



IOWA ADMINISTRATIVE BULLETIN

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Pages 1073 to 1216

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IOWA FINANCE AUTHORITY[265]

Notice, Multifamily housing, amend 3.5; rescind 3.6, 3.7, 3.9, 3.12, 3.20 to 3.27, 3.31 to 3.37 **ARC 1144C** 1088
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NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

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Filed, Licensure by examination—verification of English skills of an individual educated and licensed in another country, 3.4(4) ARC 1131C	1176

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Filed, Historic preservation and cultural and entertainment district, agricultural assets transfer, custom farming contract, from farm to food donation, targeted jobs and endow Iowa tax credits, amendments to chs 41, 42, 46, 52, 58 ARC 1138C	1200

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

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

Schedule for Rule Making 2013

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
11	Wednesday, November 6, 2013	November 27, 2013
12	Wednesday, November 20, 2013	December 11, 2013
13	Wednesday, December 4, 2013	December 25, 2013

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 Friday, November 8, 2013, at 9:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural lime sampling procedures and fee, 43.20(2), 43.32, 43.34, 43.35(1)
Notice of Termination **ARC 1106C** 10/16/13

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Organization and operation—updates and clarifications, 1.2 Notice **ARC 1123C** 10/16/13
 Iowa national guard educational assistance program, 20.1 Notice **ARC 1122C** 10/16/13
 Rural Iowa primary care loan repayment program, ch 24 Notice **ARC 1121C** 10/16/13
 Rural Iowa advanced registered nurse practitioner and physician assistant loan repayment program, ch 25 Notice **ARC 1120C** 10/16/13

COUNTY FINANCE COMMITTEE[547]

MANAGEMENT DEPARTMENT[541]"umbrella"

Update of terminology, reporting standards, 3.1(1), 4.1, 5.3(2), 5.4(2), 5.5 Notice **ARC 1136C** 10/30/13

ECONOMIC DEVELOPMENT AUTHORITY[261]

Innovation fund tax credit program, amendments to ch 116 Filed Emergency After Notice **ARC 1098C** 10/16/13

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Correction to all science endorsement title, 13.28(17)"i" Filed **ARC 1085C** 10/16/13
 Substitute authorization—length of time licensee may serve in one classroom, 22.2
Filed **ARC 1087C** 10/16/13
 School administration manager authorization, 22.6 Filed **ARC 1086C** 10/16/13

EDUCATION DEPARTMENT[281]

Accreditation standards—instructional days and hours, 12.1 Filed **ARC 1115C** 10/16/13
 Competency-based education, 12.2, 12.5(14) Filed **ARC 1116C** 10/16/13
 Independent accrediting agencies, 12.10 Filed **ARC 1118C** 10/16/13
 Private instruction and dual enrollment, amendments to ch 31 Notice **ARC 1126C** 10/16/13
 Teacher preparation clinical practice standard—teach Iowa student teaching pilot project, 79.14(13) Filed **ARC 1117C** 10/16/13
 Supplementary weighting plan for operational services, 97.7 Filed **ARC 1119C** 10/16/13

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Underground storage tanks—leak detection at unstaffed facilities, 135.5(1)"e" Filed **ARC 1100C** 10/16/13

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Iowa hazard mitigation plan, 9.3 Notice **ARC 1093C** 10/16/13
 Flood mitigation program, ch 14 Filed **ARC 1114C** 10/16/13

HUMAN SERVICES DEPARTMENT[441]

Appeals and hearings, amendments to ch 7 Notice **ARC 1129C** 10/16/13
 Mental health and disability services regional core services, amendments to ch 25 Filed **ARC 1096C** 10/16/13
 Mental health institutes and state resource centers, amendments to chs 28 to 30 Filed **ARC 1145C** 10/30/13
 Family investment program (FIP); PROMISE JOBS program, amendments to chs 41, 93
Filed **ARC 1146C** 10/30/13
 Family self-sufficiency grants program, amendments to ch 47 Filed **ARC 1147C** 10/30/13
 Food assistance—standard utility allowance, 65.8 Filed **ARC 1148C** 10/30/13
 Iowa health and wellness plan, adopt ch 74; amend ch 88 Filed Emergency After Notice **ARC 1135C** 10/30/13
 Medical assistance eligibility, amendments to ch 75 Filed Emergency After Notice **ARC 1134C** 10/30/13
 Medicaid—qualifications for enrollment as respite or interim medical monitoring and treatment provider, 77.30, 77.34(5)"a," 77.37, 77.39, 77.46(5)"a" Filed **ARC 1149C** 10/30/13
 Payment for customized wheelchairs for Medicaid members residing in nursing facilities, 78.10, 78.28(1), 81.10(5) Filed **ARC 1151C** 10/30/13
 Nonemergency medical transportation, 78.13 Notice **ARC 1161C** 10/30/13
 Rural hospital disproportionate share payment, 79.1(5)"ac" Filed **ARC 1150C** 10/30/13
 Payment for physician services rendered in facility settings, 79.1(7) Filed **ARC 1152C** 10/30/13
 Medicare crossover claims, 79.1(22) Filed **ARC 1154C** 10/30/13
 Medicaid—sanctions, timely filing of claims, 79.2, 79.4(2), 79.9, 80.4 Filed **ARC 1155C** 10/30/13

Provider enrollment or reenrollment application fee, 79.14 Filed **ARC 1153C**..... 10/30/13
 Child abuse reporting and assessment; placement on central registry for child abuse,
 amendments to chs 172, 175, 186 Filed **ARC 1156C**..... 10/30/13

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Credit for reinsurance, 5.33 Filed **ARC 1111C**..... 10/16/13
 Policy form filing, 20.4(2) Notice **ARC 1127C** 10/16/13
 Exemption from form and rate filing requirements—update of cross reference, 20.11(1)
Filed **ARC 1125C**..... 10/16/13
 Minimum standard of valuation for annuity and pure endowment contracts—incorporation
 of 2012 IAR mortality table, amendments to ch 43 Filed **ARC 1110C**..... 10/16/13

IOWA FINANCE AUTHORITY[265]

Multifamily housing, amend 3.5; rescind 3.6, 3.7, 3.9, 3.12, 3.20 to 3.27, 3.31 to 3.37
Notice **ARC 1144C** 10/30/13
 Low-income housing tax credit program—qualified allocation plan, 12.1, 12.2 Filed **ARC 1139C**..... 10/30/13
 Military service member home ownership assistance program—home purchase financing,
 27.3(2) Notice **ARC 1141C**, also Filed Emergency **ARC 1142C**..... 10/30/13
 HOME investment partnerships program, 39.1, 39.2, 39.4(1), 39.6, 39.7(3), 39.8, 39.9(8)
Filed **ARC 1140C**..... 10/30/13
 Iowa agricultural development division, adopt 265—ch 44; rescind 25—chs 1 to 11
Notice **ARC 1113C**, also Filed Emergency **ARC 1112C** 10/16/13

IOWA PUBLIC INFORMATION BOARD[497]

Inclusion of board contact information, amendments to chs 1, 3 to 7 Filed Without Notice **ARC 1091C**..... 10/16/13

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Conveyance safety program—elevator inspector qualifications, 71.1 Filed **ARC 1159C**..... 10/30/13
 Conveyance safety program—fees, 71.16 Filed **ARC 1158C** 10/30/13
 Safety standard—platform lifts and stairway chairlifts, 72.1(9) Notice **ARC 1108C**..... 10/16/13
 Bidder preferences in government contracting, ch 156 Notice **ARC 1160C** 10/30/13
 Wrestling, boxing, mixed martial arts—general requirements for athletic events, adopt ch
 169; amend chs 170 to 174, 177 Notice **ARC 1107C**..... 10/16/13

MANAGEMENT DEPARTMENT[541]

Update of department organization and address, amend chs 1, 5 to 8; rescind chs 10, 15
Notice **ARC 1124C** 10/16/13

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Removal of convenience fee for online applications; repayment receipts, 3.1 Filed **ARC 1130C**..... 10/30/13
 Licensure by examination—verification of English skills of an individual educated and
 licensed in another country, 3.4(4) Filed **ARC 1131C**..... 10/30/13

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Mortuary science—funeral director duties, record keeping, internship, preceptorship,
 licensure by endorsement, 100.1, 100.2, 100.11, 101.5, 101.8 Notice **ARC 1163C** 10/30/13
 Mortuary science—disposition of remains, renewal notices, 100.10(3), 101.10(1), 101.13(2)
Notice **ARC 1164C** 10/30/13

PUBLIC HEALTH DEPARTMENT[641]

State plumbing code—plumbing materials and methods for buildings and premises in Iowa,
 amendments to ch 25 Filed **ARC 1089C**..... 10/16/13
 Plumbing and mechanical systems board—licensure fees, 28.1 Notice **ARC 1128C**..... 10/16/13

REVENUE DEPARTMENT[701]

Interest rate for calendar year 2014, 10.2(33) Notice **ARC 1162C**..... 10/30/13
 Individual income, corporation income and franchise taxes, amendments to chs 40 to 42, 45,
 52, 53, 59 Filed **ARC 1101C**..... 10/16/13
 Inheritance tax, 40.59, amendments to ch 86 Filed **ARC 1137C** 10/30/13

Historic preservation and cultural and entertainment district, agricultural assets transfer, custom farming contract, from farm to food donation, targeted jobs and endow Iowa tax credits, amendments to chs 41, 42, 46, 52, 58 <u>Filed</u> ARC 1138C	10/30/13
Earned income, Iowa taxpayers trust fund, innovation fund investment and school tuition organization tax credits; S corporation apportionment credit; aggregate tax credit cap, amendments to chs 42, 50, 52, 89 <u>Filed</u> ARC 1102C	10/16/13
Replacement tax and statewide property tax on rate-regulated water utilities, amend 75.5, 77.1(1); adopt ch 78 <u>Filed</u> ARC 1105C	10/16/13
Flood mitigation program, ch 238 <u>Filed</u> ARC 1103C	10/16/13

SECRETARY OF STATE[721]

Performance of notarial act on electronic record, 43.5 <u>Notice</u> ARC 1092C	10/16/13
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SOIL CONSERVATION DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Water quality initiative, ch 16 <u>Filed</u> ARC 1104C	10/16/13
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TREASURER OF STATE[781]

Deposit of public funds by state agencies, ch 11 <u>Notice</u> ARC 1109C	10/16/13
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VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Iowa veterans home, amendments to ch 10 <u>Filed</u> ARC 1157C	10/30/13
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WORKFORCE DEVELOPMENT DEPARTMENT[871]

Online filing of unemployment insurance appeals, 26.4 to 26.6, 26.9, 26.12 <u>Notice</u> ARC 1094C	10/16/13
Appealing party's participation in appeal hearing, 26.14 <u>Notice</u> ARC 1095C	10/16/13

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Representative Lisa Heddens
4115 Wembley Avenue
Ames, Iowa 50010

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317

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

Representative Dawn Pettengill
P.O. Box A
Mt. Auburn, Iowa 52313

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Representative Jeff Smith
1006 Brooks North Lane
Okoboji, Iowa 51355

Senator Roby Smith
2036 East 48th Street
Davenport, Iowa 52807

Representative Guy Vander Linden
1610 Carbonado Road
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Des Moines, Iowa 50319
Telephone (515)281-5211

EDUCATION DEPARTMENT[281]

Private instruction and dual enrollment, amendments to ch 31
IAB 10/16/13 **ARC 1126C**

State Board Room, Second Floor
Grimes State Office Bldg.
Des Moines, Iowa

November 5, 2013
1 to 2 p.m.

INSURANCE DIVISION[191]

Policy form filing, 20.4(2)
IAB 10/16/13 **ARC 1127C**

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

November 5, 2013
10 a.m.

LABOR SERVICES DIVISION[875]

Safety standard—platform lifts and stairway chairlifts, 72.1(9)
IAB 10/16/13 **ARC 1108C**

Capitol View Room
1000 East Grand Ave.
Des Moines, Iowa

November 6, 2013
9 a.m.
(If requested)

Bidder preferences in government contracting, ch 156
IAB 10/30/13 **ARC 1160C**

Capitol View Room
1000 East Grand Ave.
Des Moines, Iowa

November 20, 2013
2 p.m.
(If requested)

Wrestling, boxing, mixed martial arts—general requirements for athletic events, adopt ch 169; amend chs 170 to 174, 177
IAB 10/16/13 **ARC 1107C**

Capitol View Room
1000 East Grand Ave.
Des Moines, Iowa

November 6, 2013
1:30 p.m.
(If requested)

PROFESSIONAL LICENSURE DIVISION[645]

Mortuary science—funeral director duties, record keeping, internship, preceptorship, licensure by endorsement, 100.1, 100.2, 100.11, 101.5, 101.8
IAB 10/30/13 **ARC 1163C**

Conference Room 513
Lucas State Office Bldg.
Des Moines, Iowa

November 19, 2013
8 to 8:30 a.m.

