled medical services and shall exceed those services provided under HCBS ~~MR~~ intellectual disability waiver supported community living. Instruction, supervision, support or assistance in personal hygiene, bathing, and daily living shall be provided under supported community living.

a. Services shall be included in the ~~consumer's individual comprehensive~~ member's service plan.

b. and *c.* No change.

ITEM 26. Amend subrule 78.41(8) as follows:

78.41(8) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities performed by a person to help a ~~consumer member~~ with self-care tasks which the ~~consumer member~~ would typically do independently if the ~~consumer member~~ were otherwise able.

a. The service activities may include helping the ~~consumer member~~ with any of the following nonskilled service activities:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the ~~consumer's~~ member's health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the ~~consumer member~~ is on the job site. The cost of transportation for the ~~consumer member~~ and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a ~~consumer member~~ in using transportation essential to the health and welfare of the ~~consumer member~~. The cost of the transportation is not included.

b. The service activities may include helping the ~~consumer member~~ with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program ~~before accessing the HCBS waiver.~~

(1) Tube feedings of ~~consumers~~ members unable to eat solid foods.

(2) to (13) No change.

c. A unit of service is 1 hour, or one 8- to 24-hour day ~~provided by an individual or an agency~~. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

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d. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided~~.

e. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the ~~consumer member~~.

f. The service activities ~~may~~ shall not include parenting or child care for or on behalf of the ~~consumer member~~ or on behalf of the provider.

g. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and sign, and date~~ Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker or case manager prior to the initiation of services,~~ and kept in the ~~consumer's and department's~~ member's records.

h. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the ~~consumer's~~ member's needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer member~~, indicating that the service has been provided as presented on the claim.

j. to m. No change.

ITEM 27. Amend subrule 78.41(9) as follows:

78.41(9) Interim medical monitoring and treatment services. Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature requiring specially trained caregivers beyond what is normally available in a day care setting for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient. IMMT services are not intended to provide day care but to supplement available resources. The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver. Services must be ordered by a physician.

a. Need for service. The member must be currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. The service worker or case manager must identify the need for IMMT services after evaluating the member's living environment, family and natural supports, ability to perform activities of daily living, and health care needs. The services must be needed:

- (1) To allow the member's usual caregivers to be employed,
- (2) During a search for employment by a usual caregiver,
- (3) To allow for academic or vocational training of a usual caregiver,
- (4) Due to the hospitalization of a usual caregiver for treatment for physical or mental illness, or
- (5) Due to the death of a usual caregiver.

~~a.~~ b. Service requirements. Interim medical monitoring and treatment services shall:

- (1) Provide experiences for each ~~consumer's~~ member's social, emotional, intellectual, and physical development;
- (2) Include comprehensive developmental care and any special services for a ~~consumer member~~ with special needs; and
- (3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Medical intervention means the ability to assess the situation and contact the appropriate medical professional, not the direct application of medical care.

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~~b. c.~~ Interim medical monitoring and treatment services may include supervision while the member is being transported to and from school.

~~e. d.~~ Limitations.

(1) and (2) No change.

(3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. Services under the state plan, including home health agency services under rule 441—78.9(249A), must be exhausted before IMMT services are accessed.

(4) Interim medical monitoring and treatment services ~~may~~ shall be provided only in the ~~consumer's member's home;~~ in a registered group child care home, in a registered family child care development home; ~~in a licensed child care center, residential care facility, or adult day care facility;~~ or during transportation the time when the member is being transported to and from school.

(5) ~~The staff-to-consumer member-to-staff ratio shall not be less more than one to six members to one staff person.~~

(6) The parent or guardian of the member shall be responsible for the usual and customary nonmedical cost of day care during the time in which the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost. If the cost of care goes above the usual and customary cost of day care services due to the member's medical condition, the costs above the usual and customary cost shall be covered as IMMT services.

~~d. e.~~ A unit of service is one hour.

ITEM 28. Amend subrule 78.41(11) as follows:

78.41(11) Transportation. ~~Transportation services may be provided for consumers~~ members to conduct business errands and essential shopping, to receive medical services when not reimbursed through medical transportation, to travel to and from work or day programs, and to reduce social isolation. A unit of service is either per mile, per trip, or the unit established by an area agency on aging. Transportation may not be reimbursed simultaneously with HCBS ~~MR~~ intellectual disability waiver supported community living service.

ITEM 29. Amend subrule 78.41(13) as follows:

78.41(13) Prevocational services. ~~Prevocational services are services that are aimed at preparing a consumer eligible for the HCBS MR waiver~~ member for paid or unpaid employment, but ~~that~~ are not job-task oriented. These services include teaching the ~~consumer member~~ member concepts necessary as for job readiness skills, such as following directions, attending to tasks, task completion, problem solving, and safety and mobility training.

a. No change.

b. Prevocational services do not include:

(1) Services defined in Section 4(a)(4) of the 1975 amendments to the Education of the Handicapped Act (20 U.S.C. 1404(16) and (17)) that are otherwise available to the ~~consumer member~~ member through a state or local education agency.

(2) Vocational rehabilitation services that are otherwise available to the ~~consumer member~~ member through a program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

c. A unit of service is a full day (4 to 8 hours), a half day (1 to 4 hours), or an hour.

ITEM 30. Amend subrule 78.43(2) as follows:

78.43(2) Supported community living services. ~~Supported community living services are provided by the provider within the consumer's member's home and community, according to the individualized consumer member need as identified in the individual comprehensive plan (ICP) or department case service plan. Intermittent service shall be provided as defined in rule 441—83.81(249A).~~

a. The basic components of the service may include, but are not limited to, personal and home skills training services, individual advocacy services, community skills training services, personal environment support services, transportation, and treatment services.

(1) Personal and home skills training services are ~~those~~ activities which assist a ~~consumer member~~ member to develop or maintain skills for self-care, self-directedness, and care of the immediate environment.

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(2) Individual advocacy is the act or process of representing the ~~individual's~~ member's rights and interests in order to realize the rights to which the ~~individual~~ member is entitled and to remove barriers to meeting the ~~individual's~~ member's needs.

(3) Community skills training services are ~~those~~ activities which assist a ~~person~~ member to develop or maintain skills allowing better participation in the community. Services shall focus on the following areas as they ~~are applicable~~ apply to ~~individuals~~ the member being served:

1. Personal management skills training services are activities which assist a ~~person~~ member to maintain or develop skills necessary to sustain ~~oneself~~ the member in the physical environment and are essential to the management of ~~one's~~ the member's personal business and property. This includes self-advocacy skills. Examples of personal management skills are the ability to maintain a household budget, plan and prepare nutritional meals, use community resources such as public transportation and libraries, and select foods at the grocery store.

2. Socialization skills training services are ~~those~~ activities which assist a ~~consumer~~ member to develop or maintain skills which include self-awareness and self-control, social responsiveness, community participation, social amenities, and interpersonal skills.

3. Communication skills training services are activities which assist a ~~person~~ member to develop or maintain skills including expressive and receptive skills in verbal and nonverbal language and the functional application of acquired reading and writing skills.

(4) Personal and environmental support services are those activities and expenditures provided to or on behalf of a ~~person~~ member in the areas of personal needs in order to allow the ~~person~~ member to function in the least restrictive environment.

(5) Transportation services are ~~those~~ activities and expenditures designed to assist the ~~consumer~~ member to travel from one place to another to obtain services or carry out life's activities. The service excludes transportation to and from work or day programs.

(6) Treatment services are ~~those~~ activities designed to assist the ~~person~~ member to maintain or improve physiological, emotional and behavioral functioning and to prevent conditions that would present barriers to a ~~person's~~ the member's functioning. Treatment services include physical or physiological treatment and psychotherapeutic treatment.

1. Physiological treatment ~~means activities including~~ includes medication regimens designed to prevent, halt, control, relieve, or reverse symptoms or conditions which interfere with the normal functioning of the human body. ~~The activities~~ Physiological treatment shall be provided by or under the direct supervision of a certified or licensed health care professional ~~certified or licensed to provide the treatment activity specified.~~

2. Psychotherapeutic treatment means activities provided to assist a ~~person~~ member in the identification or modification of beliefs, emotions, attitudes, or behaviors in order to maintain or improve the ~~person's~~ member's functioning in response to the physical, emotional, and social environment.

b. The supported community living services are intended to provide for the daily living needs of the ~~consumer~~ member and shall be available as needed during any 24-hour period. Activities do not include those associated with vocational services, academics, day care, medical services, Medicaid case management or other case management. Services are individualized supportive services provided in a variety of community-based, integrated settings.

(1) Supported community living services shall be available at a daily rate to ~~consumers~~ members living outside the home of their family, legal representative, or foster family and for whom a provider has primary responsibility for supervision or structure during the month. This service shall provide supervision or structure in identified ~~time~~ periods when another resource is not available.

(2) Supported community living services shall be available at an hourly rate to ~~consumers~~ members for whom a daily rate is not established.

~~(3) Intermittent service shall be provided as defined in rule 441—83.81(249A).~~

c. Services may be provided to a child or an adult. Children must first access all other services for which they are eligible and which are appropriate to meet their needs before accessing the HCBS brain injury waiver services. A maximum of ~~three consumers~~ four persons may reside in a living unit, ~~except when the provider meets the requirements set forth in 441—paragraph 77.39(13)“e.”~~

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(1) ~~Consumers~~ A member may live in the home of ~~their~~ the member's family or legal representative or in ~~other types of another typical community living arrangements~~ arrangement.

(2) ~~Consumers of services~~ A member living with ~~families~~ the member's family or legal representatives ~~are~~ representative is not subject to the maximum of ~~three consumers~~ four residents in a living unit.

(3) ~~Consumers~~ A member may not live in a licensed medical or health care ~~facilities~~ facility or in ~~settings~~ a setting that is required to be licensed as a medical or health care ~~facilities~~ facility.

(4) ~~d. Consumers~~ A member aged 17 or under living in the home of ~~their~~ the member's family, legal representative, or foster ~~families~~ family shall receive intermittent services based on development of adaptive, behavior, or health skills. Intermittent services may be provided from one to three hours a day for not more than four days a week. Duration of services shall be based on age-appropriateness and individual attention span.

~~d. Rescinded IAB 2/5/03, effective 2/1/03.~~

e. Provider budgets shall reflect all staff-to-~~consumer~~ member ratios and shall reflect costs associated with ~~consumers'~~ members' specific support needs for travel and transportation, consulting, instruction, and environmental modifications and repairs, as determined necessary by the interdisciplinary team for each ~~consumer~~ member. The specific support needs must be identified in the Medicaid case manager's service plan, the total costs shall not exceed \$1570 per ~~consumer~~ member per year, and the provider must maintain records to support the expenditures. A unit of service is:

(1) One full calendar day when a ~~consumer~~ member residing in the living unit receives on-site staff supervision for ~~19~~ eight or more hours ~~during a 24-hour calendar per day as an average over a calendar month~~ and the ~~consumer's individual comprehensive~~ member's service plan identifies and reflects the need for this amount of supervision.

(2) One hour when subparagraph (1) does not apply.

f. The maximum ~~numbers~~ number of units available per ~~consumer~~ member is as follows:

(1) and (2) No change.

g. The service shall be identified in the ~~consumer's individual comprehensive~~ member's service plan.

h. ~~Services~~ Supported community living services shall not be simultaneously reimbursed with other residential services, ~~HCBS brain injury waiver~~ or with respite, transportation, or personal assistance services, Medicaid nursing, or Medicaid home health aide services provided through Medicaid or the HCBS brain injury waiver.

ITEM 31. Amend subrule 78.43(3) as follows:

78.43(3) Respite care services. Respite care services are services provided to the ~~consumer~~ member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that ~~time~~ period. The purpose of respite care is to enable the ~~consumer~~ member to remain in the ~~consumer's~~ member's current living situation.

a. Services provided outside the ~~consumer's~~ member's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.

b. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer~~ member as determined by the ~~consumer's~~ member's interdisciplinary team.

c. A unit of service is one hour.

d. Respite care is not to be provided to ~~persons~~ members during the hours in which the usual caregiver is employed except when the ~~consumer~~ member is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care. Respite care cannot be provided to a ~~consumer~~ member whose usual caregiver is a consumer-directed attendant care provider for the ~~consumer~~ member.

e. No change.

f. The interdisciplinary team shall determine if the ~~consumer~~ member will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.81(249A).

g. and h. No change.

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ITEM 32. Amend subrule 78.43(5) as follows:

78.43(5) Home and vehicle ~~modifications~~ modification. Covered home and vehicle modifications are ~~these~~ physical modifications to the ~~consumer's~~ member's home or vehicle ~~listed below~~ that directly address the ~~consumer's~~ member's medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the ~~consumer~~ member and enable the ~~consumer~~ member to function with greater independence in the home or vehicle.

a. Modifications that are necessary or desirable without regard to the ~~consumer's~~ member's medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, ~~roof repair~~, or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. ~~Repairs~~ Home and vehicle repairs are also excluded.

b. Only the following modifications are covered:

(1) to (6) No change.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the ~~consumer's~~ member's disability.

(8) to (24) No change.

c. and d. No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the ~~consumer~~ member. Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

f. The contract shall include, ~~at a minimum,~~ the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications. Payment of up to \$6,060 per year may be made to certified providers upon satisfactory completion of the service. The case manager or service worker shall may encumber up to \$505 per a portion of the cost of a modification every month within the monthly dollar cap allowed for the consumer member until the amount entire cost of the modification is reached encumbered within the a consecutive 12-month period.

h. Services shall be included in the ~~consumer's~~ member's service plan and shall exceed the Medicaid state plan services.

ITEM 33. Amend subrule 78.43(6) as follows:

78.43(6) Personal emergency response or portable locator system. ~~The personal emergency response system allows a consumer experiencing a medical emergency at home to activate electronic components that transmit a coded signal via digital equipment over telephone lines to a central monitoring station.~~

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The necessary components of a system are:

~~a.~~ 1. An in-home medical communications transceiver.

~~b.~~ 2. A remote, portable activator.

~~c.~~ 3. A central monitoring station with backup systems staffed by trained attendants 24 hours per day, seven days per week at all times.

~~d.~~ 4. Current data files at the central monitoring station containing response protocols and personal, medical and emergency information for each ~~consumer~~ member.

~~e.~~ (2) The service shall be identified in the ~~consumer's individual and comprehensive~~ member's service plan.

~~f.~~ (3) A unit is a one-time installation fee or one month of service.

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~~g.~~ (4) Maximum units per state fiscal year ~~are~~ shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

ITEM 34. Amend subrule 78.43(8) as follows:

78.43(8) *Specialized medical equipment.*

a. Specialized medical equipment shall include medically necessary items which are for personal use by ~~consumers~~ members with a brain injury and which:

(1) ~~provide~~ Provide for health and safety of the ~~consumer~~ which member,

(2) ~~are~~ Are not ordinarily covered by Medicaid, and

(3) ~~are~~ Are not funded by educational or vocational rehabilitation programs, and

(4) ~~are~~ Are not provided by voluntary means. ~~This includes, but is not limited to: electronic aids and organizers, medicine dispensing devices, communication devices, bath aids, and noncovered environmental control units. This includes repair and maintenance of items purchased through the waiver in addition to the initial purchase cost.~~

b. Coverage includes, but is not limited to:

(1) Electronic aids and organizers.

(2) Medicine dispensing devices.

(3) Communication devices.

(4) Bath aids.

(5) Noncovered environmental control units.

(6) Repair and maintenance of items purchased through the waiver.

~~a. c. Consumers may receive specialized medical equipment once per month until a maximum yearly usage of \$6,060 has been reached. Payment of up to \$6,060 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service. Each month within the 12-month period, the service worker shall encumber an amount within the monthly dollar cap allowed for the member until the amount of the equipment cost is reached.~~

~~b. d. The need for specialized medical equipment shall be:~~

(1) ~~documented~~ Documented by a health care professional as necessary for the ~~consumer's~~ member's health and safety, and

(2) ~~identified~~ Identified in the ~~consumer's individual comprehensive~~ member's service plan.

ITEM 35. Amend subrule 78.43(9) as follows:

78.43(9) *Adult day care services.* Adult day care services provide an organized program of supportive care in a group environment to persons who need a degree of supervision and assistance on a regular or intermittent basis in a day care center. A unit of service is a full day (4 to 8 hours) or a half day (1 to 4 hours) or an extended day (8 to 12 hours). Components of the service ~~are set forth in rule 441—171.6(234)~~ include health-related care, social services, and other related support services.

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ITEM 36. Amend subrule 78.43(11) as follows:

78.43(11) *Prevocational services.* Prevocational services are services which are aimed at preparing a consumer eligible for the HCBS brain injury waiver member for paid or unpaid employment, but which are not job-task oriented. These services include teaching the consumer member concepts necessary as for job readiness skills, such as following directions, attending to tasks, task completion, problem solving, and safety and mobility training.

a. Prevocational services are intended to have a more generalized result as opposed to vocational training for a specific job or supported employment. Services include activities which are not primarily directed at teaching specific job skills but at more generalized habilitative goals and are reflected in a habilitative plan which focuses on general habilitative rather than specific employment objectives.

b. Prevocational services do not include:

(1) ~~services~~ Services defined in Section 4(a)(4) of the 1975 amendments to the Education of the Handicapped Act (20 U.S.C. 1404(16) and (17)) which are otherwise available to the ~~individual member~~ through a state or local education agency, or

(2) ~~vocational~~ Vocational rehabilitation services which are otherwise available to the ~~individual member~~ through a program funded under Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730).

c. A unit of service is a full day (4 to 8 hours), a half day (1 to 4 hours), or an hour.

ITEM 37. Amend subrule 78.43(13) as follows:

78.43(13) *Consumer-directed attendant care service.* Consumer-directed attendant care services are service activities performed by a person to help a ~~consumer member~~ with self-care tasks which the ~~consumer member~~ would typically do independently if the ~~consumer member~~ were otherwise able.

a. The service activities may include helping the ~~consumer member~~ with any of the following nonskilled service activities:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the ~~consumer's member's~~ health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the ~~consumer member~~ is on the job site. The cost of transportation for the ~~consumer member~~ and assistance with understanding of or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting or accompanying a ~~consumer member~~ in using transportation essential to the health and welfare of the ~~consumer member~~. The cost of the transportation is not included.

b. The service activities may include helping the ~~consumer member~~ with any of the following skilled services under the supervision of a licensed nurse or licensed therapist working under the direction of a physician. The licensed nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall be paid from private insurance and other third-party payment sources, Medicare, the regular Medicaid program, or the early periodic screening diagnosis and treatment program ~~before accessing the HCBS waiver.~~

(1) Tube feedings of ~~consumers members~~ unable to eat solid foods.

(2) to (13) No change.

c. A unit of service is 1 hour, or one 8- to 24-hour day ~~provided by an individual or an agency.~~ Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

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d. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care shall be responsible for selecting the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided~~.

e. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine the components of the attendant care services to be provided with the person who is providing the services to the ~~consumer member~~.

f. The service activities ~~may~~ shall not include parenting or child care for or on behalf of the ~~consumer member~~ or on behalf of the provider.

g. The ~~consumer member~~, parent, guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and sign, and date~~ Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker or case manager prior to the initiation of services,~~ and kept in the ~~consumer's and department's member's~~ records.

h. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the ~~consumer's member's~~ needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

i. If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer member~~, indicating that the service has been provided as presented on the claim.

j. to m. No change.

ITEM 38. Amend subrule 78.43(14) as follows:

78.43(14) Interim medical monitoring and treatment services. Interim medical monitoring and treatment (IMMT) services are monitoring and treatment of a medical nature ~~requiring specially trained caregivers beyond what is normally available in a day care setting for children or adults whose medical needs make alternative care unavailable, inadequate, or insufficient.~~ IMMT services are not intended to provide day care but to supplement available resources. The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver. Services must be ordered by a physician.

a. Need for service. The member must be currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. The service worker or case manager must identify the need for IMMT services after evaluating the member's living environment, family and natural supports, ability to perform activities of daily living, and health care needs. The services must be needed:

- (1) To allow the member's usual caregivers to be employed,
- (2) During a search for employment by a usual caregiver,
- (3) To allow for academic or vocational training of a usual caregiver,
- (4) Due to the hospitalization of a usual caregiver for treatment for physical or mental illness, or
- (5) Due to the death of a usual caregiver.

~~a.~~ b. Service requirements. Interim medical monitoring and treatment services shall:

- (1) Provide experiences for each ~~consumer's member's~~ social, emotional, intellectual, and physical development;
- (2) Include comprehensive developmental care and any special services for a ~~consumer member~~ with special needs; and
- (3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Medical intervention means the ability to assess the situation and contact the appropriate medical professional, not the direct application of medical care.

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~~b. c.~~ Interim medical monitoring and treatment services may include supervision while the member is being transported to and from school.

~~e. d.~~ Limitations.

(1) and (2) No change.

(3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. Services under the state plan, including home health agency services under rule 441—78.9(249A), must be exhausted before IMMT services are accessed.

(4) Interim medical monitoring and treatment services ~~may~~ shall be provided only in the ~~consumer's member's home;~~ in a registered group child care home, in a registered family child care development home; ~~in a licensed child care center, residential care facility, or adult day care facility;~~ or during transportation the time when the member is being transported to and from school.

(5) ~~The staff-to-consumer~~ member-to-staff ratio shall not be ~~less~~ more than ~~one to six~~ members to one staff person.

(6) The parent or guardian of the member shall be responsible for the usual and customary nonmedical cost of day care during the time in which the member is receiving IMMT services. Medical care necessary for monitoring and treatment is an allowable IMMT cost. If the cost of care goes above the usual and customary cost of day care services due to the member's medical condition, the costs above the usual and customary cost shall be covered as IMMT services.

~~d. e.~~ A unit of service is one hour.

ITEM 39. Amend subrule 78.46(1) as follows:

78.46(1) Consumer-directed attendant care service. Consumer-directed attendant care services are service activities ~~listed below~~ performed by a person to help a ~~consumer~~ member with self-care tasks which the ~~consumer~~ member would typically do independently if the ~~consumer~~ member were otherwise able. The services must be cost-effective and necessary to prevent institutionalization.

a. Providers must demonstrate proficiency in delivery of the services in the ~~consumer's~~ member's plan of care. Proficiency must be demonstrated through documentation of prior training or experience or a certificate of formal training.

(1) All training or experience will be detailed on Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, which must be reviewed and approved by the service worker for appropriateness of training or experience prior to the provision of services. Form 470-3372 becomes an attachment to and part of the case plan.

(2) ~~Consumers~~ The member shall give direction and training for activities which are not medical in nature to maintain independence. Licensed registered nurses and therapists must provide on-the-job training and supervision to the provider for skilled activities listed below and described on Form 470-3372. The training and experience must be sufficient to protect the health, welfare and safety of the ~~consumer~~ member.

~~a. b.~~ Nonskilled service activities covered are:

(1) to (4) No change.

(5) Meal preparation, cooking, and assistance with eating and feeding ~~assistance~~ but not the cost of meals themselves. Meal preparation and cooking shall be provided only in the member's home.

(6) Housekeeping services which are essential to the ~~consumer's~~ member's health care at home.

(7) and (8) No change.

(9) Assistance needed to go to or return from a place of employment and assistance with job-related tasks while the ~~consumer~~ member is on the job site. The cost of transportation for the ~~consumer~~ member and assistance with understanding or performing the essential job functions are not included in consumer-directed attendant care services.

(10) and (11) No change.

(12) Assisting and or accompanying a consumer member in using transportation essential to the health and welfare of the consumer, but not the member. The cost of the transportation is not included.

~~b. c.~~ Skilled service activities covered are the following performed under the supervision of a licensed nurse or licensed therapist working under the direction of a licensed physician. The licensed

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nurse or therapist shall retain accountability for actions that are delegated. The licensed nurse or therapist shall ensure appropriate assessment, planning, implementation, and evaluation. The licensed nurse or therapist shall make on-site supervisory visits every two weeks with the provider present. The cost of the supervision provided by the licensed nurse or therapist shall not be included in the reimbursement for consumer-directed attendant care services.

(1) Tube feedings of ~~consumers~~ members unable to eat solid foods.

(2) to (13) No change.

~~e. d.~~ A unit of service is 1 hour ~~for up to 7 hours per day~~ or one 8- to 24-hour day ~~provided by an individual or an agency~~. Each service shall be billed in whole units. The consumer-directed attendant care provider shall complete Form 470-4389, Consumer-Directed Attendant Care (CDAC) Service Record, for each day of service.

~~d. e.~~ The ~~consumer member, parent,~~ guardian, or attorney in fact under a durable power of attorney for health care shall:

(1) ~~be responsible for selecting~~ Select the person or agency ~~who~~ that will provide the components of the attendant care services ~~to be provided~~.

~~e. (2)~~ ~~The consumer, parent, guardian, or attorney in fact under a durable power of attorney for health care shall determine~~ Determine the components of the attendant care services to be provided with the person who is providing the services to the ~~consumer member~~.

~~f.~~ The service activities ~~may~~ shall not include parenting or child care on behalf of the ~~consumer member~~ or on behalf of the provider.

~~g.~~ The ~~consumer member, parent,~~ guardian, or attorney in fact under a durable power of attorney for health care and the provider shall complete, ~~and sign, and date~~ Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement. A copy of the completed agreement shall be attached to the service plan, ~~which is signed by the service worker prior to the initiation of services,~~ and kept in the ~~consumer's and department's member's~~ records.

~~h.~~ If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the ~~consumer's member's~~ needs are being adequately met. If the guardian or attorney in fact is the service provider, the service plan shall address how the service worker or case manager shall oversee service provision.

~~i.~~ If the ~~consumer member~~ has a guardian or attorney in fact under a durable power of attorney for health care, the guardian or attorney in fact shall sign the claim form in place of the ~~consumer member~~, indicating that the service has been provided as presented on the claim.

~~j. to l.~~ No change.

~~m.~~ Services may be provided in the absence of a ~~parent or~~ guardian if the ~~parent or~~ guardian has given advanced direction for the service provision.

ITEM 40. Amend subrule 78.46(2) as follows:

78.46(2) Home and vehicle ~~modifications~~ modification. Covered home and vehicle modifications are ~~those~~ physical modifications to the ~~consumer's member's~~ home or vehicle ~~listed below~~ that directly address the ~~consumer's member's~~ medical or remedial need. Covered modifications must be necessary to provide for the health, welfare, or safety of the ~~consumer member~~ and enable the ~~consumer member~~ to function with greater independence in the home or vehicle.

~~a.~~ Modifications that are necessary or desirable without regard to the ~~consumer's member's~~ medical or remedial need and that would be expected to increase the fair market value of the home or vehicle, such as furnaces, fencing, ~~roof repair,~~ or adding square footage to the residence, are excluded except as specifically included below. Purchasing or leasing of a motorized vehicle is excluded. ~~Repairs~~ Home and vehicle repairs are also excluded.

~~b.~~ Only the following modifications are covered:

(1) to (6) No change.

(7) Voice-activated, sound-activated, light-activated, motion-activated, and electronic devices directly related to the ~~consumer's member's~~ disability.

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(8) to (24) No change.

c. and d. No change.

e. Services shall be performed following department approval of a binding contract between the enrolled home and vehicle modification provider and the ~~consumer~~ member. Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.

f. The contract shall include, ~~at a minimum,~~ the scope of work to be performed, the time involved, supplies needed, the cost, time frame for work completion, and diagrams of the project whenever applicable, and an assurance of that the provider has liability and workers' compensation coverage and the applicable permit and license.

g. Service payment shall be made to the enrolled home and vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home and vehicle modification provider following completion of the approved modifications. Payment of up to \$6,060 per year may be made to certified providers upon satisfactory completion of the service. The case manager or service worker shall encumber up to \$505 per a portion of the cost of a modification every month within the monthly dollar cap allowed for the ~~consumer~~ member until the amount entire cost of the modification is reached encumbered within the a consecutive 12-month period.

h. Services shall be included in the ~~consumer's~~ member's service plan and shall exceed the Medicaid state plan services.

ITEM 41. Amend subrule 78.46(3) as follows:

78.46(3) *Personal emergency response or portable locator system.* ~~The personal emergency response system allows a consumer experiencing a medical emergency at home to activate electronic components that transmit a coded signal via digital equipment over telephone lines to a central monitoring station. The service shall be identified in the consumer's service plan. A unit is a one-time installation fee or one month of service. Maximum units per state fiscal year are the initial installation and 12 months of service.~~

a. A personal emergency response system is an electronic device that transmits a signal to a central monitoring station to summon assistance in the event of an emergency.

(1) The necessary components of a system are:

~~a.~~ 1. An in-home medical communications transceiver.

~~b.~~ 2. A remote, portable activator.

~~c.~~ 3. A central monitoring station with backup systems staffed by trained attendants 24 hours per day, seven days a week at all times.

~~d.~~ 4. Current data files at the central monitoring station containing response protocols and personal, medical, and emergency information for each ~~consumer~~ member.

(2) The service shall be identified in the member's service plan.

(3) A unit of service is a one-time installation fee or one month of service.

(4) Maximum units per state fiscal year shall be the initial installation and 12 months of service.

b. A portable locator system is an electronic device that transmits a signal to a monitoring device. The system allows a member to access assistance in the event of an emergency and allows law enforcement or the monitoring system provider to locate a member who is unable to request help or to activate a system independently. The member must be unable to access assistance in an emergency situation due to the member's age or disability.

(1) The required components of the portable locator system are:

1. A portable communications transceiver or transmitter to be worn or carried by the member.

2. Monitoring by the provider at a central location with response protocols and personal, medical, and emergency information for each member as applicable.

(2) The service shall be identified in the member's service plan.

(3) Payable units of service are purchase of equipment, an installation or set-up fee, and monthly fees.

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(4) Maximum units per state fiscal year shall be one equipment purchase, one installation or set-up fee, and 12 months of service.