Mortuary science—disposition of remains, renewal notices, 100.10(3), 101.10(1), 101.13(2)
IAB 10/30/13 **ARC 1164C**

Conference Room 513
Lucas State Office Bldg.
Des Moines, Iowa

November 19, 2013
8:30 to 9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Plumbing and mechanical systems board—licensure fees, 28.1
IAB 10/16/13 **ARC 1128C (ICN Network)**

First Floor North
Grimes State Office Bldg.
400 E. 12th St.
Des Moines, Iowa

November 5, 2013
11:30 a.m. to 12:30 p.m.

Cresco-Crestwood High School
1000 Schroder Dr.
Cresco, Iowa

November 5, 2013
11:30 a.m. to 12:30 p.m.

Spirit Lake High School
2701 Hill Ave.
Spirit Lake, Iowa

November 5, 2013
11:30 a.m. to 12:30 p.m.

Iowa Falls Community College
1100 College Ave.
Iowa Falls, Iowa

November 5, 2013
11:30 a.m. to 12:30 p.m.

PUBLIC HEALTH DEPARTMENT[641] (cont'd)**(ICN Network)**

Clarinda Community College 923 E. Washington St. Clarinda, Iowa	November 5, 2013 11:30 a.m. to 12:30 p.m.
Ottumwa Hospital 1001 E. Pennsylvania Ottumwa, Iowa	November 5, 2013 11:30 a.m. to 12:30 p.m.
Waterloo Dept. of Human Services 501 Sycamore St. Waterloo, Iowa	November 5, 2013 11:30 a.m. to 12:30 p.m.
Council Bluffs Dept. of Human Services 417 E. Kanesville Blvd. Council Bluffs, Iowa	November 5, 2013 11:30 a.m. to 12:30 p.m.
Sheldon Community College 603 W. Park St. Sheldon, Iowa	November 5, 2013 11:30 a.m. to 12:30 p.m.
Notre Dame High School 702 S. Roosevelt Ave. Burlington, Iowa	November 5, 2013 11:30 a.m. to 12:30 p.m.
Mason City Community College 500 College Dr. Mason City, Iowa	November 5, 2013 11:30 a.m. to 12:30 p.m.
Xavier High School 6300 42nd St. NE Cedar Rapids, Iowa	November 5, 2013 11:30 a.m. to 12:30 p.m.

TRANSPORTATION DEPARTMENT[761]

Automated traffic enforcement on the primary road system, ch 144 IAB 10/2/13 ARC 1037C	Hampton Inn and Suites 6210 SE Convenience Blvd. Ankeny, Iowa	October 30, 2013 1 p.m.
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WORKFORCE DEVELOPMENT DEPARTMENT[871]

Online filing of unemployment insurance appeals, 26.4 to 26.6, 26.9, 26.12 IAB 10/16/13 ARC 1094C	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	November 6, 2013 1:30 p.m. (If requested)
Appealing party's participation in appeal hearing, 26.14 IAB 10/16/13 ARC 1095C	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	November 6, 2013 3 p.m. (If requested)

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.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Soil Conservation Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
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COMMERCE DEPARTMENT[181]
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 Banking Division[187]
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 Insurance Division[191]
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 Accountancy Examining Board[193A]
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ARC 1136C

COUNTY FINANCE COMMITTEE[547]

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 the Iowa Code section 333A.4, the County Finance Committee hereby gives Notice of Intended Action to amend Chapter 3, “Studies and Reports,” Chapter 4, “County Budgets,” and Chapter 5, “Annual Financial Reports,” Iowa Administrative Code.

The amendment to Chapter 3 is intended to update the name of the referenced organization with the current Governmental Accounting Standards Board. The amendment to subrule 4.1(1) brings the County Finance Committee administrative rules into sync with currently used terminology. The amendment to subrule 5.3(2) reflects a change in reporting according to Governmental Accounting Standards Board Statement No. 65. The purpose of the rescission of subrule 5.4(2) and rule 547—5.5(331) is to eliminate outdated language.

A waiver provision is not included.

Any interested person may make written suggestions or comments or may request a public hearing on the proposed amendments on or before November 19, 2013. Such written comments should be directed to the County Finance Committee, Department of Management, 1007 East Grand Avenue, State Capitol, Room 13, Des Moines, Iowa 50319-0015; or e-mailed to carrie.johnson@iowa.gov. Persons who wish to convey their views orally should contact Carrie Johnson at (515)281-5598.

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

These amendments are intended to implement Iowa Code section 333A.4(1).

The following amendments are proposed.

ITEM 1. Amend subrule 3.1(1) as follows:

3.1(1) In an attempt to provide complete and accurate financial information of county government, all studies, reports and designed forms shall, where practicable, use the recommendations of the ~~national council of governmental accounting~~ Governmental Accounting Standards Board; shall be applicable to every county in the state of Iowa; and shall be capable of producing data essential to the general public and the legislative and governing bodies of this state.

ITEM 2. Amend subrule 4.1(1) as follows:

4.1(1) “*Class of proposed expenditures*” (also known as “functions”) means any one of the following ~~42~~ major areas of county services:

a. Public safety and legal services.

~~*b.* Court services.~~

~~*e. b.* Physical health and education~~ social services.

~~*d. c.* Mental health services, intellectual disabilities, and developmental disabilities.~~

~~*e.* Social services.~~

f. d. County environment and education.

~~*g. e.* Roads and transportation.~~

~~*h. f.* State and local government~~ Governmental services to residents.

~~*i. g.* Interprogram services~~ Administration.

j. h. Nonprogram services.

~~*k. i.* Debt services~~ service.

l. j. Capital projects.

ITEM 3. Amend paragraph **4.1(2)“e”** as follows:

e. Charges for services service.

COUNTY FINANCE COMMITTEE[547](cont'd)

ITEM 4. Amend subrule 5.3(2) as follows:

5.3(2) Report of financial condition. The report of financial condition, as required by Iowa Code section 331.403, subsection 1, shall provide details for the assets, deferred outflows, liabilities, deferred inflows, and fund balances of the various county funds.

ITEM 5. Rescind and reserve subrule **5.4(2)**.

ITEM 6. Rescind and reserve rule **547—5.5(331)**.

ARC 1161C**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

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

This amendment provides clarification about services provided under the nonemergency medical transportation (NEMT) program. The amendment also identifies the conditions and limitations of the program. These clarifications are intended to assist the contracted NEMT broker to provide management and oversight of the NEMT program.

The number of NEMT trips has grown by 76 percent since October 2010. There has also been a big shift in the types of trips being taken by Medicaid members. The two primary types of trips reimbursed under NEMT are mileage reimbursement and provider rides. During the period from October 2009 to December 2010, approximately 73 percent of the trips reimbursed under NEMT were classified as mileage reimbursement trips. The percentage of mileage reimbursement trips during the recent period from January to March 2013 shows a significant reduction in mileage reimbursement trips to 46 percent. As a direct result, there has been a significant increase in the number of provider rides, which are, in turn, much more expensive. The goal of this amendment is to clarify administrative rules and implement changes to the program to continue to meet member needs while ensuring that the NEMT program remains cost-effective.

Any interested person may make written comments on the proposed amendment on or before November 19, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

This amendment does not provide for waivers in specified situations because the brokerage system will apply to all Medicaid members who are eligible to receive nonemergency medical transportation services. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, there is a potential impact to private sector jobs. The current broker employs 24 full-time staff in Iowa and has contracts with 69 transportation providers in and around Iowa.

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

The following amendment is proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Rescind rule 441—78.13(249A) and adopt the following **new** rule in lieu thereof:

441—78.13(249A) Nonemergency medical transportation. The department makes available nonemergency medical transportation through a transportation brokerage. Medicaid members who are eligible for full Medicaid benefits and need transportation services so that they can receive Medicaid-covered services from providers enrolled with the Iowa Medicaid program may obtain transportation services consistent with this rule.

78.13(1) Covered services. Nonemergency medical transportation services available are limited to:

a. The most economical transportation appropriate to the needs of the member, provided to members eligible for nonemergency transportation when those members need transportation to providers enrolled in the Iowa Medicaid program for the receipt of goods or services covered by the Iowa Medicaid program. Consistent with the member's needs and subject to the limitations and restrictions set forth in this rule, subject to the advance approval of the broker, such transportation may include:

- (1) Mileage reimbursement to the member, if the member is the driver.
- (2) Mileage reimbursement to a volunteer or other responsible person, if the volunteer or other responsible person is the driver.
- (3) Taxi service.
- (4) Public transportation when public transportation is reasonably available and the member's condition does not preclude its use.
- (5) Wheelchair and stretcher vans.
- (6) Airfare costs when the most appropriate mode of transport is by air, based on the member's medical condition.

b. Reimbursement for costs of the member's meals necessary during periods of transportation and medical treatment.

c. Reimbursement of lodging expenses incurred by the member during periods of transportation and medical treatment.

d. Reimbursement of car rental costs incurred by the member during periods of transportation and medical treatment.

e. Reimbursement of a medically necessary escort's travel expenses when an escort is required because of the member's needs.

78.13(2) Exclusions. Nonemergency medical transportation is not available through the Iowa Medicaid program for:

- a.* Transportation to obtain services not covered by Iowa Medicaid;
- b.* Transportation to providers that are not enrolled in Iowa Medicaid;
- c.* Transportation for members residing in nursing facilities or ICF/ID facilities when such facilities provide the transportation (i.e., within 30 miles, one way, of the facility);
- d.* Transportation of family members to visit or participate in therapy when the member is hospitalized or institutionalized;
- e.* Transportation to durable medical equipment providers when such providers offer a delivery service that can be accessed at no cost to the member, unless the equipment requires a fitting that cannot be provided without transporting the member;
- f.* Reimbursement to HCBS and Medicaid providers for transportation provided as part of other covered services, such as personal care, home health, and supported community living services;
- g.* Transportation to a pharmacy that provides a free delivery service, with the exception of new prescription fills that are otherwise not available to the patient in the absence of nonemergency medical transportation services; and
- h.* Emergency transportation.

78.13(3) Conditions and limitations on covered services. Nonemergency medical transportation services are subject to the following limitations and conditions:

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. Member request. When a member needs nonemergency transportation to receive medical care provided by the Iowa Medicaid program, the member must contact the broker with as much advance notice as possible, but not more than 30 days' advance notice.

(1) Generally, the member must contact the broker at least two business days in advance of the member's appointment to schedule the transportation. For purposes of calculating the two-business-day notice obligation, the advance notice includes the day of the medical appointment but not the day of the telephone call.

(2) If the member's nonemergency transportation needs make the provision of two business days' notice impossible because of the member's urgent transportation need, the member must provide as much advance notice as is possible before the transportation need so that the broker can appropriately schedule the most economical form of transportation for the member. Urgent transportation needs are limited to unscheduled episodic situations in which there is no immediate threat to life or limb but which require that the broker schedule transportation with less than two business days' notice. Examples of urgent trips include, but are not limited to:

1. Postsurgical or medical follow-up care specified by a health care provider;
2. Unexpected preoperative appointments;
3. Hospital discharges;
4. Appointments for new medical conditions or tests; and
5. Dialysis.

b. No free transportation alternatives available. Member transportation through the nonemergency medical transportation broker is not available to the member when the member is capable of securing the member's own transportation at no cost to the member (e.g., free-gas voucher programs).

c. No member transportation alternatives available. Members who have their own transportation available to them are required to use their own vehicle and seek mileage reimbursement. For purposes of determining whether or not the member has the member's own transportation that is available to the member, the broker shall take into consideration:

- (1) Whether the member owns a vehicle;
- (2) Whether a member-owned vehicle is in working mechanical order and is licensed;
- (3) Whether the member has a valid driver's license and auto insurance;
- (4) Whether the member is unable to drive because of age, physical condition, cognitive impairment, or developmental limitations; and
- (5) Whether friends or family are available to transport the member to the member's medical appointment and receive mileage reimbursement.

d. Limitations on reimbursement for meals. Reimbursement for costs of members' meals necessary during periods of transportation and medical treatment is limited to situations in which:

- (1) The transportation being provided spans the entire meal period;
- (2) The one-way distance to or from the medical appointment is more than 50 miles;
- (3) The meal is necessary to satisfy the needs of the member or medically necessary escort; and
- (4) The meal reimbursement is limited to the subsistence allowance amounts applicable to state officers and state employees pursuant to Iowa Administrative Code rule 11—41.6(8A) and is supported by detailed receipts.

e. Limitations on reimbursement for lodging expenses. Reimbursement of lodging expenses incurred by members during periods of transportation and medical treatment is limited to reasonable reimbursement for expenses incurred by the member or the medically necessary escort, or both, during a nonemergency trip provided by the broker when the one-way distance to or from the medical appointment is more than 50 miles, supported by detailed receipts, and required for treatment.

f. Closest medical provider. Nonemergency medical transportation will only be provided to members to the closest qualified and enrolled Medicaid provider unless:

- (1) The difference between the closest qualified and enrolled Medicaid provider and the enrolled provider requested by the member is less than 10 miles one way; or

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) The additional cost of transportation to the enrolled provider requested by the member is medically justified based on:

1. The member's previous relationship with the requested provider; or
2. The member's prior experience with the requested provider; or
3. The requested provider's special expertise or experience; or
4. A referral requiring the member to be seen by the requested provider.

g. Member scheduling obligations. Members who require a ride will need to schedule medical appointments on days the transportation provider sends a shuttle to facilitate the provision of the most economical nonemergency medical transportation available, subject to reasonable medical exceptions.

h. Abusive behavior. Members who are abusive or inappropriate may be restricted by the department to only receiving mileage reimbursement. Such restricted members will be responsible for finding their own way to their medical appointments.

78.13(4) Grievance procedure. The broker shall establish an internal grievance procedure for members and transportation providers.

a. Members may appeal to the department pursuant to 441—Chapter 7 as an “aggrieved person.”

b. Transportation providers.

(1) Consent for state fair hearing.

1. Transportation providers that are contracted with the broker and are in good standing with the broker may request a state fair hearing only for disputes regarding payment of claims, specifically, disputes concerning the denial of a claim or reduction in payment, and only when acting on behalf of the member.

2. The transportation provider requesting such a state fair hearing must have the prior, express, signed written consent of the member or the member's lawfully appointed guardian in order to request such a hearing. Notwithstanding any contrary provision in 441—Chapter 7, no state fair hearing will be granted unless the transportation provider submits a document providing such member approval with the request for a state fair hearing.

3. The document must specifically inform the member that protected health information (PHI) may be discussed at the hearing and may be made public in the course of the hearing and subsequent administrative and judicial proceedings. The document must contain language that indicates the knowledge of the potential for PHI to become public and that the member knowingly, voluntarily and intelligently consents to the network provider's bringing the state fair hearing on the member's behalf.

(2) For all transportation provider grievances not addressed by paragraph 78.13(4)“b,” the grievance process shall end with binding arbitration, with a designee of the Iowa Medicaid enterprise as arbitrator.

ARC 1144C

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,” 16.2, 16.51, and 16.5(1)“r,” the Iowa Finance Authority proposes to amend Chapter 3, “Multifamily Housing,” Iowa Administrative Code.

The purpose of the proposed amendments is to update the rules to provide for a broader range of lending options for affordable multifamily rental housing development and to eliminate programs that are no longer used.

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.

IOWA FINANCE AUTHORITY[265](cont'd)

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on November 19, 2013. 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)725-4937 or e-mailed to mark.thompson@iowa.gov.

The Authority anticipates that it may make changes to the proposed amendments based on comments received from the public.

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

These amendments are intended to implement Iowa Code section 16.92(5)“b.”

The following amendments are proposed.

ITEM 1. Amend rule 265—3.5(16) as follows:

265—3.5(16) Program guidelines. For-profit and nonprofit sponsors are eligible to apply for assistance under this program. ~~There are three categories of loans under this program: preservation of affordable housing, low income housing tax credits, and substantial rehabilitation of nonrestricted projects.~~

3.5(1) Projects eligible for assistance must meet the following criteria, ~~in addition to any specific requirements applicable to a particular category of loan as set forth in rule 265—3.6(16), 265—3.7(16), 265—3.8(16), or 265—3.9(16), as applicable:~~

a. Both a demonstrated market need for the units must exist and the project must be in a good location, as determined by the authority in its sole discretion.

b. Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the assistance.

c. Maintenance and debt service reserve funds must be adequately funded, as determined by the authority in its sole discretion.

d. The maximum loan term is 24 months for construction financing and 40 years for permanent financing.

e. ~~The required debt service is 1.25 to 1. Loan-to-value ratio will be considered. The authority may, in limited cases, change the required debt service ratio. Such decision will be made in the sole discretion of the authority.~~ At least 75 percent of the units must be restricted to tenants whose income is at or below 80 percent of the area median income and have rents that are affordable.

f. ~~Interest rates will be set by the authority, in its sole discretion. Projects must have at least five units.~~

g. ~~Except as permitted in the case of loans made pursuant to rule 265—3.8(16), loans shall be secured by a first mortgage; provided, however, that in limited cases the authority may consider a subordinate mortgage when the first mortgage is held by another entity.~~

h. Construction and permanent financing may be awarded to projects under the program.

i. Borrowers must covenant to observe certain compliance measures, including a recorded agreement to ensure long-term affordability.

j. A title guaranty certificate from the authority’s title guaranty division is required on all loans, unless specifically waived by the authority.

k. A local contributing effort, consistent with Iowa Code section 16.4(3), in an amount of up to 1 percent of the proposed loan may be required by the authority, if feasible, for loans made under ~~division I of this chapter.~~ If a local contributing effort is required, evidence of such local contributing effort shall be presented to the authority.

l. The authority may require a change of management or general partner ~~and may refer applicants to other financing options, such as tax-exempt bonds or tax credits,~~ when appropriate.

m. FHA-insured loans may be available through the Multifamily Accelerated Processing (MAP) of HUD, if the authority is an approved MAP lender at the time of the loan closing. The authority may require or suggest such a MAP loan for any and all projects applying for assistance. In addition, the authority may participate in the HUD Risk-Sharing Program and may suggest or require such a loan for any and all projects applying for assistance.

n. ~~Grant funds may be available, in the sole discretion of the authority, if the authority determines that such funds are necessary for the continued financial viability of the project.~~

IOWA FINANCE AUTHORITY[265](cont'd)

o. Recipients must execute such documents and instruments, and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

3.5(2) ~~Loan~~ Maximum loan fees are as follows:

- a.* Commitment fee (construction period) - 1.0 percent of total development costs.
- b.* Commitment fee (permanent loan) - 2.0 percent of loan amount.
- c.* Inspection fee (construction period) - ~~0.5 percent of loan amount~~ \$500 per inspection; inspections will typically occur with each draw on a monthly basis during construction.
- d.* Application fee - 0.3 percent of proposed loan amount.
- e.* Asset management fee - calculated as \$25 per unit × number of total project units; submitted annually on or before January 31.

The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

ITEM 2. Rescind and reserve rules **265—3.6(16)**, **265—3.7(16)**, **265—3.9(16)** and **265—3.12(16)**.

ITEM 3. Rescind and reserve 265—Chapter 3, Division II, rules **265—3.20(16)** to **265—3.27(16)**.

ITEM 4. Rescind and reserve 265—Chapter 3, Division III, rules **265—3.31(16)** to **265—3.37(16)**.

ARC 1141C

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,” 16.5(1)“m,” and 16.54(5), the Iowa Finance Authority proposes to amend Chapter 27, “Military Service Member Home Ownership Assistance Program,” Iowa Administrative Code.

The purpose of this amendment is to bring the rules relating to the Military Home Ownership Assistance Program into compliance with 2013 Iowa Code section 16.54.

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 Authority will receive written comments on the proposed amendment until 4:30 p.m. on November 19, 2013. 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.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 1142C**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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

This amendment is intended to implement 2013 Iowa Code section 16.54.

ARC 1160C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 73A.21, the Labor Commissioner hereby proposes to adopt a new Chapter 156, “Bidder Preferences in Government Contracting,” Iowa Administrative Code.

This amendment would adopt new rules concerning preferences for resident bidders on government construction projects. The new chapter sets forth requirements for a public body involved in a public improvement and sets forth procedures for civil penalty cases.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on November 19, 2013, a public hearing will be held on November 20, 2013, at 2 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than November 20, 2013, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

The principal reason for adoption of this amendment is to implement legislative intent. No variance procedures are included in these rules because variance provisions are set forth in 875—Chapter 1.

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

This amendment is intended to implement Iowa Code section 73A.21.

The following amendment is proposed.

Adopt the following **new** 875—Chapter 156:

CHAPTER 156

BIDDER PREFERENCES IN GOVERNMENT CONTRACTING

875—156.1(73A) Purpose, scope and definitions. These rules institute administrative and operational procedures for enforcement of the Act. The definitions and interpretations contained in Iowa Code section 73A.21 shall be applicable to such terms when used in this chapter.

“*Act*” means Iowa Code section 73A.21.

“*Affiliate*,” when used with respect to any specified person or entity, means another person or entity that, either directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control or ownership with, such specified person or entity.

“*Commissioner*” means the labor commissioner appointed pursuant to Iowa Code section 91.2, or the labor commissioner’s designee.

“*Division*” means the division of labor of the department of workforce development.

“*Nonresident bidder*” means a person or entity that does not meet the definition of a resident bidder, including any affiliate of any person or entity that is a nonresident bidder.

“*Parent*,” when used with respect to any specified person or entity, means an affiliate controlling such specified person or entity directly or indirectly through one or more intermediaries.

“*Public body*” means the state and any of its political subdivisions, including a school district, public utility, or the state board of regents.

LABOR SERVICES DIVISION[875](cont'd)

“*Public improvement*” means a building or other construction work to be paid for in whole or in part by the use of funds of the state, its agencies, and any of its political subdivisions and includes road construction, reconstruction, and maintenance projects.

“*Public utility*” includes municipally owned utilities and municipally owned waterworks.

“*Resident bidder*” means a person or entity authorized to transact business in this state and having a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement for the public improvement. If another state or foreign country has a more stringent definition of a resident bidder, the more stringent definition is applicable as to bidders from that state or foreign country.

“*Resident labor force preference*” means a requirement in which all or a portion of a labor force working on a public improvement is a resident of a particular state or country.

“*Subsidiary*,” when used with respect to any specified person or entity, is an affiliate controlled by such specified person or entity directly, or indirectly through one or more intermediaries.

875—156.2(73A) Reporting of resident status of bidders.

156.2(1) *Reporting to public body.* Any public body that requests bids related to a public improvement shall request a statement from each bidder regarding the bidder’s resident status. The statement shall be on such form as designated by the commissioner. The statement shall require the bidder to certify whether the bidder is a resident bidder or a nonresident bidder. In the case of a resident bidder, the statement shall require the resident bidder to identify each address at which the resident bidder has conducted business in the state during the previous three years and the dates on which the resident bidder conducted business at each address. In the case of a nonresident bidder, the statement shall require the nonresident bidder to identify the nonresident bidder’s state or foreign country of domicile, to identify each preference offered by the nonresident bidder’s state or foreign country of domicile, and to certify that, except as set forth on the form, there are no other preferences offered by the nonresident bidder’s state or foreign country of domicile. The statement shall include such additional information as requested by the commissioner. The statement must be signed by an authorized representative of the bidder under penalty of perjury. A fully completed statement shall be deemed to be incorporated by reference into all project bid specifications and contract documents with any bidder on a public improvement. Failure to provide the statement before award may result in the bid being deemed nonresponsive. This may result in the bid being rejected by the public body.

156.2(2) *Determining residency status.*

a. For purposes of the Act, a person or entity is a resident bidder if the person or entity:

(1) Is authorized to transact business in Iowa; and

(2) Has had one or more places of business in Iowa at which it is conducting or has conducted business in this state for at least three years immediately prior to the date of the first advertisement for the public improvement.

b. If the person or entity is a resident of a state or foreign country having a more stringent definition than that set forth in paragraph 156.2(2)“*a*” to determine whether a person or entity in that state or country is a resident bidder under this Act, then the more stringent definition applies.