ITEM 42. Amend subrule 78.46(4) as follows:

78.46(4) *Specialized medical equipment.*

a. Specialized medical equipment shall include medically necessary items which are for personal use by consumers members with a physical disability and which:

- (1) provide Provide for the health and safety of the consumer member, that
- (2) are Are not ordinarily covered by Medicaid,
- (3) are Are not funded by educational or vocational rehabilitation programs, and
- (4) are Are not provided by voluntary means. This includes, but is not limited to: electronic aids and organizers, medicine dispensing devices, communication devices, bath aids and noncovered environmental control units. This includes repair and maintenance of items purchased through the waiver in addition to the initial costs.

b. Coverage includes, but is not limited to:

- (1) Electronic aids and organizers.
- (2) Medicine dispensing devices.
- (3) Communication devices.
- (4) Bath aids.
- (5) Noncovered environmental control units.
- (6) Repair and maintenance of items purchased through the waiver.

a. c. Consumers may receive specialized medical equipment once a month until a maximum yearly usage of \$6,060 has been reached. Payment of up to \$6,060 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service. Each month within the 12-month period, the service worker shall encumber an amount within the monthly dollar cap allowed for the member until the amount of the equipment cost is reached.

b. d. The need for specialized medical equipment shall be:

- (1) documented Documented by a health care professional as necessary for the consumer's member's health and safety, and shall be
- (2) identified Identified in the consumer's member's service plan.

ITEM 43. Amend subrule 78.52(2) as follows:

78.52(2) *Environmental modifications and adaptive devices.*

a. Environmental modifications and adaptive devices include medically necessary items installed or used within the consumer's member's home that are used by the member to address specific, documented health, mental health, or safety concerns. The following items are excluded under this service:

- (1) Items ordinarily covered by Medicaid.
- (2) Items funded by educational or vocational rehabilitation programs.
- (3) Items provided by voluntary means.
- (4) Repair and maintenance of items purchased through the waiver.
- (5) Fencing.

b. A unit of service is one modification or device.

c. For each unit of service provided, the case manager shall maintain in the consumer's member's case file a signed statement from a mental health professional on the consumer's member's interdisciplinary team that the service has a direct relationship to the consumer's member's diagnosis of serious emotional disturbance.

ITEM 44. Amend subrule 78.52(5) as follows:

78.52(5) *Respite care services.* Respite care services are services provided to the consumer member that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that period. The "usual caregiver" means a person or persons who reside with the consumer member and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer member.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. Respite care shall not be provided to ~~consumers members~~ during the hours in which the usual caregiver is employed, except when the ~~consumer member~~ is attending a 24-hour residential camp. Respite care shall not be used as a substitute for a child's day care.

b. No change.

c. ~~Staff-to-consumer~~ Member-to-staff ratios shall be appropriate to the individual needs of the ~~consumer member~~ as determined by the ~~consumer's member's~~ interdisciplinary team. The team shall determine the type of respite care to be provided according to these definitions:

(1) Basic individual respite is provided on a ratio of one staff to one ~~consumer member~~. The ~~consumer member~~ does not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(2) Specialized respite is provided on a ratio of one or more nursing staff to one ~~consumer member~~. The ~~consumer member~~ has specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

(3) Group respite is provided on a ratio of one staff to two or more ~~consumers members~~ receiving respite. These ~~consumers members~~ do not have specialized medical needs that require the direct services of a registered nurse or licensed practical nurse.

d. Respite services provided for a period exceeding 24 consecutive hours to three or more ~~consumers members~~ who require nursing care because of a mental or physical condition must be provided by a health care facility licensed under Iowa Code chapter 135C.

e. Respite services provided outside the ~~consumer's member's~~ home shall not be reimbursable if the living unit where respite care is provided is reserved for another person on a temporary leave of absence.

f. A unit of service is one hour.

ITEM 45. Amend subrule **79.1(2)**, provider category "HCBS waiver service providers," numbered paragraphs "2," "23" and "24," as follows:

Provider category	Basis of reimbursement	Upper limit
2. Emergency response system;	<u>Fee schedule</u>	Initial one-time fee \$48.29. Ongoing monthly fee \$37.56.
<u>Personal response system</u>	<u>Fee schedule</u>	<u>Initial one-time fee: \$48.29.</u> <u>Ongoing monthly fee: \$37.56.</u>
<u>Portable locator system</u>	<u>Fee schedule</u>	<u>One equipment purchase: \$300.</u> <u>Initial one-time fee: \$48.29.</u> <u>Ongoing monthly fee: \$37.56.</u>
23. Prevocational services	Fee schedule	For the brain injury waiver: \$36.50 <u>\$47.01 per day, \$23.51 per half day, or \$12.88 per hour.</u> For the intellectual disabilities <u>disability</u> waiver: County contract rate or, in absence of a contract rate, <u>\$47.01 per day, \$23.51 per half day, or \$12.88 per hour.</u>
24. Interim medical monitoring and treatment:		

HUMAN SERVICES DEPARTMENT[441](cont'd)

Home health agency (provided by home health aide)	Cost-based rate for home health aide services provided by a home health agency	Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 less 5%, converted to an hourly rate.
Home health agency (provided by nurse)	Cost-based rate for nursing services provided by a home health agency	Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 less 5%, converted to an hourly rate.
Child development home or center	Fee schedule	\$12.79 per hour.
<u>Supported community living provider</u>	<u>Retrospectively limited prospective rate</u>	<u>\$34.11 per hour, not to exceed the maximum ICF/MR rate per day.</u>

ITEM 46. Amend paragraph **80.2(2)“f”** as follows:

f. ~~Providers of home- and community-based waiver services, including home health agencies, providing home- and community-based waiver services~~ shall submit claims on Form 470-2486, Claim for Targeted Medical Care. In the event of the death of the member, the case manager or service worker shall sign and date the claim form if the services were delivered.

ARC 9157B

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 81, “Nursing Facilities,” and to adopt new Chapter 166, “Quality Improvement Initiative Grants,” Iowa Administrative Code.

The proposed amendments expand the uses of civil money penalties collected from nursing facilities to include a Quality Improvement Initiative Grant. These grants are intended to fund projects that directly or indirectly enhance quality of care or quality of life for nursing facility residents.

Section 1919 of the Social Security Act and Iowa Code section 249A.19 allow the Department to impose civil money penalties when a health care facility is not in substantial compliance with one or more Medicaid participation requirements. These penalties may range from \$50 to \$10,000 per day, depending on the kind of deficiency recorded by the Department of Inspections and Appeals (the agency that certifies nursing facilities for participation in the Iowa Medicaid program). The funds collected are to be applied to the protection of the health or property of the residents of the facilities determined to be out of compliance.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Centers for Medicare and Medicaid Services has clarified that states may direct collected civil penalty funds to entities other than nursing facilities as long as the funds are used in accordance with the intent of the statute. States may target these resources for initiatives carried out by stakeholders, such as nursing facilities, consumer groups, professional nursing home associations, ombudsmen, and quality improvement organizations.

Under these amendments, nursing facilities and other stakeholder groups may apply for a Quality Improvement Initiative Grant in any calendar year in which the Department sets aside moneys for this purpose. The grants are available only for initiatives that are outside the scope of normal operations for the nursing facility or other applicant. Grants cannot be used as replacement funding for goods or services that the applicant already offers. Grants shall be awarded for short-term quality improvement initiatives (three years or less). An initiative shall be self-sustaining once implemented unless the initiative is a one-time project.

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 November 9, 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.

The Department will also hold a public hearing for the purpose of receiving comments on these proposed amendments on Wednesday, November 10, 2010, from 2 to 4 p.m. at the Iowa Medicaid Enterprise, Rooms 128 and 129, 100 Army Post Road, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Coordination at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 249A.4 and 249A.19.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 81.50(7):

81.50(7) Authority to settle penalties. The department of inspections and appeals has the authority to settle cases at any time before the evidentiary hearing.

ITEM 2. Rescind and reserve subrule **81.52(4)**.

ITEM 3. Amend rule 441—81.53(249A) as follows:

441—81.53(249A) Civil money penalties—settlement of penalties. Use of penalties collected by the department. ~~The department of inspections and appeals has the authority to settle cases at any time prior to the evidentiary hearing decision.~~ Civil money penalties collected by the department shall be applied to the protection of the health or property of residents of facilities that the department of inspections and appeals finds deficient. Funds may be used for:

1. Payment for the cost of relocating residents to other facilities;
2. Recovery of state costs related to the operation of a facility pending correction of deficiencies or closure;
3. Reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or by individuals used by the facility to provide services to residents; and
4. Funding of projects to improve the quality of life or quality of care of nursing facility residents through quality improvement initiative grants awarded pursuant to 441—Chapter 166.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 4. Adopt the following new 441—Chapter 166:

CHAPTER 166
QUALITY IMPROVEMENT INITIATIVE GRANTS

441—166.1(249A) Definitions.

“*Eligible entities*” means nursing facilities, state agencies, nursing facility advocacy groups, and other nursing facility stakeholder groups.

“*Nursing facility*” means a licensed nursing facility certified in accordance with the provisions of 42 CFR Part 483 as amended to September 23, 1992, to provide health services. “Nursing facility” includes swing-bed hospitals and hospital-based nursing facilities that are Medicare-certified and provide only skilled level of care unless stated otherwise.

“*Quality improvement initiative*” or “*initiative*” means an innovative project that prevents noncompliance with state or federal requirements for nursing facilities and that directly or indirectly benefits nursing facility residents by enhancing their quality of life or quality of care.

441—166.2(249A) Availability of grants. At the beginning of each calendar year, the department shall set aside an annual amount from the civil money penalty fund established pursuant to Iowa Code section 249A.19 to be awarded in the form of grants to eligible entities for approved quality improvement initiatives. At no time shall the grant set-aside cause the civil money penalty fund to drop below \$1 million.

166.2(1) In any calendar year in which sufficient funds are available in the civil money penalty fund to support quality improvement initiative grants, the department shall issue a notice for applications for grants.

166.2(2) There is no entitlement to any funds available for grants awarded pursuant to this chapter. The department may award grants to the extent funds are available and, within its discretion, to the extent that applications are approved.

441—166.3(249A) Requirements for applicants. Eligible entities wishing to apply for quality improvement initiative grants must meet the following requirements:

166.3(1) Eligible entities may submit an application on behalf of a specific facility, on behalf of a group of facilities, or on behalf of a stakeholder group. However, grant funds awarded shall be distributed to one distinct entity that shall be contractually responsible for the funds.

166.3(2) The applicant must demonstrate the capacity to carry out the initiative for which the grant is requested.

166.3(3) At the time of the application, a facility applicant must not have:

a. Any pending enforcement actions that could result in the closure of the facility; or

b. Any outstanding sanctions by the Iowa Medicaid enterprise or the Centers for Medicare and Medicaid Services.

166.3(4) An applicant previously awarded a quality improvement initiative grant that failed to achieve that initiative’s intended goals or outcomes shall be ineligible to apply for a period of five years following that grant award. However, a grant may be considered if the applicant’s inability to complete the initiative was due to circumstances beyond the applicant’s control.

166.3(5) An applicant may receive a maximum of two grants within a five-year period.

441—166.4(249A) Requirements for initiatives. Grants are available only for quality improvement initiatives that are outside the scope of normal operations for the nursing facility or other applicant. Grants cannot be used as replacement funding for goods or services that the applicant already offers.

166.4(1) The applicant must be able to identify:

a. Areas in need of improvement, including staff education or training needs not available through current corporate or facility contract employment; and

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Efficient uses of the quality improvement initiative grant to improve the quality of life or quality of care of nursing facility residents.

166.4(2) Grants shall be awarded for short-term quality improvement initiatives (three years or less).

166.4(3) The applicant shall not submit a request for or receive a grant for the same type of initiative previously awarded a grant.

166.4(4) Grant awards shall be restricted to one-time initiatives or initiatives that will be self-sustaining once implemented. Costs to maintain the initiative may be considered allowable costs on the nursing facility's financial and statistical report, subject to 441—subrule 81.10(1) and rule 441—81.6(249A).

166.4(5) Quality improvement initiative grants are not available for the following:

- a.* General operations or administrative salaries.
- b.* Capital improvements, construction projects or other activities that would increase square footage or result in an increase in the assessed value of any property.
- c.* Facility maintenance activities intended to meet the minimum standards for nursing facilities set forth in 481—Chapter 61.
- d.* Goods or services for which the applicant or others are already obligated to pay.
- e.* Vendor payments and payroll obligations for a facility's normal operations or for fulfillment of state or federal requirements.
- f.* Costs related to travel, bonuses or other direct employee benefits.
- g.* Costs that are not specifically outlined in the applicant's grant application or are already included in the facility's cost report.
- h.* Projects, programs, goods or services that are unrelated to improving the quality of life or quality of care of nursing facility residents.

441—166.5(249A) Applications. Eligible entities shall apply for quality improvement initiative grants using Form 470-4869, Grant Award Application. Applications may be accessed electronically through the Iowa Medicaid enterprise Web site, www.ime.state.ia.us/Providers.

166.5(1) Grant applications must be received by the Iowa Medicaid enterprise between February 1 and April 30 of any calendar year in which grant funds are available. Grant applications submitted before or after this period shall not be considered.

166.5(2) To be considered, each application must include, at a minimum, the following:

- a.* A description of the initiative's vision or goal. The application must identify how the grant will improve the quality of care or quality of life of nursing facility residents.
- b.* The objectives or expected outcomes of the initiative.
- c.* An implementation plan.
- d.* An education plan. For initiatives intended to provide education or training to stakeholders, the applicant shall submit a plan for the development and execution of the training curriculum.
- e.* A sustainability plan. The application shall describe how the initiative is a one-time initiative or will be self-sustaining once the grant implementation period has ended.
- f.* A budget, with competitive quotes. Applicants must include three quotes for the cost of equipment, construction and labor for the quality improvement initiative. The quotes shall be from businesses that comply with federal, state and local laws as required for the health and safety of the residents of the nursing facility.
- g.* A monitoring plan. The application shall describe how the applicant will monitor and evaluate ongoing progress toward meeting the initiative's stated goals.
- h.* The qualifications of professionals and other staff involved in the initiative.

441—166.6(249A) Awarding of grants. Grants will be awarded beginning July 1 of each calendar year in which grant funds are available.

166.6(1) A grant award review committee shall be appointed by the state Medicaid director. The committee shall review and evaluate all complete grant applications submitted within the required time frame.

HUMAN SERVICES DEPARTMENT[441](cont'd)

166.6(2) Applications shall be evaluated using the following criteria (indicated on Form 470-4869, Grant Award Application):

- a. Vision or goal: 5 points.
- b. Description of initiative: 20 points.
- c. Effect on quality of care or quality of life of residents: 20 points.
- d. Objectives and outcomes: 20 points.
- e. Implementation plan: 25 points.
- f. Education plan: 5 points.
- g. Sustainability: 5 points.

166.6(3) Each grant application must score at least 85 points on the evaluation criteria for the application to be recommended to the department director for an award.

441—166.7(249A) Grant requirements. Grant awards are subject to the following general requirements.

166.7(1) Contract. Grants for approved applications shall be awarded through a contract entered into by the department and the applicant. Grant funds shall be distributed to grantees in quarterly increments.

166.7(2) Progress report. The grantee shall submit quarterly progress reports following the date of the award until completion of the initiative. A grantee that fails to submit a quarterly progress report shall forfeit any future grant award distributions.

166.7(3) Final report. The grantee must submit a final report to the bureau of long term care of the Iowa Medicaid enterprise within 60 days of completion of the initiative.

- a. The report shall be submitted on Form 470-4950, Grant Award Final Report.
- b. The final report must provide evidence of successful completion of the quality improvement initiative and must address the following:
 - (1) The purpose of the grant,
 - (2) The expected outcomes of the initiative,
 - (3) The actual outcomes of the initiative,
 - (4) The number of residents who benefited from the initiative,
 - (5) The status of the action plan for sustainability if the initiative will continue beyond the grant funding.

These rules are intended to implement Iowa Code section 249A.19.

ARC 9168B

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code chapters 505 and 514D and 2010 Iowa Acts, Senate File 2201, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 36, “Individual Accident and Health—Minimum Standards,” Iowa Administrative Code.

Chapter 36 provides reasonable standardization and simplification of terms and coverages of individual accident and sickness insurance policies and provides for full disclosure in the sale of the coverages. These amendments update the rules to reflect recent changes to Iowa Code chapter 505 made in 2010 Iowa Acts, Senate File 2201. The Division intends that Iowa insurance companies will comply with these rules for all individual policy rate filings submitted on or after January 19, 2011.

INSURANCE DIVISION[191](cont'd)

Any interested person may make written suggestions or comments on these proposed amendments on or before November 16, 2010, at 10 a.m. Such written materials should be directed to Ann Outka, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059; E-mail ann.outka@iid.iowa.gov.

Also, there will be a public hearing on November 16, 2010, at 10 a.m. in the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9158B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapters 505 and 514D and 2010 Iowa Acts, Senate File 2201.

ARC 9160B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r,” the Iowa Finance Authority proposes to amend Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

These amendments replace the current qualified allocation plan for the Low-Income Housing Tax Credit Program with the 2011 qualified allocation plan, which is incorporated by reference in rule 265—12.1(16).

The qualified allocation plan sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the postreservation requirements, the appeal process, and the compliance monitoring component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the qualified allocation plan are available upon request from the Authority and are available electronically on the Authority’s Web site at www.iowafinanceauthority.gov. It is the Authority’s intent to incorporate the 2011 qualified allocation plan by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers. The qualified allocation plan is subject to state and federal requirements that cannot be waived. (See Internal Revenue Code Section 42 and Iowa Code section 16.52.)

The Authority will receive written comments on the proposed amendments and on the qualified allocation plan until 4:30 p.m. on November 9, 2010. Comments may be addressed to Dave Vaske, Low-Income Housing Tax Credit Manager, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Dave Vaske at (515)725-4941 or E-mailed to dave.vaske@iowa.gov.

The Authority will hold a public hearing on November 9, 2010, to receive public comments on these amendments and on the proposed 2011 qualified allocation plan. The public hearing will be held from 9 to 11 a.m. at the Authority’s offices, located at 2015 Grand Avenue, Des Moines, Iowa.

IOWA FINANCE AUTHORITY[265](cont'd)

The Authority anticipates that it may make changes to the 2011 qualified allocation plan based on comments received from the public.

These amendments are intended to implement Iowa Code sections 16.5(1)“r,” 16.52, 17A.12, and 17A.16 and IRC Section 42.

The following amendments are proposed.

ITEM 1. Amend rule 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2010 First Amended~~ 2011 Qualified Allocation Plan shall be the qualified allocation plan for the allocation of ~~2010~~ 2011 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The qualified allocation plan does not include any amendments or editions created subsequent to ~~June 23~~ September 27, 2010.

ITEM 2. Amend rule 265—12.2(16) as follows:

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority’s Web site at <http://www.iowafinanceauthority.gov>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority’s Web site. The plan incorporates by reference IRC Section 42 and the regulations in effect as of ~~June 23~~ September 27, 2010. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority’s Web site.

ARC 9159B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.5(1)“m,” the Iowa Finance Authority proposes to amend Chapter 39, “HOME Partnership Program,” Iowa Administrative Code.

The purpose of these amendments is to revise the rules and to adopt additional rules relating to the application and allocation process by which HOME funds are to be awarded.

The Authority does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on November 9, 2010. Comments may be addressed to Carla Pope, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Carla Pope at (515)725-4901 or E-mailed to carla.pope@iowa.gov.

The Authority will conduct a public hearing on the proposed amendments on November 9, 2010, at 2 p.m. at the Authority’s offices, located at 2015 Grand Avenue, Des Moines, Iowa.

The Authority anticipates that it may make changes to the proposed amendments based on comments received from the public.

IOWA FINANCE AUTHORITY[265](cont'd)

These amendments are intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Sections 12701 et seq.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **265—39.2(16)**:

“*Energy Star*” means a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that establishes standards and practices to improve energy efficiency.

“*Energy Star certification*” means a property meets strict guidelines for energy efficiency set by the U.S. Environmental Protection Agency (EPA), making the property 20 to 30 percent more efficient than standard homes. Homes achieve this level of performance through a combination of energy-efficient improvements, including effective insulation systems, high-performance windows, tight construction and ducts, efficient heating and cooling equipment, and Energy Star-qualified lighting and appliances.

“*Energy Star rater*” means a certified inspector that works closely with the builder throughout the construction process to help determine the needed energy-saving equipment and construction techniques and to conduct required on-site diagnostic testing and inspections to document that the home is eligible to earn the Energy Star certification.

“*Extremely low income*” means families whose annual incomes do not exceed 30 percent of the median income for the area, as determined by HUD.

“*Handicapped accessible*” means that the unit meets the construction standards for the rental unit set forth in Chapter 11 of the International Building Code 2009 or, if more stringent, the local building code related to accessibility of rental units.

“*Low income*” means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD.

“*Very low income*” means families whose annual incomes do not exceed 50 percent of the median income for the area, as determined by HUD.

ITEM 2. Rescind the definition of “Iowa green communities criteria” in rule **265—39.2(16)**.

ITEM 3. Adopt the following **new** rule 265—39.3(16):

265—39.3(16) Eligible applicants. Eligible applicants for HOME assistance include all incorporated cities and all counties within the state of Iowa, nonprofit 501(c) organizations, CHDOs, and for-profit corporations or partnerships.

39.3(1) Any eligible applicant may apply directly to IFA.

39.3(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

ITEM 4. Amend subrule 39.4(1) as follows:

39.4(1) Eligible activities include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion and preservation), rental housing new construction, home ownership assistance (including development subsidies), ~~owner-occupied housing rehabilitation,~~ and other housing-related activities as may be deemed appropriate by IFA. Assisted housing may be single-family housing or multifamily housing and may be designed for occupancy by homeowners or tenants.

a. Assisted units shall be affordable.

(1) to (3) No change.

~~(4) For owner-occupied housing rehabilitation, the after-rehabilitation value of the rehabilitated unit shall not exceed 95 percent of the median purchase price as established by HUD mortgage limits for the same type of single-family housing in the area.~~

b. Assisted households shall meet income limits established by federal program requirements.

(1) For rental activities for projects with 35 units or fewer, all assisted units shall be rented to low-income households with incomes at or below 80 percent of the area’s median family income; at initial occupancy, 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area’s median family income and, for projects with ~~five~~ 5 or more units, 20 percent of the

IOWA FINANCE AUTHORITY[265](cont'd)

units shall be rented initially to very low-income households with incomes at or below 50 percent of the area's median family income.

(2) For rental activities for projects with 36 units or more, all assisted units shall be rented to low-income households; at initial occupancy and throughout the HOME compliance period, 5 percent of all of the units, assisted or not assisted, in the project shall be rented to extremely low-income households, and the household shall not pay more than the rent established by HUD for extremely low-income households. At initial occupancy, the remainder of the HOME assisted units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with 5 or more units, 20 percent of the units shall be rented initially to very low-income households.

~~(2)~~ (3) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.

~~(3)~~ (4) For home ownership assistance ~~and owner-occupied rehabilitation~~, only households with incomes at or below 80 percent of the area median family income shall be assisted.

c. No change.

d. ~~Iowa green communities criteria.—All newly constructed housing (single-family and multifamily housing) and all multifamily rental activities involving gut rehabilitation shall meet the mandatory requirements of the Iowa green communities criteria. All other multifamily rental activities involving rehabilitation (that is, not gut rehabilitation) shall meet the applicable mandatory requirements of the Iowa green communities criteria regarding rehabilitation. Energy Star. All new construction must obtain Energy Star certification verified by an Energy Star rater.~~

ITEM 5. Adopt the following new rule 265—39.5(16):

265—39.5(16) Application procedure.

39.5(1) HOME applications shall be reviewed at least annually. IFA reserves the right to withhold funding from the annual HOME competitive cycle to compensate for insufficient number or quality of applications received, to ensure IFA meets its 15 percent CHDO set-aside from HOME funds, to add HOME funds to existing HOME awards within one year of the original award date, to reallocate deobligated or recaptured funds, and to fund projects that are consistent with the Rural Development Section 515 Preservation Demonstration Program. In the event that funds are withheld from the annual competitive cycle, IFA will entertain additional applications, requests for proposals, or other forms of requests as deemed appropriate by IFA.

39.5(2) Joint applications. For applicants requesting funding from both the HOME partnership and low-income housing tax credit (LIHTC) programs, the applicant may request application forms and related materials from the LIHTC program at IFA. IFA will make a joint tax credit and HOME application available to a potential applicant. The applicant must submit to IFA the completed application with required HOME attachments by the deadline established in the application package.

a. IFA shall appoint a joint review team to discuss and review applications for HOME and LIHTC funds and any other funding sources. Staff for each program may communicate frequently regarding common projects. Information contained in the joint application will be shared with each program.

b. HOME staff shall review applications for eligibility and for activity threshold requirements. The joint review team shall meet to compare and discuss each common project. Final award decisions regarding funding recommendations will be made in accordance with IFA's qualified allocation plan (scoring and set-asides). Staff for each program will make recommendations for funding to the IFA board of directors. A decision by one program does not bind the other program to fund a project.

c. An applicant for the HOME partnership program must meet the threshold requirements outlined in rule 265—39.6(16).

ITEM 6. Rescind rule 265—39.6(16) and adopt the following new rule in lieu thereof:

265—39.6(16) Application requirements. To be considered for HOME assistance, an application shall meet the following threshold criteria.

IOWA FINANCE AUTHORITY[265](cont'd)

39.6(1) The application shall propose a housing activity consistent with the HOME fund purpose and eligibility requirements and the state consolidated plan.

39.6(2) The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of successful administration of prior housing activities. IFA reserves the right to deny funding to an applicant that has failed to comply with federal or state requirements in the administration of a previous project funded by the state of Iowa or that failed to comply with federal requirements in the administration of a previous project funded in any other state. Documentation of the ability of the applicant to provide technical services and the availability of certified lead professionals and contractors either trained in safe work practices or certified as abatement contractors may also be required as applicable to the HOME fund activity.

39.6(3) The application shall provide evidence of the need for the proposed activity, the potential impact of the proposed activity, the feasibility of the proposed activity, and the impact of additional housing resources on the existing related housing market.

39.6(4) The application shall demonstrate local support for the proposed activity.

39.6(5) The application shall show that a need for HOME assistance exists after all other financial resources have been identified and secured for the proposed activity.

39.6(6) The application shall include a certification that the applicant will comply with all applicable state and federal laws and regulations.

39.6(7) Local participating jurisdiction requirement. An application for a project located in a locally designated participating jurisdiction (PJ) must show evidence of a financial commitment from the local PJ at least equal to 25 percent of the total IFA HOME funds requested. Sources of local PJ financial commitment may include one or more of the following: HOME, community development block grant, tax increment financing, tax abatement, or general funds; the value of waived taxes, fees or charges associated with HOME projects; the value of donated land or real property; the cost of infrastructure improvements associated with HOME projects; and the contracted commitment to provide the direct costs of supportive services to residents of HOME projects provided by a city-owned agency using nonfederal funds.

39.6(8) An application for home ownership assistance activity must indicate that recipients will require the beneficiaries of the applicant's home ownership assistance activity to use a principal mortgage loan product that meets the following criteria:

a. With the exception of Habitat for Humanity principal mortgage loan products, the principal mortgage loan must be the only repayable loan in all individual home ownership assistance projects.

b. The HOME assistance must be recorded in second lien position to the principal mortgage loan, if one exists. Recipients of HOME fund home ownership assistance activities must maintain their assistance security agreements in the above-stated recording position throughout the applicable period of affordability and will not be allowed to subordinate the required recording position to any other form of assistance, such as home equity loans. A homebuyer search is required, and any collection/unpaid obligation that would become a judgment or any judgments must be paid in full prior to closing.

c. Any mortgage lending entity's principal mortgage loan products may be used provided they meet all of the following minimum requirements:

(1) The loan must be a fully amortizing, fixed-rate loan with rate not to exceed Fannie Mae 90-day yield + 0.125% or VA-published interest rate at par;

(2) Loan terms must include an 80 percent or higher loan-to-value ratio;

(3) No less than a 15-year, fully amortized, fixed-rate mortgage shall be used; and

(4) No adjustable rate mortgages or balloon payment types of mortgages will be allowed.

d. Recipients are encouraged but not required to have the beneficiaries of their home ownership assistance activity utilize a principal mortgage loan product offered by one of the following: Iowa finance authority, USDA Rural Development, Federal Home Loan Bank, HUD (including FHA and VA), Habitat for Humanity, Fannie Mae, or Freddie Mac.

39.6(9) An application for a home ownership assistance activity must stipulate that home ownership assistance is for first-time homebuyers only and that the assisted unit will remain as the assisted homebuyer's principal residence throughout the required period of affordability.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 7. Adopt the following new rule 265—39.7(16):

265—39.7(16) Application review criteria.

39.7(1) IFA shall evaluate applications and make funding decisions based on general activity criteria, need, impact, feasibility, and activity administration based upon the specific type of activity to be undertaken. The activity criteria shall be a part of the application. Training will be offered prior to the application deadline to provide information and technical assistance to potential applicants.

39.7(2) A request for proposals shall be published by IFA when funds are available to award. The request for proposals shall specify the general criteria, need, impact and feasibility criteria, and the administrative criteria based on the activity proposed. Notice of the availability of funding will be placed on IFA's Web site at www.iowafinanceauthority.gov.

39.7(3) Special consideration will be given to applications where 100 percent of the HOME-funded rental units are fully handicapped accessible (not adaptable).

ITEM 8. Amend subrule 39.8(3) as follows:

39.8(3) IFA reserves the right to set aside a portion of the state's annual HOME allocation for rental housing activities jointly funded with HOME and low-income housing tax credits and for the Rural Development Section 515 Preservation Demonstration Program.

ITEM 9. Amend rule 265—39.9(16) as follows:

265—39.9(16) Administration of awards. Applicants selected to receive HOME funds awards shall be notified by letter from the ~~DED director or~~ IFA executive director or IFA affordable rental production division director.

39.9(1) Preaudit survey. A preaudit survey may be required for all for-profit and nonprofit direct recipients for assistance that exceeds \$150,000.

39.9(2) Contract. A contract shall be executed between the recipient and IFA. These rules, the approved application, the ~~Iowa Housing Fund~~ IFA HOME Management Guide and all applicable federal and state laws and regulations shall be part of the contract.

a. The recipient shall execute and return the contract to IFA within 45 days of transmittal of the final contract from IFA. Failure to do so may be cause for IFA to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Contracts may be conditioned upon the timely completion of these requirements.

c. Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. ~~Release of funds shall be conditioned upon IFA's receipt of an administrative plan for the funded activity.~~

e. Release of funds shall be conditioned upon IFA's receipt and approval of documentation of environmental clearance.

39.9(3) No change.

39.9(4) Requests for funds. Recipients shall submit requests for funds in the manner and on forms prescribed by IFA. Individual requests for funds shall be made in whole dollar amounts equal to or greater than \$500 per request, except for the final draw of funds. Adequate and itemized documentation supporting the amount of funds requested must be provided prior to release of funds.