156.2(3) *Determining authorization to transact business.* A person or entity is authorized to transact business in the state if:

a. In the case of a sole proprietorship, the sole proprietor is an Iowa resident for Iowa income tax purposes.

b. In the case of a general partnership or joint venture, more than 50 percent of the general partners or joint venture parties are residents of Iowa for Iowa income tax purposes.

c. In the case of a limited liability partnership which has filed a statement of qualification in this state, the statement has not been canceled.

d. In the case of a limited liability partnership whose statement of qualification is filed in a state other than Iowa, the limited liability partnership has filed a statement of foreign qualification in Iowa and a statement of cancellation has not been filed pursuant to Iowa Code section 486A.105(4).

LABOR SERVICES DIVISION[875](cont'd)

e. In the case of a limited partnership or limited liability limited partnership whose certificate of limited partnership is filed in this state, the limited partnership or limited liability limited partnership has not filed a statement of termination.

f. In the case of a limited partnership or a limited liability limited partnership whose certificate of limited partnership is filed in a state other than Iowa, the limited partnership or limited liability limited partnership has received notification from the Iowa secretary of state that the application for certificate of authority has been approved and no notice of cancellation has been filed by the limited partnership or the limited liability limited partnership.

g. In the case of a limited liability company whose certificate of organization is filed in this state, the limited liability company has not filed a statement of termination.

h. In the case of a limited liability company whose certificate of organization is filed in a state other than Iowa, the limited liability company has received a certificate of authority to transact business in this state and the certificate has not been revoked or canceled.

i. In the case of a corporation whose articles of incorporation are filed in this state, the corporation (1) has paid all fees required by Iowa Code chapter 490, (2) has filed its most recent biennial report, and (3) has not filed articles of dissolution.

j. In the case of a corporation whose articles of incorporation are filed in a state other than Iowa, the corporation (1) has received a certificate of authority from the Iowa secretary of state, (2) has filed its most recent biennial report with the secretary of state, and (3) has neither received a certificate of withdrawal from the secretary of state nor had its authority revoked.

156.2(4) *Determining if bidder has conducted business in state.* In order to determine if a bidder has a place of business for transacting business within the state at which it is conducting and has conducted business for at least three years prior to the date of the first advertisement of the public improvement, the bidder shall meet the following criteria for the three-year period prior to the first advertisement for the public improvement:

a. Continuously maintained a place of business for transacting business in Iowa that is suitable for more than receiving mail, telephone calls, and e-mails; and

b. Conducted business in the state for each of those three years and filed an Iowa income tax return, made payments to the Iowa unemployment insurance fund, if applicable, and maintained an Iowa workers' compensation policy, if applicable, in effect for each of those three years.

875—156.3(73A) Application of preference. When awarding a contract for a public improvement to the lowest responsible bidder, the public body shall allow a preference to a resident bidder as against a nonresident bidder that is equal to any preference given or required by the state or foreign country in which the nonresident bidder is a resident without regard to whether such preferences are actually enforced by the applicable regulatory body in each state. If the bidder is a subsidiary of a parent that would be a nonresident bidder if such parent were to bid on the public improvement in its own name, then the public body shall allow a preference as against such bidder that is equal to the preference given or required by the state or foreign country in which the bidder's parent is domiciled. In the instance of a labor force preference, a nonresident bidder shall apply the same resident labor force preference to a public improvement in this state as would be required in the construction of a public improvement by the state or foreign country in which the nonresident bidder, or the parent of a resident bidder if the parent would qualify as a nonresident bidder if such parent were to bid on the public improvement in its own name, is domiciled.

A preference shall not be applied to a subcontractor unless the state of domicile of the nonresident bidder to whom the contract was awarded would apply a preference to the subcontractor.

Specific methods of calculating and applying a preference shall mirror those that apply in the state of domicile of the nonresident bidder to whom the contract was awarded. In the event that the specific method used by the nonresident bidder's state of domicile cannot be determined, the calculation for a labor force preference shall include only the labor force working on the public improvement in Iowa on a regular basis calculated by pay period.

LABOR SERVICES DIVISION[875](cont'd)

875—156.4(73A) Complaints regarding alleged violations of the Act.

156.4(1) *Complaints.* Any person with information regarding a violation of the Act may submit a written complaint to the commissioner. Any complaint must provide the information required pursuant to subrule 156.4(2) or as much of such information as is reasonably practicable under the circumstances. The completed written complaint form shall be submitted to the commissioner at Labor Services Division, 1000 East Grand Avenue, Des Moines, Iowa 50319.

156.4(2) *Written complaint form.* The commissioner shall prepare a written complaint form that a person with information regarding a potential violation of the Act may submit pursuant to subrule 156.4(1). The written complaint form shall request the following information: the name, address, telephone number, and e-mail address of the complainant; the name of the bidder that is believed to have violated the Act; a description of any relationships between the complainant and the bidder; an identification of the public body to which the bidder submitted a bid; the state or foreign country of domicile of the bidder; a description of the goods and services provided under the bid; and such additional information as requested by the commissioner.

156.4(3) *Availability of written complaint form.* The written complaint form shall be available in all division offices and on the department of workforce development's Internet Web site.

875—156.5(73A) Nonresident bidder record-keeping requirements. While participating in a public improvement, a nonresident bidder domiciled in a state or country that has established a resident labor force preference shall make and keep, for a period of not less than three years, accurate records of all workers employed by the contractor or subcontractor on the public improvement. The records shall include each worker's name, address, telephone number if available, social security number, trade classification, and starting and ending date of employment.

875—156.6(73A) Investigations; determination of civil penalty. The commissioner or an authorized designee shall cause an investigation to be made into charges of violations of the Act, including allegations set forth in a written complaint.

156.6(1) *Investigative powers.* The commissioner or the authorized designee shall have the following powers:

a. Hearings. The commissioner may hold hearings and investigate charges of violations of the Act.

b. Entry into place of employment. The commissioner may, consistent with due process of law, enter any place of employment to inspect records concerning labor force residency, to question an employer or employee, and to investigate those facts, conditions, or matters as are deemed appropriate in determining whether any person has violated the provisions of the Act. The commissioner shall only make an entry into a place of employment in response to a written complaint.

c. Residency of workers. The commissioner may investigate and ascertain the residency of a worker engaged in any public improvement in this state.

d. Oaths; depositions; subpoenas. The commissioner may administer oaths, take or cause to be taken deposition of witnesses, and require by subpoena the attendance and testimony of witnesses and the production of all books, registers, payrolls, and other evidence relevant to a matter under investigation or hearing.

e. Employment of personnel. The commissioner may employ qualified personnel as are necessary for the enforcement of Iowa Code section 73A.21. The personnel shall be employed pursuant to the merit system provisions of Iowa Code chapter 8A, subchapter IV.

f. Request for records. The commissioner shall require a contractor or subcontractor to file, within 10 days of receipt of a request, any records enumerated in rule 875—156.5(73A). If the contractor or subcontractor fails to provide the requested records within 10 days, the commissioner may direct, within 15 days after the end of the 10-day period, that the fiscal or financial office charged with the custody and disbursement of funds of the public body that contracted for construction of the public improvement or undertook the public improvement, to withhold immediately from payment to the contractor or subcontractor up to 25 percent of the amount to be paid to the contractor or subcontractor

LABOR SERVICES DIVISION[875](cont'd)

under the terms of the contract or written instrument under which the public improvement is being performed. The amount withheld shall be immediately released upon receipt by the public body of a notice from the commissioner indicating that the request for records as required by this paragraph has been satisfied.

156.6(2) *Division determination.* Upon conclusion of an investigation, the commissioner or an authorized designee shall issue a written determination to the party that was the subject of the investigation. The determination shall indicate whether or not the division finds a violation of the Act by the party. If the determination indicates that the party engaged in a violation of the Act, the determination shall also indicate the remedies the division intends to pursue as a result of the violation.

156.6(3) *Informal conference.* A party seeking review of the division's determination pursuant to this rule may file a written request for an informal conference. The request must be received by the division within 15 days after the date of issuance of the division's determination. During the conference, the party seeking review may present written or oral information and arguments as to why the division's determination should be amended or vacated. The division shall consider the information and arguments presented and issue a written decision advising all parties of the outcome of the informal conference.

875—156.7(73A) Remedies. Following the conclusion of the informal conference, or following the expiration of the time in which a party may file a written request for an informal conference, the division may pursue the following remedies.

156.7(1) *Injunctive relief.* If the division determines that a violation of the Act has occurred, the division may sue for injunctive relief against the awarding of a contract, the undertaking of a public improvement, or the continuation of a public improvement.

156.7(2) *Civil penalty.* Any person or entity that violates the provisions of this chapter is subject to a civil penalty in an amount not to exceed \$1,000 for each violation found in a first investigation by the division, not to exceed \$5,000 for each violation found in a second investigation by the division, and not to exceed \$15,000 for a third or subsequent violation found in any subsequent investigation by the division. Each violation of this chapter for each worker and for each day the violation continues constitutes a separate and distinct violation. In determining the amount of the penalty, the division shall consider the appropriateness of the penalty to the person or entity charged, upon determination of the gravity of the violation(s). The collection of these penalties shall be enforced in a civil action brought by the attorney general on behalf of the division.

875—156.8(73A) Compliance with federal law. If it is determined that application of this chapter and the Act may cause denial of federal funds which would otherwise be available for a public improvement, or would otherwise be inconsistent with requirements of any federal law or regulation, the application of this chapter shall be suspended to the extent necessary to prevent denial of the funds or to eliminate the inconsistency with federal requirements.

These rules are intended to implement Iowa Code section 73A.21.

ARC 1163C

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 Mortuary Science hereby gives Notice of Intended Action to amend Chapter 100, “Practice of Funeral Directors, Funeral

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Establishments, and Cremation Establishments,” and Chapter 101, “Licensure of Funeral Directors, Funeral Establishments, and Cremation Establishments,” Iowa Administrative Code.

These proposed amendments define an embalming record; require funeral directors to complete embalming records when applicable; identify funeral records that are to be created and maintained by the funeral director and funeral establishment of the licensed activity associated with a decedent; add a new subrule on intern training requirements and the number of procedures to be completed during an internship; require the preceptor to familiarize the intern with all aspects of funeral directing; provide for the loss of preceptor status upon failure to comply with Board rules; and clarify the endorsement process. All other changes are technical in nature.

Interested parties were provided an opportunity to comment on the proposed amendments prior to publication of this Notice. The proposed amendments were distributed to Iowa Funeral Directors Association (IFDA) members, Iowa Department of Public Health, Bureau of Vital Statistics, and the Des Moines Area Community College Mortuary Science Program. The Board received comments from the Bureau of Vital Statistics and incorporated recommended changes into the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than November 19, 2013, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail judith.manning@idph.iowa.gov.

A public hearing will be held on November 19, 2013, from 8 to 8:30 a.m. in Conference Room 513, 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.

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

These amendments are intended to implement Iowa Code chapters 21, 147, 144C, 156 and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of “Embalming record” in rule **645—100.1(156)**:

“*Embalming record*” means a record completed by the licensed funeral director or registered intern for each body embalmed in Iowa, or otherwise prepared for disposition by the licensee. “Embalming record” includes, at a minimum, a case analysis and a detailed listing of the procedures or treatments or both performed on the deceased.

ITEM 2. Amend paragraphs **100.2(1)“b”** and **“f”** as follows:

b. Embalming deceased human beings as specified in rule 645—100.6(156); and completing embalming records as specified in paragraph 100.11(2)“d.”

f. Signing death certificates and performing associated duties under Iowa Code chapter 144.

ITEM 3. Amend subrule 100.2(2) as follows:

100.2(2) Registered interns. Registered interns may provide funeral director services identified in subrule 100.2(1), paragraphs “*a*” through “*e f*,” under the direct supervision of an Iowa-licensed preceptor. ~~Registered~~ However, registered interns shall not sign death certificates.

ITEM 4. Adopt the following **new** rule 645—100.11(156):

645—100.11(156) Records to be retained by a funeral establishment. To ensure a permanent record of the licensed activity relating to the custody of each decedent, each funeral director shall create and the funeral establishment shall maintain the records identified in this rule. Funeral directors and funeral establishments shall comply with the rules adopted by the department of public health under Iowa Code section 144.49.

100.11(1) At a minimum, the following information, if applicable, relating to each human remains which enters the custody of the establishment/licensee shall be maintained as the permanent record of licensed activity:

- a.* Name of the deceased;
- b.* Date, time, and place of death (institution or other place, city, state, zip);

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- c. Name and address of the person or funeral establishment to whom the dead body or fetus is released;
- d. Date and from whom the funeral director assumed custody, including the name of the institution or other place of death releasing the dead human body or fetus;
- e. Date, time, and name of the licensed funeral director or registered intern completing embalming or other preparation for final disposition;
- f. Date, place and method of final disposition of the dead body or fetus.