39.9(5) Record keeping and retention.

a. No change.

b. Representatives of IFA, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a HOME funds award; to the total project receipts and expenditures related to new construction, acquisition, or rehabilitation; and to any records maintained by third-party administrators for general administration or technical services for the HOME-funded project.

39.9(6) and 39.9(7) No change.

IOWA FINANCE AUTHORITY[265](cont'd)

39.9(8) Contract closeout. Upon the contract expiration date or work completion date, as applicable, and IFA's receipt of final draw and completion documentation, IFA shall initiate closeout procedures. Recipients shall comply with applicable audit requirements, quarterly performance reports and Section 3 requirements and provide other required documents described in the HOME funds application ~~and Iowa Housing Fund~~, the contract, IFA HOME Management Guide, and IFA HOME partnership program policies and procedures.

39.9(9) to 39.9(11) No change.

ARC 9163B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority proposes to adopt new Chapter 41, “Shelter Assistance Fund,” Iowa Administrative Code.

The purpose of these rules is to facilitate the administration of a fund to provide financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

The Authority does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority will receive written comments on the proposed rules until 4:30 p.m. on November 9, 2010. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

The Authority anticipates that it may make changes to the proposed rules based on comments received from the public.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 9162B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These rules are intended to implement Iowa Code sections 16.5 and 16.40.

ARC 9167B

IOWA FINANCE AUTHORITY[265]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority proposes to adopt new Chapter 42, “Emergency Shelter Grants Program,” Iowa Administrative Code.

The purpose of these rules is to facilitate the administration of a fund to provide financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

IOWA FINANCE AUTHORITY[265](cont'd)

The Authority does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority will receive written comments on the proposed rules until 4:30 p.m. on November 9, 2010. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

The Authority anticipates that it may make changes to the proposed rules based on comments received from the public.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 9166B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These rules are intended to implement Iowa Code section 16.5(1)"m" and 42 U.S.C. Sections 11371 through 11378.

ARC 9156B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy hereby gives Notice of Intended Action to amend Chapter 200, "Licensure of Physical Therapists and Physical Therapist Assistants," Chapter 202, "Discipline for Physical Therapists and Physical Therapist Assistants," Chapter 203, "Continuing Education for Physical Therapists and Physical Therapist Assistants," Chapter 207, "Continuing Education for Occupational Therapists and Occupational Therapy Assistants," and Chapter 209, "Discipline for Occupational Therapists and Occupational Therapy Assistants," Iowa Administrative Code.

These proposed amendments will add requirements for foreign-trained physical therapist assistants, update continuing education requirements for physical and occupational therapy licensure and amend language in the physical and occupational therapy discipline chapters to be consistent with the Iowa Code.

Any interested person may make written comments on the proposed amendments no later than November 9, 2010, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail jmanning@idph.state.ia.us.

A public hearing will be held on November 9, 2010, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 148A, 148B and 272C.

The following amendments are proposed.

ITEM 1. Amend paragraph **200.5(2)"a"** as follows:

a. Submit an English translation and an equivalency evaluation of their educational credentials through the following organization: Foreign Credentialing Commission on Physical Therapy, Inc., 124 West Street South, Third Floor, Alexandria, VA 22314; telephone (703)684-8406; Web site www.fcpt.org. The credentials of a foreign-educated physical therapist or foreign-educated physical therapist assistant licensure applicants applicant should be evaluated using the version of the Federation

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

of State Boards of Physical Therapy (FSBPT) Coursework Evaluation Tool (CWT) that covers the date the applicant graduated from the applicant's respective physical therapy therapist or physical therapist assistant education program. A credentialing agency should use the version for the CWT that coincides with the professional educational criteria that were in effect on the date the applicant graduated from the applicant's respective physical therapy education program. This same process should be used for first-time licensees and for those seeking licensure through endorsement. The professional curriculum must be equivalent to the Commission on Accreditation in Physical Therapy Education standards. An applicant shall bear the expense of the curriculum evaluation.

ITEM 2. Amend subrule 202.2(11) as follows:

202.2(11) Conviction of a felony crime related to the profession or occupation of the licensee or the conviction of any felony crime that would affect the licensee's ability to practice physical therapy. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ITEM 3. Amend paragraphs **203.2(1)“a”** and **“b”** as follows:

a. Requirements for physical therapist licensees. Each biennium, each person who is licensed to practice as a physical therapist in this state shall be required to complete a minimum of 40 hours of continuing education approved by the board; a minimum of 20 hours shall be clinical in nature.

b. Requirements for physical therapist assistant licensees. Each biennium, each person who is licensed to practice as a physical therapist assistant in this state shall be required to complete a minimum of 20 hours of continuing education approved by the board; a minimum of 10 hours shall be clinical in nature.

ITEM 4. Rescind subrule 203.3(2) and adopt the following **new** subrule in lieu thereof:

203.3(2) Specific criteria.

a. Licensees may obtain continuing education hours of credit by attending workshops, conferences, symposiums, electronically transmitted, live interactive conferences, and academic courses which relate directly to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses which apply to the field of physical therapy will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

b. Licensees may obtain continuing education hours of credit by teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of a course.

c. Continuing education hours of credit may be granted for any of the following activities not to exceed a maximum combined total of 20 hours for a physical therapist licensee and 10 hours for a physical therapist assistant licensee:

(1) Presenting professional programs which meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

(3) Viewing videotaped presentations and electronically transmitted material that have a postcourse test if the following criteria are met:

1. There is a sponsoring group or agency;

2. There is a facilitator or program official present;

3. The program official is not the only attendee; and

4. The program meets all the criteria specified in this rule.

(4) Participating in home study courses that have a certificate of completion and a postcourse test.

(5) Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(6) Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics.

(7) Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics.

ITEM 5. Amend paragraphs **207.2(1)“a”** and **“b”** as follows:

a. Requirements for occupational therapist licensees. Each biennium, each person who is licensed to practice as an occupational therapist in this state shall be required to complete a minimum of 30 hours of continuing education approved by the board; a minimum of 15 hours shall be clinical in nature.

b. Requirements for occupational therapy assistant licensees. Each biennium, each person who is licensed to practice as an occupational therapy assistant in this state shall be required to complete a minimum of 15 hours of continuing education approved by the board; a minimum of 8 hours shall be clinical in nature.

ITEM 6. Rescind subrule 207.3(2) and adopt the following new subrule in lieu thereof:

207.3(2) Specific criteria.

a. Licensees may obtain continuing education hours of credit by attending workshops, conferences, symposiums, electronically transmitted, live interactive conferences, and academic courses which relate directly to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses which apply to the field of occupational therapy will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

b. Licensees may obtain continuing education hours of credit by teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of a course.

c. Continuing education hours of credit may be granted for any of the following activities not to exceed a maximum combined total of 15 hours for an occupational therapist licensee and 8 hours for an occupational therapy assistant licensee:

(1) Presenting professional programs which meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

(3) Viewing videotaped presentations and electronically transmitted material that have a postcourse test if the following criteria are met:

1. There is a sponsoring group or agency;

2. There is a facilitator or program official present;

3. The program official is not the only attendee; and

4. The program meets all the criteria specified in this rule.

(4) Participating in home study courses that have a certificate of completion and a postcourse test.

(5) Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics.

(6) Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics.

(7) Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics.

ITEM 7. Amend subrule 209.2(11) as follows:

209.2(11) Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee's ability to practice occupational therapy. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for October is 4.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective October 9, 2010, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .30%
More than 397 days	Minimum .70%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

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

USURY(cont'd)

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%
October 1, 2010 — October 31, 2010	4.75%

ARC 9151B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 163.1, the Department of Agriculture and Land Stewardship amends Chapter 65, "Animal and Livestock Importation," Iowa Administrative Code.

Pre-entry import permits are no longer required for cattle or bison originating from a state with a modified accredited advanced tuberculosis (TB) zone. Additionally, whole-herd TB testing within the past year is no longer required for cattle and bison less than six months of age that originate from a modified accredited advanced TB zone. The USDA has split the state of Minnesota into two zones for TB status purposes, and the amendments allow cattle and bison in the southern Minnesota zone to have the same pre-entry permit and TB testing requirements as states with TB-free status.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 8985B** on August 11, 2010. One positive comment in support of the change was received from the public. No changes have been made to the amendments published under Notice.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective September 20, 2010. The amendments remove a restriction on commerce and the interstate movement of cattle and bison.

These amendments are intended to implement Iowa Code chapter 163.

These amendments became effective on September 20, 2010.

The following amendments are adopted.

ITEM 1. Amend subrule 65.2(3) as follows:

65.2(3) Pre-entry permits are required for:

- a. All Cervidae.
- b. All domestic fowl or poultry originating from an AI- or END-affected state.
- c. Captive wild-type swine.
- d. Cattle and bison originating from states or zones not classified as tuberculosis-free and brucellosis-free.

ITEM 2. Amend subrule 65.4(3) as follows:

65.4(3) *Testing.*

a. *Tuberculosis test.* Testing requirements for tuberculosis are as follows:

(1) A tuberculosis test is not required for importation of cattle or bison provided that:

1. The cattle or bison are native to, and originate from, an accredited tuberculosis-free herd (accredited herd number and date of last test must be listed on the CVI), state, or zone; or
2. The cattle (beef-type) and bison are between the ages of 6 months and 18 months and are being imported for feeding purposes.

(2) A negative tuberculosis test is required within 60 days prior to importation for cattle or bison six months of age or older that are not exempted by 65.4(3)"a"(1).

(3) Cattle and bison less than 6 months of age that originate from a herd, state, or zone that is not accredited as tuberculosis-free or as modified accredited advanced must originate from a herd which has been whole-herd tested negative for tuberculosis within 12 months prior to importation.

b. No change.

[Filed Emergency After Notice 9/20/10, effective 9/20/10]

[Published 10/20/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/20/10.

ARC 9158B**INSURANCE DIVISION[191]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code chapters 505 and 514D and 2010 Iowa Acts, Senate File 2201, the Insurance Division hereby amends Chapter 36, “Individual Accident and Health—Minimum Standards,” Iowa Administrative Code.

Chapter 36 provides reasonable standardization and simplification of terms and coverages of individual accident and sickness insurance policies and provides for full disclosure in the sale of the coverages. These amendments update the rules to reflect recent changes to Iowa Code chapter 505 made by 2010 Iowa Acts, Senate File 2201. The Division intends that Iowa insurance companies will comply with these rules for all individual policy rate filings made with the Division on or after October 1, 2010.

In compliance with Iowa Code section 17A.4(3), the Division finds that notice and public participation are unnecessary because the amendments are necessary for the administration of 2010 Iowa Acts, Senate File 2201, which became effective April 9, 2010.

The Division also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the amendments, 35 days after publication, should be waived and these amendments should be made effective on October 1, 2010, because 2010 Iowa Acts, Senate File 2201, became effective April 9, 2010.

These amendments are published herein under Notice of Intended Action as **ARC 9168B** to allow for public comment.

The Insurance Division adopted these amendments on September 30, 2010.

These amendments became effective on October 1, 2010.

These amendments are intended to implement Iowa Code chapters 505 and 514D and 2010 Iowa Acts, Senate File 2201.

The following amendments are adopted.

ITEM 1. Amend **191—Chapter 36**, title, as follows:

INDIVIDUAL ACCIDENT AND HEALTH—
MINIMUM STANDARDS AND RATE HEARINGS

ITEM 2. Adopt the following **new** Division I heading preceding rule 191—36.1(514D):

DIVISION I
MINIMUM STANDARDS

ITEM 3. Reserve rules **191—36.13** to **191—36.19**.

ITEM 4. Adopt the following **new** Division II heading:

DIVISION II
RATE HEARINGS

ITEM 5. Adopt the following **new** rule 191—36.20(514D,83GA,SF2201) in Division II:

191—36.20(514D,83GA,SF2201) Rate hearings.

36.20(1) Purpose, applicability and effective date.

a. Purpose. The purpose of this rule is to set forth a procedure to be followed for hearings about certain health insurance policy premium rate increases.

b. Applicability. This rule applies to all individual health insurance policies issued or to be issued in Iowa except those excluded by 2010 Iowa Acts, Senate File 2201, section 8(4A).

c. Effective date. This rule became effective October 1, 2010.

36.20(2) Definitions.

“*Carrier*” shall mean a health insurance carrier licensed to do business in the state as used in 2010 Iowa Acts, Senate File 2201, section 8.

“*Commissioner*” shall mean the Iowa insurance commissioner or designee.

INSURANCE DIVISION[191](cont'd)

“*Consumer advocate*” shall mean the division’s consumer advocate described by Iowa Code section 505.8(6) or designee.

“*Division*” shall mean the Iowa insurance division.

“*Filing*” shall mean a rate filing presented to the division for approval pursuant to this chapter, Iowa Code chapter 514D and 2010 Iowa Acts, Senate File 2201, through the National Association of Insurance Commissioners’ System for Electronic Rate and Form Filing.

“*Health insurance*” shall mean the same as “health insurance” is used in 2010 Iowa Acts, Senate File 2201, section 8, and excludes the types of insurance listed in 2010 Iowa Acts, Senate File 2201, section 8(4A).

“*Hearing*” shall mean a public hearing for purposes of accepting comments regarding a premium rate increase for which a carrier has requested approval from the commissioner. The hearing is for the gathering of comments; it is not an adjudicatory proceeding or an administrative action.

“*Plan*” shall mean the policy form(s) subject to the rate change proposal.

“*Rate*” shall mean the premiums (or premium rates) presented to the division for approval.

36.20(3) *Filing and notice required.* Carriers that are required to file an application for a rate increase shall make a filing according to division procedures through the National Association of Insurance Commissioners’ System for Electronic Rate and Form Filing. When a carrier makes a request for the commissioner’s approval of a rate filing and the requested rate in the application is for a rate increase exceeding the average annual health spending growth rate stated in the most recent National Health Expenditure projection published by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services:

- a. The carrier shall contact the division to obtain a hearing date, time and location.
- b. Once the hearing is scheduled with the division, the carrier shall provide a notice of the intended rate increase and of the date, time and location of the rate hearing at least 45 days before the hearing.
- c. The notice shall be in writing and shall be mailed to all persons insured by the plan for which the carrier is requesting approval of the rate increase.
- d. The notice shall specify the proposed rate increase that is applicable to each policyholder and shall include the ranking and quantification of those factors that are responsible for the amount of the rate increase proposed.
- e. The notice shall include information about how the policyholder can contact the consumer advocate for assistance.
- f. The notice shall state the following:

NOTICE OF PROPOSED PREMIUM INCREASE

Dear [INSURED]

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

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

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

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

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

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

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

INSURANCE DIVISION[191](cont'd)

Iowa Insurance Division Consumer Advocate
Iowa Insurance Division
330 Maple Street
Des Moines, Iowa 50319
Telephone: (515)281-5705
Iowa toll-free: 1-877-955-1212
Fax: (515)281-3059
E-mail: Insuranceca@iid.iowa.gov

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

g. If an insurer wishes to use language in its notice that is different from the language in paragraph "*f*," it must seek the approval of the commissioner prior to using different language. The request for approval shall be submitted to the commissioner via the National Association of Insurance Commissioners' System for Electronic Rate and Form Filing.