100.11(2) Each funeral establishment shall create and maintain the following records for a period of ten years:

- a. General price list required by the funeral rule, beginning on the most recent effective date;
- b. Each completed statement of goods and services required by the funeral rule, beginning on the date the statement is signed;
- c. Cremation records (see 645—100.10(156));
- d. Embalming records;
- e. Each preneed contract (pursuant to Iowa Code chapter 523A), beginning on the date of death.

100.11(3) The funeral records maintained by the funeral establishment as required in 100.11(1) and 100.11(2) shall be made available by the manager, funeral director or owner of the funeral establishment to:

- a. Any person or entity assuming a new ownership interest or any person newly assuming the position of manager, at least ten days prior to a change in ownership or manager, unless otherwise mutually agreed upon by the parties;
- b. Any licensed funeral director who practiced funeral directing while under the employment of, or while acting as an agent of, the funeral establishment; and
- c. The state registrar of vital statistics and the board.

100.11(4) In the event a funeral establishment ceases to do business, the owner or manager of the funeral establishment shall identify the person or entity which will be responsible for records to be maintained by a funeral establishment as required in 100.11(1) and 100.11(2). The funeral establishment shall notify the board if funeral records are moved from the funeral establishment to another location and identify the person responsible for their safekeeping.

ITEM 5. Amend paragraph **101.5(1)“f”** as follows:

f. The intern shall, during the internship, complete the requirements outlined in 101.5(3), including to embalm not fewer than 25 human remains and direct or assist in the direction of not fewer than 25 funerals under the direct supervision of the certified preceptor and shall to submit reports on forms furnished by the department of public health. Work on the first 5 embalming cases and funeral cases, first 5 funeral arrangements, and first 5 funeral or memorial services must be completed in the physical presence of the preceptor. The first 12 embalming cases and the first 12 funeral case reports must be completed and submitted by the completion of the sixth month of the internship.

ITEM 6. Amend paragraph **101.5(2)“f”** as follows:

- f.* A preceptor's duties shall include the following:
- (1) Ensure the intern completes the training program outlined in 101.5(3);
 - (1) (2) Be physically present and supervise the first five embalmings and first five funeral cases;
 - (2) (3) Familiarize the intern in the areas specified by the preceptor training outline;
 - (3) (4) Read and sign each of the 25 embalming reports and the 25 funeral directing reports completed by the intern;
 - (4) (5) Complete a written six-month report of the intern on a form provided by the board. This report is to be reviewed with and signed by the intern and submitted to the board before the end of the seventh month; and
 - (5) (6) At the end of the internship, complete a confidential evaluation of the intern on a form provided by the board. This evaluation shall be submitted within two weeks of the end of the internship.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 7. Amend paragraph **101.5(2)“g”** as follows:

g. Failure of a preceptor to fulfill the requirements set forth by the board, including failure to remit the required six-month progress report, as well as the final evaluation, shall result in an investigation of the preceptor by the board and may result in actions which may include, but not be limited to, the loss of preceptor status for current and future interns or discipline or both.

ITEM 8. Adopt the following **new** subrule 101.5(3):

101.5(3) Intern training requirements.

a. The board-approved preceptor shall ensure that the intern is knowledgeable of each of the following items during the internship:

- (1) The requirements of the Federal Trade Commission.
- (2) The requirements of the Occupational Safety and Health Act.
- (3) The requirements of the Americans With Disabilities Act.
- (4) The benefits of the Social Security and Veterans Health Administrations.
- (5) The requirements of Iowa funeral law and forms (for example, preneed in Iowa Code chapter 523A, death certificates and Iowa burial transit permits in Iowa Code chapter 144, authorized person in Iowa Code chapter 144C and the board's laws and rules).

b. The board-approved preceptor shall ensure that the intern performs each of the following under the preceptor's direct supervision:

- (1) Assists with or performs a minimum of 10 transfers of human remains.
- (2) Performs 25 embalmings of human remains to include:
 1. Obtaining permission to embalm.
 2. Placement of human remains on preparation table.
 3. Pre-embalming analysis.
 4. Primary disinfection.
 5. Setting features.
 6. Selection of injection/drainage sites and raising those vessels.
 7. Selection and mixing of embalming chemicals and operation of the embalming machine.
 8. Injection and drainage methods.
 9. Cavity treatment.
 10. Suturing techniques.
- (3) Prepares a minimum of 10 human remains for viewing to include:
 1. Dressing.
 2. Cosmetizing.
 3. Casketing.
- (4) Assists with cremation procedures to include:
 1. Contacting medical examiner.
 2. Completing required cremation forms.
 3. Preparing remains for cremation.
- (5) Makes complete funeral arrangements with a minimum of 10 families to include each of the following, as applicable:
 1. Presentation of funeral goods, products and services.
 2. Presentation of payment options for families.
 3. Contacting third-party suppliers of goods and services, such as clergy, cemetery personnel, outer burial container provider, crematory, florist, and musicians.
 4. Completing the obituary.
 5. Presentation of general price list and associated price lists.
 6. Preparation and presentation of statement of funeral goods and services.
- (6) Coordinates, at a minimum, 10 visitations to include:
 1. Preparing the chapel, visitation room or other facility.
 2. Setting up floral arrangements.
 3. Setting up register book and memorial folders or prayer cards.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- (7) Directs a minimum of 25 funerals or memorial services to include, as applicable:
1. Greeting funeral attendees.
 2. Assisting casket bearers.
 3. Preparing for funeral procession.
 4. Driving a vehicle in procession.
 5. Assisting at graveside committal.
 6. Transporting flowers.
 7. Coordinating with officiant and family.

ITEM 9. Amend rule 645—101.8(156) as follows:

645—101.8(156) Licensure by endorsement. An applicant who has been a licensed funeral director under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. Applicants licensed before 1980 are exempt from showing a passing grade on the national board examination. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

101.8(1) Submits to the board a completed application;

101.8(2) Pays the licensure fee;

101.8(3) Shows evidence of licensure requirements that are similar to those required in Iowa;

101.8(4) Provides official copies of the academic transcripts showing the completion of a mortuary science program accredited by the American Board of Funeral Service Education;

101.8(5) Provides official transcript of grades showing 60 semester hours from a regionally accredited college or university with a minimum of a 2.0 or “C” grade point average;

101.8(6) Completes a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas, including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed;

101.8(7) Furnishes certified evidence of:

a. ~~two~~ Two or more years of actual practice as a licensed funeral director in the state from which the applicant desires to endorse; or

b. Having met requirements substantially equivalent to those in 101.5(1) “g” and 101.5(3).

101.8(8) Was issued the initial license by endorsement within six months of the birth month and will not be required to renew the license until the fifteenth day of the birth month two years later. The new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license was originally issued;

101.8(9) No change.

101.8(10) Satisfies the provisions of 101.18(3), if the applicant is not actively licensed in another jurisdiction.

ARC 1164C

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 Mortuary Science hereby gives Notice of Intended Action to amend Chapter 100, “Practice of Funeral Directors, Funeral Establishments, and Cremation Establishments,” and Chapter 101, “Licensure of Funeral Directors, Funeral Establishments, and Cremation Establishments,” Iowa Administrative Code.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These proposed amendments remove duplicative language that already exists in Iowa Code section 144C.5 that gives a more defined progression of who has the right to control the disposition of a decedent's remains. In addition, this rule making amends the requirement to send a renewal notice to funeral directors and funeral establishments to be consistent with legislative changes to Iowa Code section 147.10.

Interested parties were provided an opportunity to comment on the proposed amendments prior to publication of this Notice. The proposed amendments were distributed to Iowa Funeral Directors Association (IFDA) members. The Board received no comment on the proposed amendments.

Any interested person may make written comments on the proposed amendments no later than November 19, 2013, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail judith.manning@idph.iowa.gov.

A public hearing will be held on November 19, 2013, from 8:30 to 9 a.m. in Conference Room 513, 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.

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

These amendments are intended to implement Iowa Code chapters 21, 147, 144C, 156 and 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 100.10(3) as follows:

100.10(3) *Authorizing person and preneed cremation arrangements.* The authorized person has legal authority and may make decisions regarding the final disposition of the decedent. ~~If the decedent in the decedent's lifetime requested that the decedent's body be cremated by signing a cremation authorization, the authorized person at the time of death may revoke the cremation authorization to cancel the cremation.~~

ITEM 2. Amend subrule 101.10(1) as follows:

101.10(1) The biennial license renewal period for a license to practice as a funeral director shall begin on the sixteenth day of the licensee's birth month and end on the fifteenth day of the licensee's birth month two years later. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice from the board does not relieve the licensee of the responsibility for renewing the license. All licenses shall renew on a biennial basis.

ITEM 3. Amend subrule 101.13(2) as follows:

101.13(2) ~~A renewal of license application shall be mailed at least 60 days prior to the expiration of the license.~~ Failure to receive the notice from the board shall not relieve the license holder of the obligation to pay triennial renewal fees on or before the renewal date.

ARC 1162C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

REVENUE DEPARTMENT[701](cont'd)

Iowa Code section 421.7 requires the Director of Revenue to determine and publish the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes shall be 5 percent for the calendar year 2014 (0.4% per month). The Department shall also pay interest at the 5 percent rate on refunds. The interest rate for calendar years 2010-2013 was also 5 percent (0.4% per month).

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

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

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 2, 2013, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before November 19, 2013. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by November 19, 2013.

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

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is proposed.

Adopt the following **new** subrule 10.2(33):

10.2(33) Calendar year 2014. The interest rate upon all unpaid taxes which are due as of January 1, 2014, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2014. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2014. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2014.

ARC 1135C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, the Department of Human Services adopts a new Chapter 74, "Iowa Health and Wellness Plan," and amends Chapter 88, "Managed Health Care Providers," Iowa Administrative Code.

The Iowa Health and Wellness Plan will provide medical assistance to low-income Iowans aged 19 to 64 whose countable income does not exceed 133 percent of the federal poverty level (FPL) for their family size, who are not eligible for any other full Medicaid group or Medicare, who are not pregnant, and whose dependent children are covered by minimum essential coverage.

These amendments do not include the contributions or premiums required beginning in calendar year 2015 and described under the state legislation. They also do not include the ability to waive these contributions or premiums. The Department is currently finalizing the details of these provisions with the Centers for Medicare and Medicaid Services (CMS). Once CMS approval is obtained, the administrative rules will be amended accordingly. These amendments do not address the specific delivery for dental services, medical home or accountable care organizations. Once CMS has approved these items and details are developed, they will be added to the rules.

As of October 1, 2013, low-income adults have been able to enroll in a new Medicaid coverage group for benefits that will begin January 1, 2014. Since the IowaCare 1115 demonstration waiver is ending December 31, 2013, many people currently enrolled in the IowaCare program will be transitioned to the Iowa Health and Wellness Plan.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 0972C** on August 21, 2013.

The Department has received identical comments from two respondents. A synopsis of the comments received and the corresponding Department responses are as follows:

Comments: The respondents recommended that four provisions be changed: (1) Nonemergency medical transportation should be a covered benefit; (2) early and periodic screening, diagnosis, and treatment (EPSDT) services for 19 to 21 year olds should be a covered benefit; (3) copayments for nonemergency use of the emergency room should be lowered (proposal exceeds federal minimum); and (4) retroactive eligibility should be allowed. Additionally, the respondents expressed concerns over the imposition of monthly premium payments for those with income below 100 percent of the federal poverty level (FPL) if certain key wellness/preventive activities are not met. The respondents stated that federal law prohibits assessment of premiums for individuals with income below 150 percent of the FPL and that imposing these premiums could lead to hardship and disenrollment. The respondents provided detailed recommendations for easing the burden of completing key activities, helping participants complete them, and simplifying the premium structure.

The respondents stated that introducing two new components of the Medicaid program in Iowa (the Iowa Wellness Plan and the Marketplace Choice Plan) will be a significant, complex administrative challenge and will be more difficult than simply expanding the Medicaid program and that the process will require significant outreach, education, and procedural safeguards to ensure that eligible individuals receive the coverage and services to which they are entitled. The respondents recommended developing a continuous eligibility process to increase efficiency and reduce administrative burden.

Department response: In response to the concerns about imposing premiums for very poor beneficiaries, the waiver applications were amended to include a hardship provision for those who cannot afford their premiums for both waivers. The Department requested CMS to waive retroactive eligibility to remain consistent with the enabling legislation (2013 Iowa Acts, Senate File 446), which does not provide for retroactivity. The Department also requested CMS to waive coverage of nonemergency medical transportation and EPSDT for the same reason, because the enabling legislation does not provide such services. This policy also ensures consistent benefits across the Iowa Wellness Plan, the Marketplace Choice Plan, and qualified health plan (QHP) coverage through the Health

HUMAN SERVICES DEPARTMENT[441](cont'd)

Insurance Marketplace. Thus, no additional benefit modifications are being made to these amendments as a result of the comments received.

The Department proposed to charge a \$10 copayment to beneficiaries for nonemergency use of the emergency room. The waiver authority aligns the waiver with the Iowa Health and Wellness Plan legislation. Moreover, the Department wants to determine whether the \$10 copayment will impact beneficiary care utilization behavior and whether the copayment reduces inappropriate emergency room use. Therefore, the \$10 copayment provision remains in these amendments.

Due to continuing departmental review, combined with multiple ongoing rule-making efforts, cross references in 74.5(3), 74.6(1)“f,” 74.6(2), and 441—74.7(249A,85GA,SF446) to 441—74.9(249A,85GA, SF446) were updated for accuracy. In addition, wording relating to mandatory coverage groups was added in 74.2(1)“a” and in paragraph “2” of rule 441—74.8(249A,85GA,SF446) for clarity.

The Council on Human Services adopted these amendments on September 26, 2013.

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

These amendments do not provide for waivers in specific situations because all members should be subject to the same rules. The Department has an exception to policy process that may be pursued should a member feel that the member has exceptional circumstances justifying an exception. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, there will be potential for an impact on private sector jobs. The number of new jobs cannot be estimated, but it is anticipated that there will be an increased need for medical providers to service this population of previously uninsured people. Pent-up demand for services in the initial years and ongoing care needs will sustain the need for medical providers. The new federal funding to pay providers will create a mechanism to support job growth.

These amendments are intended to implement Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, sections 166 to 173 and 185 to 187.

These amendments became effective October 2, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** 441—Chapter 74:

CHAPTER 74 IOWA HEALTH AND WELLNESS PLAN

PREAMBLE

This chapter defines and structures the Iowa Health and Wellness Plan, effective January 1, 2014, and administered by the department pursuant to 2013 Iowa Acts, Senate File 446, sections 166 to 173 and 185 to 187. Implementation of the Iowa Health and Wellness Plan is subject to approval by the Secretary of the United States Department of Health and Human Services of any waivers of the requirements of Title XIX of the Social Security Act to provide for federal funding of the plan. This chapter shall be construed to comply with all requirements for federal funding under Title XIX of the Social Security Act or under the terms of any applicable waiver granted by the Secretary. To the extent this chapter is inconsistent with any applicable federal funding requirement under Title XIX or the terms of any applicable waiver, the requirements of Title XIX or the terms of the waiver shall prevail.

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441—74.1(249A,85GA,SF446) Definitions.

“*Accountable care organization*” means a risk-bearing, integrated health care organization characterized by a payment and care delivery model that ties provider reimbursement to quality metrics and reductions in the total cost of care for an attributed population of patients.

“*Countable income*” means “modified adjusted gross income” (MAGI) or “household income,” as applicable, determined pursuant to 42 U.S.C. § 1396a(e)(14).

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

“*Enrollment period*” means the 12-month period for which eligibility is initially established.

“*Essential health benefits*” means the essential health benefits defined by the Secretary of the United States Department of Health and Human Services pursuant to Section 1302(b) of the Patient Protection and Affordable Care Act, Public Law 111-148.

“*Exempt individuals*” shall be defined pursuant to 42 CFR § 440.315.

“*Federal poverty level*” means the poverty income guidelines revised annually and published in the Federal Register by the U.S. Department of Health and Human Services.

“*Health insurance marketplace*” or “*exchange*” means an American health benefit exchange established pursuant to 42 U.S.C. § 18031.

“*Iowa Health and Wellness Plan*” means the medical assistance program set forth in this chapter.

“*Iowa wellness plan*” means the benefits and services provided to Iowa Health and Wellness Plan members with countable income that does not exceed 100 percent of the federal poverty level.

“*Marketplace choice plan*” means the benefits and services provided to Iowa Health and Wellness Plan members with countable income between 101 percent and 133 percent of the federal poverty level.

“*Member*” means an individual who is receiving assistance under the Iowa Health and Wellness Plan described in this chapter.

“*Minimum essential coverage*” means health insurance defined in Section 5000A(f) of Subtitle D of the Internal Revenue Code.

“*Modified adjusted gross income*” means the financial-eligibility methodology prescribed in 42 U.S.C. § 1396a(e)(14).

“*Qualified employer-sponsored coverage*” shall be defined pursuant to 42 U.S.C. § 1396e-1(b).

“*Qualified health plan*” shall be defined pursuant to Section 1301 of the Patient Protection and Affordable Care Act, Public Law 111-152.

441—74.2(249A,85GA,SF446) Eligibility factors. Except as more specifically provided in this chapter, Iowa Health and Wellness Plan eligibility shall be determined according to the requirements of 441—Chapter 75.

74.2(1) Persons covered. Subject to the additional requirements of this chapter and of 441—Chapter 75, medical assistance under the Iowa Health and Wellness Plan shall be available to persons 19 through 64 years of age who:

- a. Are not eligible for medical assistance in a mandatory group under 441—Chapter 75;
- b. Have countable income at or below 133 percent of the federal poverty level for their household size; and
- c. Are not entitled to or enrolled in Medicare benefits under Part A or Part B of Title XVIII of the Social Security Act; and
- d. Are not pregnant.

74.2(2) Parents or caretakers of dependent children. All dependent children under the age of 21 living with a parent or other caretaker relative must be enrolled in Medicaid, in the Children’s Health Insurance Program (CHIP), or in other minimum essential coverage as a condition of the parent’s or other caretaker relative’s eligibility for Iowa Health and Wellness Plan benefits.

74.2(3) Citizenship. To be eligible for Iowa Health and Wellness Plan benefits, a person must meet the citizenship requirements in 441—Chapter 75.

441—74.3(249A,85GA,SF446) Application. Medicaid application policies and procedures described in 441—Chapter 76 shall apply to applications for the Iowa Health and Wellness Plan.

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441—74.4(249A,85GA,SF446) Financial eligibility.

74.4(1) Countable income. Individuals are financially eligible for the Iowa Health and Wellness Plan if their countable income is no more than 133 percent of the federal poverty level, as of the date of a decision on initial or ongoing eligibility.

74.4(2) Household size. For financial eligibility purposes, household size shall be determined according to the modified adjusted gross income (MAGI) methodology.

441—74.5(249A,85GA,SF446) Enrollment period.

74.5(1) Iowa Health and Wellness Plan eligibility shall be effective on the first day of the month following the month of application or the first day of the month all eligibility requirements are met, whichever is later. The enrollment period shall continue for 12 consecutive months unless the member is disenrolled in accordance with the provisions of rule 441—74.8(249A,85GA,SF446).

74.5(2) Care provided before enrollment. No payment shall be made for medical care received before the effective date of enrollment.

74.5(3) Reinstatement. Enrollment for the Iowa Health and Wellness Plan may be reinstated without a new application in accordance with 441—subrule 76.12(2).

441—74.6(249A,85GA,SF446) Reporting changes.

74.6(1) Reporting requirements. As a condition of ongoing enrollment, a member shall report any of the following changes no later than ten calendar days after the change takes place:

- a. The member enters a nonmedical institution, including but not limited to a penal institution.
- b. The member abandons Iowa residency.
- c. The member turns 65.
- d. The member becomes entitled or enrolled in Medicare Part A or Part B or both.
- e. The member's dependent child loses minimum essential coverage.
- f. The member's countable income increases in a manner that must be reported according to the requirements of rule 441—76.15(249A).
- g. The member is confirmed pregnant.

74.6(2) Untimely report. When a change is not timely reported as required by this rule, any program expenditures for care or services provided when the member was not eligible shall be considered an overpayment and be subject to recovery from the member in accordance with rule 441—75.28(249A).

74.6(3) Effective date of change. After enrollment, changes reported during the month that affect the member's eligibility shall be effective the first day of the next calendar month unless:

- a. Timely notice of adverse action is required as specified in 441—subrule 7.7(1); or
- b. The enrollment period has expired and the member is not eligible for a new enrollment period.

441—74.7(249A,85GA,SF446) Reenrollment. A new eligibility determination is required for consecutive 12-month enrollment periods. The reenrollment process will follow the requirements in 441—subrule 76.14(2).

441—74.8(249A,85GA,SF446) Terminating enrollment. Iowa Health and Wellness Plan enrollment shall end when any of the following occur:

1. The enrollment period ends and coverage for the next enrollment period has not been renewed.
2. The member becomes eligible for medical assistance in a mandatory coverage group under 441—Chapter 75.
3. The member is found to have been ineligible for any reason.
4. The member dies.
5. The member turns 65.
6. The member abandons Iowa residency.
7. The member becomes entitled or enrolled in Medicare Part A or Part B or both.
8. The member's dependent child loses minimum essential coverage.
9. The member's countable income exceeds 133 percent of the federal poverty level.

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10. The member becomes pregnant.

11. The Iowa Health and Wellness Plan is discontinued according to the requirements in rule 441—74.14(249A,85GA,SF446).

441—74.9(249A,85GA,SF446) Recovery. The department shall recover from a member all Medicaid funds incorrectly expended on behalf of the member in accordance with rule 441—75.28(249A).

74.9(1) The department shall recover Medicaid funds expended on behalf of a member from the member's estate in accordance with rule 441—75.28(249A).

74.9(2) Funds received from third parties, including Medicare, by a provider other than a state mental health institute shall be reported to the Iowa Medicaid enterprise, and an adjustment shall be made to a previously submitted claim.

441—74.10(249A,85GA,SF446) Right to appeal. Decisions and actions by the department regarding eligibility or services provided under this chapter may be appealed pursuant to 441—Chapter 7. Coverage decisions and actions by participating marketplace choice plans shall be appealed through the plans' grievance and appeal processes. Members will not be entitled to an appeal hearing if the sole basis for denying or limiting services is discontinuance of the program pursuant to rule 441—74.14(249A,85GA,SF446).

441—74.11(249A,85GA,SF446) Financial participation.

74.11(1) Copayment. Payment for nonemergency use of a hospital emergency department shall be subject to a \$10 copayment by the member, which shall be subtracted from the Iowa Health and Wellness Plan payment otherwise due to the provider. This copayment will be waived during the first year of the Iowa Health and Wellness Plan.

74.11(2) Reserved.

441—74.12(249A,85GA,SF446) Benefits and service delivery. Covered benefits and the service delivery method shall be determined by the member's countable income and health status.

74.12(1) *Iowa wellness plan services.* Iowa Health and Wellness Plan members with countable income that does not exceed 100 percent of the federal poverty level shall be enrolled in the Iowa wellness plan unless the member is determined by the department to be an exempt individual. The department shall provide the member with a medical assistance eligibility card identifying the member as eligible for Iowa wellness plan services.

a. Covered Iowa wellness plan services are essential health benefits, all other benefits required pursuant to 42 U.S.C. § 1396u-7(b)(1)(B), prescription drugs and dental services consistent with 441—Chapter 78, and habilitation services consistent with rule 441—78.27(249A).

b. The Iowa Health and Wellness Plan provider network shall include all providers enrolled in the medical assistance program, including all participating accountable care organizations.

c. Members enrolled in the Iowa wellness plan shall be subject to enrollment in managed care, other than PACE programs, pursuant to 441—Chapter 88. In addition to reimbursement for managed care pursuant to 441—Chapter 88, the department may provide care coordination fees, performance incentive payments, or shared savings arrangements for medical homes and accountable care organizations serving members enrolled in the Iowa Health and Wellness Plan.

d. When the member does not choose a primary medical provider, the department shall assign the member to a primary medical provider in accordance with the Medicaid managed health care mandatory enrollment provisions specified in 441—subrule 88.3(7) for mandatory enrollment counties and in accordance with quality data available to the department.