36.20(4) Comments.

a. The consumer advocate shall collect any public testimony or comments received from policyholders regarding the rate increase request.

b. The consumer advocate shall post without delay all comments received on the consumer advocate's Internet Web site (<http://iainsuranceca.wordpress.com/>), which is also accessible through the division's Internet Web site (www.iid.state.ia.us).

c. The consumer advocate shall provide the comments to the commissioner and present them at the hearing.

36.20(5) Evidence requested by the commissioner. At any time after the filing of the request for approval of the rate increase, the commissioner may:

a. Request additional information from the carrier, and the carrier shall furnish any additional information as requested;

b. Request the submission of additional information by any other party to the filing; and

c. Obtain independent analysis of the filing by qualified experts as permitted under Iowa Code section 505.15.

36.20(6) Hearing.

a. The hearing shall be open to the public.

b. The division shall make a record of the hearing. The cost of making the record shall be paid by the carrier. The cost of copies of the record requested by the carrier or by the division shall also be paid by the carrier.

c. At the hearing, the carrier that is requesting the commissioner's approval of the rate increase may present testimony and information to support its position in addition to the information supplied with the filing. The costs of the carrier's presentation shall be paid by the carrier.

d. The consumer advocate shall present at the hearing the public testimony and comments received.

e. Formal rules of pleading or evidence need not be observed at any hearing.

f. The hearing does not constitute a contested case under Iowa Code chapter 17A.

36.20(7) Confidentiality. Information submitted to the division as part of a filing and as part of the hearing process shall constitute a public record under Iowa Code chapter 22 except as provided in Iowa Code section 505.17 and 2010 Iowa Acts, Senate File 2201, section 6.

36.20(8) Record of expenses. A carrier shall maintain a record of expenses incurred by the carrier in relation to any rate hearing and shall submit it to the commissioner within 30 days following the date of the rate hearing.

INSURANCE DIVISION[191](cont'd)

36.20(9) Severability. If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.

This rule is intended to implement Iowa Code chapter 514D and 2010 Iowa Acts, Senate File 2201.

[Filed Emergency 9/30/10, effective 10/1/10]

[Published 10/20/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/20/10.

ARC 9162B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2010 Iowa Acts, Senate File 2088, division XXII, the Iowa Finance Authority hereby adopts new Chapter 41, “Shelter Assistance Fund,” Iowa Administrative Code.

The purpose of these rules is to facilitate the administration of a fund for the purpose of providing financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that assistance to homeless shelters is needed immediately, and the normal notice and public participation process would delay implementation of the program, which is a continuation of a program formerly administered by the Iowa Department of Economic Development. The Authority is also concurrently publishing these rules under Notice of Intended Action as **ARC 9163B** to allow for public comment.

The Authority finds that these rules confer a benefit on homeless persons, in that the rules provide assistance and ease and speed the administration of an important program benefiting shelters that benefit those persons. These rules should be implemented as soon as feasible in order to avoid a disruption in the provision of assistance under the program; therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these rules is waived.

The Authority adopted these rules on September 27, 2010.

These rules are intended to implement Iowa Code section 16.5(1)“r” and 2010 Iowa Acts, Senate File 2088, division XXII.

These rules became effective on October 1, 2010.

The following amendment is adopted.

Adopt the following **new** 265—Chapter 41:

CHAPTER 41 SHELTER ASSISTANCE FUND

265—41.1(16) Purpose. The shelter assistance fund is created for the purpose of providing financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

265—41.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

“*Applicant*” means an eligible provider of eligible homeless services which is applying for SAF program funds.

“*Domestic violence shelter*” means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.

IOWA FINANCE AUTHORITY[265](cont'd)

“Emergency shelter” means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons.

“ESG program” or *“ESGP”* means the Emergency Shelter Grants Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

“HMIS” means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

“Homeless” or *“homeless individual”* shall have the meaning set forth in 42 U.S.C. Section 11302.

“Homeless prevention” means activities or programs designed to prevent the incidence of homelessness.

“Homeless shelter” means a facility providing temporary housing and services for homeless persons.

“HUD” means the U.S. Department of Housing and Urban Development.

“HUD ESG Desk Guide” means the document provided by HUD which supplements the federal regulations pertaining to the Emergency Shelter Grants Program.

“IFA” means the Iowa finance authority.

“Major rehabilitation” means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

“Obligated” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the shelter assistance fund. Funds awarded by IFA by a written agreement or letter of award requiring payment from the shelter assistance fund are obligated.

“Operations” means administration, maintenance, repair, security, provision of essential services, and provision of homelessness prevention activities.

“Private, nonprofit organization” means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board,
3. Practices nondiscrimination in the provision of services to clients, and
4. Has registered with the state of Iowa as a nonprofit corporation.

“Recipient” means any private, nonprofit organization or city or county government to which IFA distributes shelter assistance fund program funds.

“Rehabilitation” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.

“Renovation” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

“SAF” means shelter assistance fund.

“Subrecipient” means any private, nonprofit organization or city or county government to which a recipient distributes shelter assistance fund program funds.

“Transitional housing” means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.

“Value of the building” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or subrecipient.

265—41.3(16) Eligible applicants. City governments, county governments, and private, nonprofit organizations are eligible applicants under the SAF program. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions when the nonprofit service provider serves homeless and near-homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other related services for homeless individuals and families.

IOWA FINANCE AUTHORITY[265](cont'd)

265—41.4(16) Eligible activities. Activities assisted by the SAF may include the following:

1. Rehabilitation, renovation, or expansion of buildings for use in the provision of services for the homeless.
2. Provision of normal operating expenses for programs providing services to homeless individuals or families, including staff salaries, maintenance, insurance, utilities, furnishings, provision of essential services, provision of homeless prevention activities, administrative activities, and all other documented normal operating expenses.

265—41.5(16) Ineligible activities. The general rule is that any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with SAF program funds. The following are items specifically listed as ineligible in 24 CFR Part 576.

1. Acquisition or new construction of an emergency shelter for the homeless;
2. Rehabilitation administration, such as preparation of work specification, loan processing, or inspections;
3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).

265—41.6(16) Application procedures. IFA will issue requests for proposals from eligible applicants as often as the state expects funding from HUD for the ESG program. Requests for proposals will combine the ESG program with the SAF program. The proposals must be submitted on forms prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match for the ESG program, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

265—41.7(16) Application review process. The application review process will be a joint process that combines the SAF program with the ESG program. The following procedures will be used in the review of applications for most purposes. IFA reserves the right to select an alternate application process for SAF program funds only.

41.7(1) Review; threshold criteria; eligible activities.

a. Review of applications. Applications will be reviewed by a panel appointed by IFA. Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant experience and capacity, as well as past performance, are top priorities. Other review criteria include, but are not limited to, program design, community need, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.

b. Threshold criteria. IFA will identify threshold criteria that all programs must meet in order to be eligible.

c. Activities eligible during funding cycle. Each competition round will specify which of the total eligible program activities will be supported during that competition round.

41.7(2) If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

41.7(3) IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

41.7(4) IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

41.7(5) Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

41.7(6) IFA reserves the right to negotiate all aspects of a funding request prior to final approval.

IOWA FINANCE AUTHORITY[265](cont'd)

41.7(7) IFA shall establish the period of funding for each competition.

265—41.8(16) Matching requirement. Subrecipients are not required to provide a match for SAF program funds.

265—41.9(16) Funding awards.

41.9(1) *Awards on behalf of multiple applicants.* A city or county government or nonprofit organization may be designated, at the discretion of IFA, to administer contracts for multiple applicants within a prescribed geographic area.

41.9(2) *Right to negotiate.* IFA reserves the right to negotiate the amount of the funding award, the scale of the project, and alternative methods for completing the project.

41.9(3) *Special purpose awards.* IFA may, at its discretion, award any remaining funds as it sees fit within the SAF program regulations.

265—41.10(16) Restrictions placed on recipients and subrecipients.

41.10(1) *Use as provider of homeless services.* Any building for which SAF program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If SAF program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:

a. In the case of a building that was not operated as a provider of services for the homeless before receipt of SAF program funds, on the date of initial occupancy as a provider of services to the homeless.

b. In the case of a building that was operated as a provider of services to the homeless before the receipt of SAF program funds, on the date that those funds are first obligated to the homeless service provider.

41.10(2) *Building standards.* Any building for which SAF program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.

41.10(3) *Participation by homeless individuals and families.*

a. SAF program recipients and subrecipients must certify that homeless individuals and families are involved, through employment, volunteer services, or otherwise, in constructing, renovating, maintaining, and operating assisted facilities and in providing services.

b. Subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policymaking entity. The Secretary of HUD may issue a waiver to the subrecipient if the subrecipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

41.10(4) *Termination of assistance and grievance procedure.* Subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.

41.10(5) *Data reporting system.* Subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract.

41.10(6) *Ensuring confidentiality.* Subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

265—41.11(16) Compliance with applicable federal and state laws and regulations. All recipients and subrecipients must comply with the Iowa Code governing activities performed under this program. Use of SAF program funds must comply with the following additional requirements.

IOWA FINANCE AUTHORITY[265](cont'd)

41.11(1) *Nondiscrimination and equal opportunity.* All recipients and subrecipients must comply with the following:

a. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).

b. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).

d. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

41.11(2) *Auditing.* Auditing requirements are as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

265—41.12(16) Administration.

41.12(1) *Contracts.* Upon selection of an application for funding, IFA will either initiate a contract or authorize a recipient to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients shall remain responsible for adherence to the requirements of the SAF program rules. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

41.12(2) *Record keeping and retention.* Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and the subrecipient. Private, nonprofit subrecipients covered through an SAF program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their SAF program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

b. Representatives of the state auditor's office and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient or a subrecipient pertaining to the receipt of assistance under these rules.

41.12(3) *Reporting requirements.* Recipients and subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:

a. HMIS data reports. All recipients and subrecipients of SAF program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA; provided, however, that a recipient or subrecipient that qualifies as a domestic violence shelter shall not be required to report personally identifiable information about its homeless domestic violence clients. "Personally identifiable information" shall include any information that the reporting domestic violence shelter reasonably determines could be used to identify a particular client.

b. Requests for funds. Recipients and subrecipients must submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the implementation of subrule 41.12(5).

41.12(4) *Amendments to contracts.* Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if

IOWA FINANCE AUTHORITY[265](cont'd)

the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

41.12(5) Remedies for noncompliance. At any time, IFA may, for cause, find that a recipient or subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the recipient's or subrecipient's use of program funds for activities not described in its application, the recipient's or subrecipient's failure to complete approved activities in a timely manner, the recipient's or subrecipient's failure to comply with any applicable state or federal rules or regulations, or the recipient's or subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At its discretion, IFA may employ any of the following remedies for noncompliance:

a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious action.

b. Condition a future award.

c. Direct the recipient or subrecipient to stop incurring costs with grant funds.

d. Require that some or all of the awarded funds be remitted to the state.

e. Reduce the level of funds the recipient or subrecipient would otherwise be entitled to receive.

f. Elect not to provide future award funds to the recipient or subrecipient until appropriate actions are taken to ensure compliance.

These rules are intended to implement Iowa Code section 16.5(1)"r" and 2010 Iowa Acts, Senate File 2088, division XXII.

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

[Published 10/20/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/20/10.

ARC 9166B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)"b," 16.5(1)"r" and 16.40, the Iowa Finance Authority hereby adopts new Chapter 42, "Emergency Shelter Grants Program," Iowa Administrative Code.

The purpose of these rules is to facilitate the administration of a fund to provide financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that assistance to homeless shelters is needed immediately, and the normal notice and public participation process would delay implementation of the program, which is a continuation of a program formerly administered by the Iowa Department of Economic Development. The Authority is also concurrently publishing these rules under Notice of Intended Action as **ARC 9167B** to allow for public comment.

The Authority finds that these rules confer a benefit on homeless persons, in that the rules provide assistance and ease and speed the administration of an important program benefiting shelters that benefit those persons. These rules should be implemented as soon as feasible in order to avoid a disruption in the provision of assistance under the program; therefore, these rules are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these rules is waived.

The Authority adopted these rules on September 27, 2010.

These rules are intended to implement Iowa Code section 16.5(1)"m" and 42 U.S.C. Sections 11371 through 11378.

IOWA FINANCE AUTHORITY[265](cont'd)

These rules became effective on October 1, 2010.

The following amendment is adopted.

Adopt the following new 265—Chapter 42:

CHAPTER 42
EMERGENCY SHELTER GRANTS PROGRAM

265—42.1(16) Purpose. The emergency shelter grants program is designed to improve the quality of services to the homeless and to prevent individuals and families from becoming homeless. The program will make available needed services and help meet the costs of providing essential social services so that homeless individuals and families have access not only to safe and sanitary shelter but also to the supportive services and other types of assistance the individuals and families need to improve their situations.

265—42.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

“*Applicant*” means an eligible provider of eligible homeless services which is applying for funds through the ESG program.

“*Domestic violence shelter*” means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.

“*Emergency shelter*” means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons.

“*ESG program*” or “*ESGP*” means the Emergency Shelter Grants Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

“*HMIS*” means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

“*Homeless*” or “*homeless individual*” shall have the meaning set forth in 42 U.S.C. Section 11302.

“*Homeless prevention*” means activities or programs designed to prevent the incidence of homelessness.

“*Homeless shelter*” means a facility providing temporary housing and services for homeless persons.

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*HUD ESG Desk Guide*” means the document published by HUD which supplements the federal regulations pertaining to the Emergency Shelter Grants Program.

“*IFA*” means the Iowa finance authority.

“*Major rehabilitation*” means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

“*Obligated*” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the grant amount. Funds awarded by IFA by a written agreement or letter of award requiring payment from the grant amount are obligated.

“*Private, nonprofit organization*” means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board,
3. Practices nondiscrimination in the provision of services to clients, and
4. Has registered with the state of Iowa as a nonprofit corporation.

“*Recipient*” means any private, nonprofit organization or city or county government to which IFA distributes ESG program funds.

“*Rehabilitation*” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including

IOWA FINANCE AUTHORITY[265](cont'd)

improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.

“*Renovation*” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

“*SAF*” means the shelter assistance fund, as set forth in 265—Chapter 41.

“*Subrecipient*” means any private, nonprofit organization or city or county government to which the recipient distributes ESG program funds.

“*Transitional housing*” means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.

“*Value of the building*” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or the subrecipient.

265—42.3(16) Eligible applicants. City governments, county governments, and private, nonprofit organizations are eligible applicants under the ESG program. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions when the nonprofit service provider serves homeless and near-homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other services eligible under the ESG program as determined by HUD.

265—42.4(16) Eligible activities. Eligible activities are based on guidelines established by the Stewart B. McKinney Homeless Assistance Act of 1987 and are further defined in 24 CFR Part 576 and the HUD Desk Guide. Activities assisted by this program may include only the following:

42.4(1) Construction. Rehabilitation, renovation, or conversion of buildings for use in the provision of services for the homeless.

42.4(2) Essential services—new or increased level of services. Provision of essential services if the service is a new service or quantifiable increase in the level of service. ESG program funds may not be used to replace existing funding sources for services; however, once a new or increased level of service meets the standards, ESG program funds may be used to continue funding the service in subsequent years. No more than 30 percent of the IFA annual grant amount may be used for this purpose.

42.4(3) Operating costs. Payment of emergency shelter and transitional housing operating costs including shelter maintenance, operations, rent, repairs, security, fuel, equipment, insurance, utilities, food and furnishings. Staff salaries, including fringe benefits, paid under the operating cost category are limited to 10 percent of the grant amount. Maintenance and security costs are not subject to the 10 percent standard.

42.4(4) Prevention of homelessness. Payment for eligible activities that assist in the prevention of homelessness. Grants may be made for homeless prevention as long as the total amount of such grants does not exceed 30 percent of the total emergency shelter grants program allocation. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month’s rent to enable a family to acquire its own rental unit; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.

42.4(5) Administrative costs. A recipient may use a portion of a grant received for administrative purposes as determined by IFA. The maximum allowed for these administrative costs shall be 5 percent of the state ESGP allocation. IFA reserves the authority for distribution of administrative funds.

265—42.5(16) Ineligible activities. The general rule is that any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with ESG program funds. The following are items specifically listed as ineligible in 24 CFR Part 576.

1. Acquisition or new construction of an emergency shelter for the homeless;

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2. Rehabilitation administration, such as preparation of work specification, loan processing, or inspections;

3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).

265—42.6(16) Application procedures. IFA will issue requests for proposals from eligible applicants as often as the state expects funding from HUD. Requests for proposals will combine the ESG program with the SAF program. The proposals must be submitted on forms prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

265—42.7(16) Application review process. The following procedures will be used in the review of applications.

42.7(1) Review; threshold criteria; eligible activities.

a. Review of applications. Applications will be reviewed by a panel appointed by IFA. Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant experience and capacity, as well as past performance, are top priorities. Other review criteria include, but are not limited to, program design, community need, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.

b. Threshold criteria. IFA will identify threshold criteria that all programs must meet in order to be eligible.

c. Activities eligible during funding cycle. Each competition round will also specify which of the total eligible program activities will be supported during that competition round.

42.7(2) If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

42.7(3) IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

42.7(4) IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

42.7(5) Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

42.7(6) IFA reserves the right to negotiate all aspects of a funding request prior to final approval.

42.7(7) IFA shall establish the term of each funding award.

265—42.8(16) Matching requirement. Each subrecipient of ESG program funds must match the grant amount with an equal amount. In calculating the amount of matching funds, the following may be included: the value of any donated material or building used in the project, the value of any lease on a building used in the project, any salary paid to staff of the subrecipient or to any state subrecipient in carrying out the ESG program, and the time and services contributed by volunteers at the rate of \$5 per hour. For purposes of this rule, IFA will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish fair market value. IFA may allow an exemption of matching funds up to a maximum of \$100,000 of the state allocation received from HUD for the subrecipients least capable of providing such matching amounts. The subrecipient must document its need to participate in this exemption from matching requirements and must receive prior approval from IFA before the exemption will be effective.

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265—42.9(16) Funding awards.

42.9(1) Awards on behalf of multiple applicants. A city or county government or nonprofit organization may be designated, at the discretion of IFA, to administer a contract for multiple applicants within a prescribed geographic area.

42.9(2) Right to negotiate. IFA reserves the right to negotiate the amount of the funding award, the scale of the project, and alternative methods for completing the project.

42.9(3) Special purpose awards. IFA may, at its discretion, award any remaining funds as it sees fit within the ESG program regulations.

265—42.10(16) Restrictions placed on recipients and subrecipients.

42.10(1) Use as provider of homeless services. Any building for which ESG program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:

a. In the case of a building that was not operated as a provider of services for the homeless before receipt of ESG program funds, on the date of initial occupancy as a provider of services to the homeless.

b. In the case of a building that was operated as a provider of services to the homeless before the receipt of ESG program funds, on the date that those funds are first obligated to the homeless service provider.

42.10(2) Building standards. Any building for which ESG program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.

42.10(3) Participation by homeless individuals and families.

a. A recipient or subrecipient of ESG program funds must certify that it involves, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating assisted facilities and in providing services.

b. Local government recipients or subrecipients or qualified recipients or subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policymaking entity. The Secretary of HUD may issue a waiver to the recipient or subrecipient if the recipient or subrecipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

42.10(4) Termination of assistance and grievance procedure. Recipients and subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.

42.10(5) Data reporting system. Recipients and subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract.

42.10(6) Ensuring confidentiality. Recipients and subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

265—42.11(16) Compliance with applicable federal and state laws and regulations. All recipients and subrecipients shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Act of 1987 and its implementing regulations. Use of ESG program funds must comply with the following additional requirements.

42.11(1) Nondiscrimination and equal opportunity. All recipients and subrecipients must comply with the following:

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a. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).

b. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).

d. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

42.11(2) Auditing. Auditing requirements are as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

265—42.12(16) Administration.

42.12(1) Contracts. Upon selection of an application for funding, IFA will either initiate a contract or authorize another entity to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including the federal ESG program rules and the state program rules as set forth herein. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state or federal agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

42.12(2) Record keeping and retention. Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and the subrecipient. Private, nonprofit recipients and subrecipients covered through an ESG program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their ESG program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

b. Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient or subrecipient pertaining to the receipt of assistance under these rules.

42.12(3) Reporting requirements. Recipients and subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:

a. HMIS data reports. All recipients and subrecipients of ESG program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA; provided, however, that a recipient or subrecipient that qualifies as a domestic violence shelter shall not be required to report personally identifiable information about its homeless domestic violence clients. "Personally identifiable information" shall include any information that the reporting domestic violence shelter reasonably determines could be used to identify a particular client.

b. Requests for funds. Recipients and subrecipients must submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the implementation of 42.12(5).

42.12(4) Amendments to contracts. Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if

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the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

42.12(5) Remedies for noncompliance. At any time, IFA may, for cause, find that a recipient or subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the recipient's or subrecipient's use of program funds for activities not described in its application, the recipient's or subrecipient's failure to complete approved activities in a timely manner, the recipient's or subrecipient's failure to comply with any applicable state or federal rules or regulations, or the recipient's or subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At IFA's discretion, remedies for noncompliance may include the following:

- a. Issue a warning letter that further failure to comply with program requirements within a stated period of time will result in a more serious action.
- b. Condition a future award.
- c. Direct the recipient or subrecipient to stop incurring costs with grant funds.
- d. Require that some or all of the awarded funds be remitted to the state.
- e. Reduce the level of funds the recipient or subrecipient would otherwise be entitled to receive.
- f. Elect not to provide future award funds to the recipient or subrecipient until appropriate actions are taken to ensure compliance.

These rules are intended to implement Iowa Code section 16.5(1)"m" and 42 U.S.C. Sections 11371 through 11378.

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

[Published 10/20/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/20/10.

ARC 9161B

PHARMACY BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of 2009 Iowa Code Supplement section 124.212B, the Governor's Office of Drug Control Policy and the Iowa Board of Pharmacy amend Chapter 100, "Iowa Real-Time Electronic Pseudoephedrine Tracking System," Iowa Administrative Code.

2009 Iowa Code Supplement section 124.212B directs the Governor's Office of Drug Control Policy to establish a real-time electronic repository to monitor and control the sale of Schedule V products that are not listed in another controlled substance schedule and that contain any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine. Rules establishing the pseudoephedrine tracking system (PTS) became effective September 1, 2010. This amendment is solely a change of the office address found in subrule 100.4(4).

Pursuant to Iowa Code section 17A.4(3), the Board and the Governor's Office of Drug Control Policy find that notice and public participation are unnecessary because this is a nonsubstantive change and the change confers a benefit to the public.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Board and the Governor's Office of Drug Control Policy further find that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment should become effective upon filing with the Administrative Rules Coordinator on September 30, 2010. The physical location of the Governor's Office of Drug Control Policy has changed, and the immediate amendment to this rule ensures that patients and others using this information to contact the Governor's Office of Drug Control Policy have the correct mailing and physical address information.

This amendment was approved by the Governor's Office of Drug Control Policy on September 23, 2010, and by the Board of Pharmacy on September 28, 2010.

This amendment is intended to implement 2009 Iowa Code Supplement section 124.212B.

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This amendment became effective on September 30, 2010.

The following amendment is adopted.

Amend paragraph **100.4(4)“a”** as follows:

a. A patient may submit a signed, written request for records of the patient's purchases and attempted purchases during a specified period of time. The request shall identify the patient by name, including any aliases used by the patient, and shall include the patient's date of birth and gender. The request shall also include any address where the patient resided during the time period of the request and the patient's current address and daytime telephone number. A patient may personally deliver the request to the PTS administrator or authorized staff member of the office located at ~~401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309~~ Wallace State Office Building, 502 E. 9th Street, First Floor, Des Moines, Iowa 50319. The patient shall be required to present current government-issued photo identification at the time of delivery of the request. A copy of the patient's identification shall be maintained in the records of the PTS.

[Filed Emergency 9/30/10, effective 9/30/10]

[Published 10/20/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/20/10.

ARC 9154B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 23, "Emission Standards for Contaminants," Chapter 24, "Excess Emission," and Chapter 28, "Ambient Air Quality Standards," Iowa Administrative Code.

The primary purpose of the amendments is to update state air quality rules by adopting new federal requirements, including adoption of new national ambient air quality standards (NAAQS) and adoption of new federal air toxics standards. The amendments also provide the option to submit initial excess emission reports by E-mail.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 16, 2010, as **ARC 8845B**. A public hearing was held on July 19, 2010. No oral or written comments were presented at the hearing. One set of written comments was received prior to the close of the public comment period on July 20, 2010. The submitted comments and the Department's response to the comments are summarized in the public responsiveness summary available from the Department. The Department did not make any changes to the adopted amendments from those published under Notice of Intended Action.

Item 1 amends the introductory paragraph of subrule 23.1(2), the provisions that adopt by reference the federal new source performance standards (NSPS) contained in 40 CFR Part 60. The NSPS program requires new and existing facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for air pollutant emissions. NSPS requirements vary depending on the processes, activities or equipment being regulated, and whether the processes, activities or equipment is considered to be new or existing.

This amendment adopts by reference federal amendments to two existing new source performance standards. EPA promulgated amendments to an additional NSPS that the Department did not adopt, as explained in more detail below.

On April 28, 2009, EPA finalized amendments to the NSPS for nonmetallic mineral processing plants (Subpart OOO). This NSPS affects facilities such as aggregate processing plants or concrete batch plants which commence construction, modification, or reconstruction on or after April 22, 2008. These amendments include new emission limits, additional testing and monitoring requirements, changes to simplify the notification requirements for all affected facilities, changes to definitions, and various clarifications.

The Department estimates that approximately 200 portable and fixed plants are subject to the original NSPS Subpart OOO requirements. However, these facilities are only subject to the requirements in the new federal amendments if the facilities commenced construction, modification or reconstruction after April 22, 2008. The Department is aware of only a few facilities that are affected by the new NSPS requirements at this time. More facilities may become subject to the new requirements in the future. The Department is working with individual facilities regarding the new Subpart OOO requirements as facilities submit permit applications for construction, modification, or reconstruction.

On October 8, 2009, EPA finalized amendments to the NSPS coal preparation and processing plants (40 CFR 60 Subpart Y). This NSPS affects facilities that prepare and process coal, such as electric utilities and industrial operations. The federal amendments include revisions to the emission limits for particulate matter and opacity standards for thermal dryers, pneumatic coal cleaning equipment, and coal handling equipment. The revised limits apply to affected facilities that commence construction, modification, or reconstruction on or after April 28, 2008. The federal amendments also establish a sulfur dioxide (SO₂) emission limit and a combined nitrogen oxide (NO_x) and carbon monoxide (CO) emissions limit for thermal dryers. In addition, the federal amendments establish work practice standards to control fugitive coal dust emissions from open storage piles. The SO₂ limit, the NO_x/CO limit, and the work practice standards apply to affected facilities that commence construction, modification, or reconstruction on or after May 27, 2009.

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The Department estimates that approximately 50 facilities are subject to the original Subpart Y requirements. However, only facilities that undergo construction, modification or reconstruction on or after the dates noted above are subject to the new requirements. At this time, the Department has identified only a few facilities that are affected by the new NSPS requirements. More facilities may be subject to the new requirements in the future. The Department is working with individual facilities that may be subject to the new Subpart Y requirements as facilities submit permit applications for construction, modification, or reconstruction.

On October 6, 2009, EPA amended the NSPS and emission guidelines for new hospital/infectious/medical waste incinerators (HMIWI) (Subparts Ce and Ec). The Department is not adopting these new federal amendments because Iowa no longer has any operating incinerators affected under the HMIWI regulations, and the Department anticipates that no new HMIWI will be constructed in Iowa. Many HMIWI throughout the United States have shut down because less expensive alternative waste disposal options are available. The Department is not required to adopt federal NSPS for which there are no affected facilities and for which there are no affected facilities reasonably expected to exist in the future. The Department is taking additional rule-making action regarding the currently adopted HMIWI regulations, as explained under Item 3 and Item 6.

Item 2 amends paragraph 23.1(2)“sss” to revise the explanation accompanying the adoption by reference of the NSPS for municipal waste combustors (Subpart Eb). When the Department adopted EPA’s 2006 amendments to this NSPS through a prior rule making, the Department did not at that time modify the explanatory text to be consistent with the federal amendments. This amendment modifies the text so that it is identical to the current federal regulations.

Item 3 amends paragraph 23.1(2)“ttt” to add a note rescinding adoption by reference of the federal NSPS regulations for HMIWI (Subpart Ec). As explained above, the state does not have any HMIWI affected under NSPS Subpart Ec and does not expect to have any affected HMIWI in the future.

Item 4 amends the introductory paragraph of subrule 23.1(4), the emission standards for hazardous air pollutants for source categories, also known as national emission standards for hazardous air pollutants or NESHAP, to adopt recent amendments that EPA made to 40 CFR Part 63. The NESHAP program requires facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for hazardous air pollutants (HAP). NESHAP requirements for source sectors vary depending on the processes, activities or equipment being regulated.

The NESHAP affect both new and existing major sources and area sources. Area sources are usually smaller commercial or industrial operations. Specifically, area sources have potential emissions less than 10 tons per year (tpy) of any single hazardous air pollutant (HAP) and less than 25 tpy of any combination of HAP and are classified as minor sources for HAP. Facilities that have potential HAP emissions greater than or equal to these levels are classified as major sources. HAP are sometimes also known as “air toxics.”

This rule making includes adoption of new or amended NESHAP potentially impacting some facilities or businesses that previously had few, if any, air quality requirements. Because of the potential impacts to small businesses and previously unregulated facilities, the Department is developing implementation strategies in conjunction with this rule making. The strategies include cooperative efforts with the University of Northern Iowa (UNI), Iowa Air Emissions Assistance Program; Iowa Department of Economic Development (IDED); the Linn County and Polk County local air quality programs; and other interested associations and organizations to provide outreach and compliance assistance to stakeholders.

The Department’s outreach strategies are specific to each rule and depend on a number of factors, including: the estimated number of facilities and small businesses affected, the compliance date of the rule, the requirements of the rule (such as emissions control, work practices standards, etc.), and current level of air quality knowledge (such as air permits or active industry associations). As Department resources allow, outreach may include informational meetings, workshops, fact sheets, guides, and Internet-based tools. It is hoped that this rule making, in conjunction with current and future efforts of the Department and its compliance assistance partners, will result in reductions in air toxics and other

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air pollutant emissions, while minimizing the regulatory burden to small businesses and other affected facilities.