74.12(2) *Marketplace choice plan services.* Iowa Health and Wellness Plan members with countable income between 101 percent and 133 percent of the federal poverty level shall be enrolled in a marketplace choice plan unless the member is determined by the department to be an exempt individual. Marketplace choice coverage shall be provided through designated qualified health plans available on the health insurance marketplace. Covered services not provided by the marketplace choice plan will

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be provided by the medical assistance program. Individuals who have been determined eligible for the marketplace choice plan, but who have not yet been enrolled in a marketplace choice plan, shall receive fee-for-service coverage under the Iowa wellness plan until they choose or are assigned to a marketplace choice plan.

a. Upon enrollment, a member shall choose a qualified health plan from those designated by the department to provide coverage to Iowa Health and Wellness Plan members.

b. When the member does not select a qualified health plan pursuant to notice of the need to do so, the department will select a plan, enroll the member, and notify the member of the assigned plan.

c. The department shall pay premiums to designated qualified health plans participating on the health insurance marketplace to buy coverage for eligible Iowa Health and Wellness Plan members. The department shall begin payment of the member's premiums for the first month of enrollment through the Iowa Health and Wellness Plan. The qualified health plan shall provide the member with an insurance card identifying the member as an enrollee of the plan. The department shall provide the member with a medical assistance eligibility card identifying the member as eligible for the marketplace choice plan.

d. Covered services are all benefits, including essential health benefits, provided by the designated qualified health plan on the health insurance marketplace, including prescription drugs. Dental services shall be provided through a contract with a commercial dental plan with covered services consistent with 441—Chapter 78. Services not covered by the qualified health plan, but covered pursuant to the marketplace choice 1115 waiver or the marketplace choice state plan will be covered by the Medicaid program.

74.12(3) *Exempt individuals.* An Iowa Health and Wellness Plan member who has been determined by the department to be an exempt individual shall be given the choice of the benefits and service delivery method provided by the Iowa wellness plan or receiving benefits and services pursuant to 441—Chapter 78.

74.12(4) *Qualified employer-sponsored coverage.* An individual who has access to cost-effective employer-sponsored coverage shall be subject to enrollment in the health insurance premium payment program pursuant to 441—Chapter 75.

441—74.13(249A,85GA,SF446) Claims and reimbursement methodologies.

74.13(1) *Claims for services not provided by a qualified health plan.* Claims for services provided under the Iowa wellness plan or for covered marketplace choice services not provided by the member's qualified health plan shall be submitted to the Iowa Medicaid enterprise as required by 441—Chapter 80.

74.13(2) *Payment for services not provided by a qualified health plan.* Payment for services provided under the Iowa wellness plan or for covered marketplace choice services not provided by the member's qualified health plan shall be provided in accordance with 441—Chapter 79 or as provided in a contract between the department and the provider.

74.13(3) *Payment for services provided by the marketplace choice plan.* Payment for services provided under the marketplace choice plan shall be made in accordance with the rates filed with the Iowa insurance division.

441—74.14(249A,85GA,SF446) Discontinuance of program.

74.14(1) If the methodology for calculating the federal medical assistance percentage for eligible individuals, as provided in 42 U.S.C. § 1396d(y), is modified through federal law or regulation, in a manner that reduces the percentage of federal assistance to the state, or if federal law or regulation affecting eligibility or benefits for the Iowa Health and Wellness Plan is modified, the department may implement an alternative plan as specified in the medical assistance state plan or waiver for coverage of the affected population, subject to prior, statutory approval of implementation of the alternative plan.

74.14(2) If the methodology for calculating the federal medical assistance percentage for eligible individuals, as provided in 42 U.S.C. § 1396d(y), is modified through federal law or regulation resulting in a reduction of the percentage of federal assistance to the state below 90 percent but not below 85 percent, the medical assistance program reimbursement rates for inpatient and outpatient hospital

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services shall be reduced by a like percentage in the succeeding fiscal year, subject to prior, statutory approval of implementation of the reduction.

These rules are intended to implement 2013 Iowa Acts, Senate File 446, sections 166 to 173 and 185 to 187, and Iowa Code chapter 249A.

ITEM 2. Amend subrule 88.2(1) as follows:

88.2(1) *Contracts with HMOs.* The department shall enter into contracts for the scope of services specified in 441—Chapter 78, or a part thereof, with an HMO licensed under the provisions of commerce department rules of the insurance division, 191—Chapter 40. The department may also include the scope of services described in 441—Chapter 74, known as the Iowa Health and Wellness Plan, or part thereof, in contracts with HMOs.

a. to c. No change.

ITEM 3. Amend subrule 88.22(1) as follows:

88.22(1) *Contracts with PHPs.* The department shall enter into contracts for the scope of services specified in 441—Chapter 78, or a part thereof, with a PHP which has verified to the department that the criteria set forth in the Social Security Act have been met. This verification shall be reviewed by Centers for Medicare and Medicaid Services (CMS) staff to ensure that the status of PHP is rightfully conferred. The department may also include the scope of services described in 441—Chapter 74, known as the Iowa Health and Wellness Plan, or part thereof, in contracts with PHPs.

a. to c. No change.

ITEM 4. Amend subrule 88.48(1) as follows:

88.48(1) *Managed services.* Provision of the following services by any provider other than the patient manager requires authorization from the patient manager in order to be payable by Medicaid except that mental health and substance abuse services for all managed health care recipients are provided under the Iowa Plan program and do not require authorization (see rule 441—88.61(249A)):

a. to j. No change.

These services require authorization even if the need for the service is considered urgent. However, in case of urgent medical conditions, the patient manager shall arrange for necessary care within 24 hours by either providing it or referring to and authorizing another appropriate provider to provide care.

Services or parts thereof described in 441—Chapter 74, known as the Iowa Health and Wellness Plan, require authorization by the patient manager as otherwise required by this division.

ITEM 5. Adopt the following **new** subrule 88.65(7):

88.65(7) *Iowa wellness plan service benefits.* Services described in 441—Chapter 74 that otherwise constitute covered services pursuant to this rule shall be included in Iowa Plan services for members enrolled in the Iowa Plan who are also Iowa wellness plan members.

[Filed Emergency After Notice 10/2/13, effective 10/2/13]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1134C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 7(6), the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments add language that allows Department staff to determine financial eligibility for Medicaid assistance using the modified adjusted gross income methodology and add other eligibility requirements of the Patient Protection and Affordable Care Act (commonly referred to as the Affordable

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Care Act or the ACA) for applications received on or after October 1, 2013, and for assistance that will be effective January 1, 2014, and thereafter.

These amendments add a new coverage group for former foster care children up to age 26. These amendments also revise social security and residency requirements under the Affordable Care Act and remove eligibility for the dependent relative of a recipient of state supplemental assistance.

These amendments are necessary to comply with requirements of the Patient Protection and Affordable Care Act of 2010 (Public Law 111-148) and subsequent federal regulations. The Iowa Legislature eliminated eligibility for the dependent relative of a recipient of state supplemental assistance in light of other eligibility for such individuals under the ACA.

Finally, these amendments also adopt two new rules, 441—75.28(249A) and 441—75.29(249A). The adoption of these rules is a technical change that in effect relocates the content of rules 441—76.8(249A) and 441—76.12(249A) to Chapter 75. This change was made in conjunction with the recent rescission of Chapter 76, “Application and Investigation,” including rules 441—76.8(249A) and 441—76.12(249A), and the adoption of a new Chapter 76 in lieu thereof (see **ARC 1069C**, October 2, 2013, Iowa Administrative Bulletin).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 0971C** on August 21, 2013. The Department received no comments from the public concerning the Notice. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 26, 2013.

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

These amendments do not provide for waivers in specified situations because of federal legislative requirements found in the Affordable Care Act. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 7(6).

These amendments became effective October 2, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following new preamble in **441—Chapter 75**:

PREAMBLE

This chapter establishes the conditions of eligibility for the medical assistance program administered by the department of human services pursuant to Iowa Code chapter 249A and addresses related matters. This chapter shall be construed to comply with all requirements for federal funding under Title XIX of the Social Security Act or under the terms of any applicable waiver of Title XIX requirements granted by the Secretary of the U.S. Department of Health and Human Services. To the extent this chapter is inconsistent with any applicable federal funding requirement under Title XIX or the terms of any applicable waiver, the requirements of Title XIX or the terms of the waiver shall prevail.

ITEM 2. Amend subrule 75.1(9) as follows:

75.1(9) *Individuals receiving state supplemental assistance.* Medical assistance shall be available to all recipients of state supplemental assistance as authorized by Iowa Code chapter 249. ~~Medical assistance shall also be available to the individual’s dependent relative as defined in 441—subrule 51.4(4).~~

ITEM 3. Adopt the following new subrule 75.1(45):

75.1(45) *Medicaid for former foster care youth.* Effective January 1, 2014, medical assistance shall be available to a person who meets all of the following conditions:

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- a. The person is at least 18 years of age (or such higher age to which foster care is provided to the person) and under 26 years of age;
- b. The person is not described in or enrolled under any of Subclauses (I) through (VII) of Section 1902(a)(10)(A)(i) of Title XIX of the Social Security Act or is described in any of such subclauses but has income that exceeds the level of income applicable under Iowa's state Medicaid plan for eligibility to enroll for medical assistance under such subclause;
- c. The person was in foster care under the responsibility of Iowa on the date of attaining 18 years of age or such higher age to which foster care is provided; and
- d. The person was enrolled in the Iowa Medicaid program under Title XIX of the Social Security Act while in such foster care.

ITEM 4. Rescind rule 441—75.7(249A) and adopt the following new rule in lieu thereof:

441—75.7(249A) Furnishing of social security number.

75.7(1) As a condition of eligibility, except as provided by subrule 75.7(2), all social security numbers issued to each individual (including children) for whom Medicaid is sought must be furnished to the department.

75.7(2) The requirement of subrule 75.7(1) does not apply to an individual who:

- a. Is not eligible to receive a social security number;
- b. Does not have a social security number and may only be issued a social security number for a valid nonwork reason in accordance with 20 CFR § 422.104; or
- c. Refuses to obtain a social security number because of a well-established religious objection. For this purpose, a well-established religious objection means that the individual:
 - (1) Is a member of a recognized religious sect or division of the sect; and
 - (2) Adheres to the tenets or teachings of the sect or division of the sect and for that reason is conscientiously opposed to applying for or using a national identification number.

75.7(3) If a social security number has not been issued or is not known, the individual seeking Medicaid must cooperate with the department in applying for a social security number with the Social Security Administration or in requesting the Social Security Administration to furnish the number.

ITEM 5. Amend subrule 75.10(1) as follows:

75.10(1) Definitions.

a. *Institutions.* For purposes of this rule, “institution” means an “institution” or a “medical institution” as those terms are defined in 42 CFR § 435.1010 as amended to July 13, 2007. For purposes of state placement, “institution” also includes foster care homes licensed as set forth in 45 CFR § 1355.20 as amended to January 6, 2012, and providing food, shelter and supportive services to one or more persons unrelated to the proprietor.

b. *“Incapable of expressing intent”* shall mean that the person meets one or more of the following conditions: *Incapable of indicating intent regarding residency.* For purposes of this rule, an individual is considered to be “incapable of indicating intent regarding residency” if the individual:

- 1. Has an IQ of 49 or less or has a mental age of seven or less; ~~;~~
- 2. ~~Is~~ Has been judged legally incompetent; ~~;~~ or
- 3. ~~Is found~~ Has been determined to be incapable of indicating intent ~~based on medical documentation obtained from~~ regarding residency by a physician, psychologist or other person licensed by the state in the field of ~~mental retardation~~ intellectual disability.

“Institution” shall mean an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor. Foster care facilities are included.

ITEM 6. Rescind subrule 75.10(2) and adopt the following new subrule in lieu thereof:

75.10(2) Determination of residency. State residency is determined according to the following criteria. If more than one criterion applies, the applicable criterion listed first determines the individual's residency:

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. Cases of disputed residency. If two or more states do not agree on an individual's state of residence, the state where the individual is physically located is the state of residence.

b. Temporary absence from state of residence. An individual who was a resident of a state pursuant to the other criteria of this rule, who is temporarily absent from that state, and who intends to return to that state when the purpose of the absence has been accomplished remains a resident of that state during the absence, unless another state has determined that the person is a resident there for Medicaid purposes.

c. Individuals placed by a state in an out-of-state institution. If any agency of a state, including an entity recognized under state law as being under contract with the state for such purposes, arranges for an individual to be placed in an institution located in another state, the state arranging or actually making the placement is considered the individual's state of residence during that placement.

(1) Any action beyond providing information to the individual and the individual's family constitutes arranging or making a placement. However, the following actions do not constitute arranging or making a placement:

1. Providing basic information to individuals about another state's Medicaid program and information about the availability of health care services and facilities in another state.