EPA promulgated amendments to the reciprocating internal combustion engine (RICE) NESHAP on March 3, 2010. The NESHAP amendments primarily impact existing stationary compression ignition (CI) engines (diesel-fueled engines) at major and area sources. Affected, existing engines must comply with the NESHAP requirements by May 3, 2013.

NESHAP requirements are set to reduce air toxics, and, in this case, formaldehyde is the targeted HAP. EPA set standards in the NESHAP to reduce carbon monoxide (CO), which is being used as a surrogate for reducing formaldehyde emissions. Emissions of particulate matter (including fine particles (PM_{2.5})), sulfur dioxide (SO₂), and volatile organic compounds (VOC) are also expected to be reduced by 2013.

The NESHAP requirements vary depending on the size of the engine, whether the engine is classified as “emergency” or “non-emergency,” and whether the engine is located at a major source or an area source. Emergency engines and engines rated at 100 horsepower (HP) or less at major sources and 300 HP or less at area sources are not subject to emission limits, monitoring or performance testing requirements. Rather, emergency engines and small engines are required to implement management/maintenance practices on a set schedule, including changing oil and oil filters, inspecting the air cleaner, and inspecting hoses and belts.

Owners or operators of non-emergency engines must install a closed crankcase ventilation system and use ultra low sulfur fuel. Further, owners or operators of non-emergency engines are required to meet standards for CO emissions by either meeting a numerical emission limit or by reducing CO emissions by at least 70 percent. EPA expects that most owners or operators of non-emergency engines will need to install control equipment, most likely a diesel oxidation catalyst (DOC), to meet the CO emissions requirements. Facility staff will be required to monitor set parameters to ensure that the catalyst is operating correctly. Facility staff will also be required to conduct an initial performance test (stack test) for CO, and conduct periodic tests on a specified schedule thereafter.

EPA estimates that 80 percent of the estimated 900,000 affected RICE engines nationwide will be classified as emergency engines. These estimates appear to be accurate and possibly an underestimate for engines at industrial or commercial facilities that do not supply power to the grid as part of a financial arrangement with another entity. Therefore, the Department expects that the vast majority of engines at these facilities will meet the NESHAP definition of “emergency.”

However, the Department expects that a lower percentage of engines located at municipal utilities may be classified as emergency. Based on current discussions with EPA and with stakeholders, the Department expects that approximately one-third (~33 percent) of these engines will meet the definition of “emergency.” This estimate for municipal utilities also includes other institutional, industrial or commercial facilities that supply power to the grid as part of a financial arrangement with another entity, such as an investor-owned utility or a cooperative utility.

Regulated entities, municipal utilities in particular, have expressed concern about the potential costs of complying with the NESHAP for engines that do not qualify as “emergency.” The Department has been working closely with Iowa Association of Municipal Utilities (IAMU), Southern Iowa Municipal Electric Cooperative Association (SIMECA), Resale Power Group of Iowa (RPGI), individual municipalities, and others to address these concerns. The Department is pressing EPA to get expeditious answers to specific questions and scenarios associated with engine classification. The Department is also working closely with stakeholders to identify alternative emissions reductions options, such as use of biodiesel and making certain types of engine modifications that may meet the NESHAP requirements and may also cost considerably less than engine control retrofits.

The Department is conservatively estimating that two-thirds (~67 percent) of the stationary CI engines at major sources providing power to the grid, including investor-owned utilities, cooperatives, and larger municipal utilities, will be subject to the NESHAP emission standards. The Department is also estimating that up to 67 percent of the engines at area sources providing power to the grid, including engines at municipal utilities and other institutional, commercial or industrial facilities, will be subject to the

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NESHAP emission standards. Since this 67 percent estimate is across the power generation source sector, some facilities may have more of their engines impacted, while some may have fewer.

Based on U.S. Department of Energy data from 2008, major source emissions inventories, and the assumption that approximately 67 percent of engines at power-supplying facilities will be classified as "non-emergency," the Department estimates that up to 314 engines will be subject to emission standards, monitoring and testing requirements.

Items 5, 6 and 7 amend subrule 23.1(4) by adopting new paragraphs "ev," "fa," "fb," "fc," and "fd" to adopt by reference new NESHAP for new and existing area sources. The Department adopts by reference three newly promulgated NESHAP for area sources, as explained in more detail below.

On October 29, 2009, EPA finalized the area source NESHAP for chemical manufacturing (Subpart VVVVVV). This NESHAP affects area sources under several chemical manufacturing sectors, including pharmaceutical production, agricultural chemicals and pesticides manufacturing, and organic chemical manufacturing, that emit one or more of 15 specific HAP. The NESHAP includes management practices and, in some cases, add-on control, to reduce emissions from process vessels, storage tanks, transfer racks, heat exchange systems and wastewater. Existing facilities have until October 29, 2012, to be in compliance with the NESHAP.

The Department estimates that there may be up to 100 facilities subject to this NESHAP. However, many facilities may not be emitting the affected HAP in regulated quantities or may elect to discontinue use prior to the NESHAP compliance date. Many other facilities are already following management practices under other federal standards that are identical or similar to the NESHAP requirements. In the near term, the Department expects to work individually with facilities on NESHAP applicability, particularly as these facilities submit permit applications for review. Over the next six months, the Department and its compliance assistance partners will determine if a more extensive NESHAP outreach strategy is appropriate.

On December 3, 2009, EPA finalized the area source NESHAP for paint and allied products manufacturing (Subpart CCCCCC). This NESHAP affects area sources that manufacture paint, ink or adhesive and that process, use, or generate materials containing chromium, lead, nickel or cadmium, benzene or methyl chloride. Affected facilities are required to operate particulate control equipment to control metal air toxics and must use management practices to control volatile air toxic emissions. Existing facilities have until December 3, 2012, to comply with the NESHAP requirements.

Currently, the Department estimates that 50 facilities may be subject to this NESHAP. However, many facilities may not use, or may elect to discontinue use of, the affected HAP before the NESHAP compliance date. In the near term, the Department expects to work individually with facilities on NESHAP applicability, particularly as these facilities submit permit applications for review. Over the next year, the Department and its compliance assistance partners will determine if a more extensive NESHAP outreach strategy is appropriate.

On January 5, 2010, EPA finalized the area source NESHAP for prepared feeds manufacturing (Subpart DDDDDDD). This NESHAP affects area sources that produce animal feed products and use materials that contain chromium (Cr) or manganese (Mn). Affected facilities must apply management practices in the area of the facility where materials containing chromium or manganese are stored, used or handled. Facilities that produce more than 50 tons per day of feed will also be required to operate control equipment to reduce chromium and manganese emissions from pelleting and pelleting cooling operations. Existing facilities will have until January 5, 2012, to comply with the NESHAP requirements.

The Department estimates that approximately 250 facilities meet the definition of prepared feeds manufacturing under the NESHAP. The Department is working closely with its compliance assistance partners at the University of Northern Iowa (UNI) Air Emission Assistance Program and the Iowa Department of Economic Development (IDED) and with the Agribusiness Association of Iowa (AAI) to determine how many facilities will be subject to the NESHAP.

Based on discussion with AAI and the National Grain and Feed Association (NGFA), a voluntary survey conducted by UNI, and NESHAP initial notifications submitted to the Department, the Department estimates that up to 40 percent of potentially affected facilities (~100) may meet one of the

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NESHAP exemptions. Most of these facilities either do not use Mn or Cr or will be able to modify the additives and pre-mixes to reduce Mn or Cr below the regulated concentrations.

Based on the sources of information described above, the Department estimates that 50 of the 150 NESHAP-affected facilities have pelleting operations and have daily feed production exceeding 50 tons and, therefore, may be subject to the cyclone control, operation and monitoring requirements.

The Department has not adopted two other recently promulgated area source NESHAP, the NESHAP for asphalt processing and asphalt roofing manufacturing (Subpart AAAAAAA) and the NESHAP for chemical preparation (Subpart BBBBBBB). Iowa does not have any facilities subject to these NESHAP and is unlikely to have any subject facilities in the future.

Items 8 and 9 amend paragraph 23.1(5)“b” to rescind the emission guidelines for existing HMIWI. EPA originally promulgated emission guidelines for existing HMIWI in 1997 and the Department adopted these emission guidelines in 1998. At that time, Iowa had two operating HMIWI affected under the emission guidelines. These two HMIWI have since shut down.

This rule making rescinds the existing emission guidelines because the Department is not required to retain federal emission guidelines for which the state has no subject facilities and for which the Department can reasonably expect not to have any subject facilities in the future.

Item 10 amends subrule 24.1(2), the requirements for oral reporting of excess emissions. The amendment changes the description in this subrule to “initial report of excess emissions” and also adds the option for the owner or operator to submit the required excess emissions information to the Department by electronic mail (E-mail).

In some cases, E-mail will be a more accurate and efficient method for owners and operators to provide these reports. E-mail reporting will eliminate Department staff time in transcribing the initial report and will enable staff to more efficiently input the information into reports and databases. Since E-mail may not be available or convenient in all cases, owners and operators will still be allowed to make an initial report of excess emissions in person or by telephone.

Owners and operators must still follow up their initial excess emissions report with a written, hard-copy report. This amendment does not allow an E-mail option for written excess emissions reporting at this time due to EPA’s requirements under the federal cross-media electronic reporting rule (CROMERR). CROMERR requires special electronic verification that the Department has not yet established for excess emissions reports. The Department hopes to provide an electronic option for these reports in the future.

Item 11 amends subrule 24.1(3), the provisions for a written report of excess emissions. The amendment changes the term “oral” report to “initial” report to be consistent with the amendment described in Item 10. This amendment does not allow an E-mail option for written excess emissions reporting at this time due to EPA’s requirements under CROMERR. CROMERR requires special electronic verification that the Department has not yet established for excess emissions reports.

Item 12 amends rule 567—28.1(455B) to adopt by reference new national ambient air quality standards (NAAQS). On February 9, 2010, EPA strengthened the NAAQS for nitrogen dioxide (NO₂) by adding a new 1-hour standard to more adequately protect public health and welfare. EPA set the new 1-hour NO₂ standard at the level of 100 parts per billion (ppb). In addition to establishing an averaging time and level, EPA also set a new “form” for the standard. The form is the air quality statistic used to determine if an area meets the standard. The form for the 1-hour NO₂ standard is the 3-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. EPA retained, with no change, the current annual average NO₂ standard of 53 ppb.

EPA expects to designate areas as attaining or not attaining the new standard by January 2012 using NO₂ monitoring data from the current communitywide monitoring network. Once the expanded network of NO₂ monitors required under the new standard is fully deployed and three years of data have been collected, EPA intends to redesignate areas in 2016 or 2017, as appropriate, based on the air quality data from the new monitoring network. The Department will need to complete and submit revisions to the state implementation plan (SIP) for NO₂ by January 2013. The SIP revision will include any rule changes necessary to implement the new standard.

These amendments are intended to implement Iowa Code section 455B.133.

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These amendments shall become effective on November 24, 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 [23.1, 24.1, 28.1] is being omitted. These amendments are identical to those published under Notice as **ARC 8845B**, IAB 6/16/10.

[Filed 9/23/10, effective 11/24/10]

[Published 10/20/10]

[For replacement pages for IAC, see IAC Supplement 10/20/10.]

ARC 9164B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code chapters 509 and 514, the Insurance Division hereby amends Chapter 38, "Coordination of Benefits," Iowa Administrative Code.

The rules in Chapter 38 are in accordance with the model provisions for coordination of benefits as promulgated by the National Association of Insurance Commissioners. The amendments to the rules eliminate an outdated division of the chapter and update and clarify duties and procedures.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 11, 2010, as **ARC 9006B**. A public hearing was held on September 3, 2010, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. No comments were received; no changes were made to the amendments published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 509 and 514.

These amendments shall become effective November 24, 2010.

The following amendments are adopted.

ITEM 1. Rescind and reserve **191—Chapter 38, Division I**.

ITEM 2. Amend subrule 38.12(1) as follows:

38.12(1) The purpose of this ~~division~~ chapter is to adopt the new model provisions for coordination of benefits (COB) as promulgated by the National Association of Insurance Commissioners (NAIC).

ITEM 3. Rescind and reserve rule **191—38.19(509,514)**.

[Filed 10/1/10, effective 11/24/10]

[Published 10/20/10]

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ARC 9169B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 502.605, the Insurance Division hereby amends Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

The rules in Chapter 50 provide duties and procedures to follow for the regulation of securities offerings and those who engage in the securities business in Iowa. The amendments to the rules update and clarify duties and procedures.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 11, 2010, as **ARC 9010B**. A public hearing was held on September 3, 2010, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. Comments were received that requested the deletion

INSURANCE DIVISION[191](cont'd)

of proposed subrule 50.60(7) requiring electronic filing of submissions. That change has been made; proposed Item 8 has not been adopted.

These amendments are intended to implement Iowa Code chapter 502.

These amendments shall become effective November 24, 2010.

The following amendments are adopted.

ITEM 1. Rescind the definition of "NASD" in rule **191—50.1(502)**.

ITEM 2. Adopt the following **new** definition of "FINRA" in rule **191—50.1(502)**:
"FINRA" means the Financial Industry Regulatory Authority.

ITEM 3. Strike "NASD" wherever it appears in **191—Chapter 50** and insert "FINRA" in lieu thereof.

ITEM 4. Amend subrule 50.10(1) as follows:

50.10(1) An applicant for an initial registration to conduct business as a broker-dealer must:

a. File a current Form BD. If the applicant is a member of FINRA, Form BD shall be filed with CRD. If the applicant is not a member of FINRA, Form BD shall be signed and notarized and filed with the administrator; and

~~b. File with the administrator copies of the applicant's most recent audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and including, at a minimum, a balance sheet, income statement and net capital calculation;~~

~~e. b. Pay a \$200 filing fee. If the applicant is a member of FINRA, the fee shall be remitted to the CRD. If the applicant is not a member of FINRA, the fee shall be remitted to the administrator; and~~

~~d. File with the administrator a completed Iowa Broker-Dealer Affidavit form including:~~

~~(1) A signed and notarized statement indicating that the applicant engaged in no securities transactions with persons in Iowa prior to registration or, if applicable, identifying all past and current accounts of persons in Iowa; and~~

~~(2) A signed consent to service of process pursuant to Iowa Code section 502.611. The form may be obtained from the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066; via E-mail at iowa.sec@iid.state.ia.us; or from the division Web site at <http://www.iid.state.ia.us/division/securities>.~~

ITEM 5. Amend subparagraph **50.12(1)"a"(4)** as follows:

(4) Pay a ~~\$30~~ \$40 filing fee to FINRA if applying for registration as an agent of ~~an~~ a FINRA member broker-dealer, or to the administrator if applying for registration as an agent of a non-FINRA member broker-dealer.

ITEM 6. Amend paragraph **50.12(4)"e"** as follows:

e. A ~~\$30~~ \$40 filing fee.

ITEM 7. Amend paragraph **50.18(2)"d"** as follows:

d. Pays a ~~\$30~~ \$40 filing fee.

[Filed 10/1/10, effective 11/24/10]

[Published 10/20/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/20/10.

AGENCY	RULE	DELAY
Natural Resource Commission[571]	71.2(2)“c” [IAB 9/8/10, ARC 9051B]	Effective date of October 13, 2010, delayed 30 days by the Administrative Rules Review Committee at its meeting held October 12, 2010. [Pursuant to §17A.4(7)]