2. Assisting an individual in locating an institution in another state, provided the individual is not incapable of indicating intent regarding residency and independently decides to move.

(2) When a competent individual leaves an out-of-state institution in which the individual was placed by a state, that individual's state of residence is the state where the individual is physically located.

d. Individuals receiving a state supplementary assistance payment. Individuals who are receiving a state supplementary assistance payment pursuant to 42 U.S.C. § 1382e (including payments from Iowa pursuant to rules 441—50.1(249) through 441—54.8(249), 441—81.23(249A), 441—82.19(249A), 441—85.47(249A), or 441—177.1(249) through 441—177.11(249)) are considered to be residents of the state paying the supplementary assistance.

e. Individuals receiving Title IV-E payments. Individuals who are receiving federal foster care or adoption assistance payments for a child under Title IV-E of the Social Security Act are considered to be residents of the state where the child lives.

f. Individuals aged 21 and over who are residing in an institution and who are capable of indicating intent regarding residency. For an individual aged 21 or over who is residing in an institution and who is not incapable of indicating intent regarding residency, the state of residence is the state where the individual is living and intends to reside.

g. Individuals aged 21 and over who are residing in an institution and who became incapable of indicating intent regarding residency before the age of 21. For an individual aged 21 or over who is residing in an institution and who became incapable of indicating intent regarding residency before the age of 21, the state of residence is:

(1) That of the parent applying for Medicaid on the individual's behalf if the parents reside in separate states (if a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of that of the parent);

(2) The parent's or legal guardian's state of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of that of the parent);

(3) The current state of residence of the parent or legal guardian who files the application if the individual is residing in an institution in that state (if a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of that of the parent); or

(4) The state of residence of the individual or party who files an application if the individual has been abandoned by the individual's parent(s), does not have a legal guardian, and is residing in an institution in that state.

h. Individuals aged 21 and over who are residing in an institution and who became incapable of indicating intent regarding residency at or after the age of 21. For an individual aged 21 or over who is residing in an institution and who became incapable of indicating intent regarding residency at or after the age of 21, the state of residence is the state in which the individual is physically present.

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i. Individuals aged 21 and over who are not residing in an institution and who are incapable of indicating intent regarding residency. For an individual aged 21 or over who is not residing in an institution and who is incapable of indicating intent regarding residency, the state of residence is the state where the individual is living.

j. Individuals aged 21 and over who are not residing in an institution and who are capable of indicating intent regarding residency. For an individual aged 21 or over who is not residing in an institution and who is not incapable of indicating intent regarding residency, the state of residence is the state where the individual is living and either:

- (1) Intends to reside, with or without a fixed address; or
- (2) Entered with a job commitment or to seek employment, whether or not currently employed.

k. Individuals under the age of 21 who are residing in an institution and who are not married or emancipated. For an individual under the age of 21 who is residing in an institution and who is neither married nor emancipated, the state of residence is:

(1) The parent's or legal guardian's state of residence at the time of placement (if a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of that of the parent);

(2) The current state of residence of the parent or legal guardian who files the application if the individual is residing in an institution in that state (if a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of that of the parent); or

(3) The state of residence of the individual or party who files an application if the individual has been abandoned by the individual's parent(s), does not have a legal guardian, and is residing in an institution in that state.

l. Individuals under the age of 21 who are capable of indicating intent regarding residency and who are married or emancipated. For an individual under the age of 21 who is not incapable of indicating intent regarding residency and who is married or emancipated from the individual's parent, the state of residence is determined in accordance with paragraph 75.10(2) "*j.*"

m. Other individuals under the age of 21. For an individual under the age of 21 who is not described in paragraph 75.10(2) "*k*" or "*l*," the state of residence is:

- (1) The state where the individual resides, with or without a fixed address; or
- (2) The state of residency of the parent or caretaker, determined in accordance with paragraph 75.10(2) "*j*," with whom the individual resides.

ITEM 7. Adopt the following **new** rule 441—75.28(249A):

441—75.28(249A) Recovery.

75.28(1) Definitions.

"*Administrative overpayment*" means medical assistance incorrectly paid to or for the client because of continuing assistance during the appeal process or allowing a deduction for the Medicare Part B premium in determining client participation while the department arranges to pay the Medicare premium directly.

"*Agency error*" means medical assistance incorrectly paid to or for the client because of action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.
4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the department.
6. Failure to make prompt revisions in medical payment following changes in policies requiring the changes as of a specific date.

"*Client*" means a current or former Medicaid member.

"*Client error*" means medical assistance incorrectly paid to or for the client because the client or client's representative failed to disclose information, or gave false or misleading statements, oral or

HUMAN SERVICES DEPARTMENT[441](cont'd)

written, regarding the client's income, resources, or other eligibility and benefit factors. "Client error" also means assistance incorrectly paid to or for the client because of failure by the client or client's representative to timely report as defined in rule 441—76.15(249A).

"Department" means the department of human services.

"Premiums paid for medical assistance" means monthly premiums assessed to a member or household for Medicaid, IowaCare or the Iowa Health and Wellness Plan coverage.

75.28(2) Amount subject to recovery. The department shall recover from a client all Medicaid funds incorrectly expended to or on behalf of the client and all unpaid premiums assessed by the department for medical assistance. The incorrect expenditures or unpaid premiums may result from client or agency error or administrative overpayment.

75.28(3) Notification. All clients shall be promptly notified on Form 470-2891, Notice of Medical Assistance Overpayment, when it is determined that assistance was incorrectly expended or when assessed premiums are unpaid.

a. Notification of incorrect expenditures shall include:

- (1) For whom assistance was paid;
- (2) The period during which assistance was incorrectly paid;
- (3) The amount of assistance subject to recovery; and
- (4) The reason for the incorrect expenditure.

b. Notification of unpaid premiums shall include:

- (1) The amount of the premium; and
- (2) The month covered by the medical assistance premium.

75.28(4) Source of recovery. Recovery shall be made from the client or from parents of children under the age of 21 when the parents completed the application and had responsibility for reporting changes. Recovery may come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

75.28(5) Repayment. The repayment of incorrectly expended Medicaid funds shall be made to the department. However, repayment of funds incorrectly paid to a nursing facility, a Medicare-certified skilled nursing facility, a psychiatric medical institution for children, an intermediate care facility for persons with an intellectual disability, or mental health institute enrolled as an inpatient psychiatric facility may be made by the client to the facility. The department shall then recover the funds from the facility through a vendor adjustment.

75.28(6) Appeals. The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 441—Chapter 7.

75.28(7) Estate recovery. Medical assistance is subject to recovery from the estate of a Medicaid member, the estate of the member's surviving spouse, or the estate of the member's surviving child as provided in this subrule. Effective January 1, 2010, medical assistance that has been paid for Medicare cost sharing or for benefits described in Section 1902(a)(10)(E) of the Social Security Act is not subject to recovery. All assets included in the estate of the member, the surviving spouse, or the surviving child are subject to probate for the purposes of medical assistance estate recovery pursuant to Iowa Code section 249A.5(2) "d." The classification of the debt is defined at Iowa Code section 633.425(7).

a. Definition of estate. For the purpose of this subrule, the "estate" of a Medicaid member, a surviving spouse, or a surviving child shall include all real property, personal property, or any other asset in which the member, spouse, or surviving child had any legal title or interest at the time of death, or at the time a child reaches the age of 21, to the extent of that interest. An estate includes, but is not limited to, interest in jointly held property, retained life estates, and interests in trusts.

b. Debt due for member 55 years of age or older. Receipt of medical assistance when a member is 55 years of age or older creates a debt due to the department from the member's estate upon the member's death for all medical assistance provided on the member's behalf on or after July 1, 1994.

c. Debt due for member under the age of 55 in a medical institution.

(1) Receipt of medical assistance creates a debt due to the department from the member's estate upon the member's death for all medical assistance provided on the member's behalf on or after July 1, 1994, when the member:

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1. Is under the age of 55; and
2. Is a resident of a nursing facility, an intermediate care facility for persons with an intellectual disability, or a mental health institute; and
3. Cannot reasonably be expected to be discharged and return home.

(2) If the member is discharged from the facility and returns home before staying six consecutive months, no debt will be assessed for medical assistance payments made on the member's behalf for the time in the institution.

(3) If the member remains in the facility for six consecutive months or longer or dies before staying six consecutive months, the department shall presume that the member cannot or could not reasonably be expected to be discharged and return home and a debt due shall be established. The department shall notify the member of the presumption and the establishment of a debt due.

d. Request for a determination of ability to return home. Upon receipt of a notice of the establishment of a debt due based on the presumption that the member cannot return home, the member or someone acting on the member's behalf may request that the department determine whether the member can or could reasonably have been expected to return home.

(1) When a written request is made within 30 days of the notice that a debt due will be established, no debt due shall be established until the department has made a decision on the member's ability to return home. If the determination is that there is or was no ability to return home, a debt due shall be established for all medical assistance as of the date of entry into the institution.

(2) When a written request is made more than 30 days after the notice that a debt due will be established, a debt due will be established for medical assistance provided before the request even if the determination is that the member can or could have returned home.

e. Determination of ability to return home. When the member or someone acting on the member's behalf requests that the department determine if the member can or could have returned home, the determination shall be made by the Iowa Medicaid enterprise (IME) medical services unit.

(1) The IME medical services unit cannot make a determination until the member has been in an institution at least six months or after the death of the member, whichever is earlier. The IME medical services unit will notify the member or the member's representative and the department of the determination.

(2) If the determination is that the member can or could return home, the IME medical services unit shall establish the date the return is expected or could have been expected to occur.

(3) If the determination is that the member cannot or could not return home, a debt due will be established unless the member or the member's representative asks for a reconsideration of the decision. The IME medical services unit will notify the member or the member's representative and the department of the reconsideration decision.

(4) If the reconsideration decision is that the member cannot or could not return home, a debt due will be established against the member unless the decision is appealed pursuant to 441—Chapter 7. The appeal decision will determine the final outcome for the establishment of a debt due and the period when the debt is established.

f. Debt collection.

(1) A nursing facility participating in the medical assistance program shall notify the IME revenue collection unit upon the death of a member residing in the facility by submitting Form 470-4331, Estate Recovery Program Nursing Home Referral.

(2) Upon receipt of Form 470-4331 or a report of a member's death through other means, the IME revenue collection unit will use Form 470-4339, Medical Assistance Debt Response, to request a statement of the member's assets from the member's personal representative. The representative shall sign and return Form 470-4339 indicating whether assets remain and, if so, what the assets are and what higher priority expenses exist. EXCEPTION: The procedures in this subparagraph are not necessary when a probate estate has been opened, because probate procedures provide for an inventory, an accounting, and a final report of the estate.

g. Waiving the collection of the debt.

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(1) The department shall waive the collection of the debt created under this subrule from the estate of the member to the extent that collection of the debt would result in either of the following:

1. Reduction in the amount received from the member's estate by a surviving spouse or by a surviving child who is under the age of 21, blind, or permanently and totally disabled at the time of the member's death.

2. Creation of an undue hardship for the person seeking a waiver of estate recovery. Undue hardship exists when total household income is less than 200 percent of the poverty level for a household of the same size, total household resources do not exceed \$10,000, and application of estate recovery would result in deprivation of food, clothing, shelter, or medical care such that life or health would be endangered. For this purpose, "income" and "resources" shall be defined as being under the family medical assistance program.

(2) To apply for a waiver of estate recovery due to undue hardship, the person shall provide a written statement and supporting verification to the department within 30 days of the notice of estate recovery pursuant to Iowa Code section 633.425.

(3) The department shall determine whether undue hardship exists on a case-by-case basis. Appeals of adverse decisions regarding an undue hardship determination may be filed in accordance with 441—Chapter 7.

h. Amount waived. If collection of all or part of a debt is waived pursuant to paragraph 75.28(7) "g," to the extent that the person received the member's estate, the amount waived shall be a debt due from the following:

(1) The estate of the member's surviving spouse, upon the death of the spouse.

(2) The estate of the member's surviving child who is blind or has a disability, upon the death of the child.

(3) A surviving child who was under 21 years of age at the time of the member's death, when the child reaches the age of 21.

(4) The estate of a surviving child who was under 21 years of age at the time of the member's death, if the child dies before reaching the age of 21.

(5) The hardship waiver recipient, when the hardship no longer exists.

(6) The estate of the recipient of the undue hardship waiver, at the time of death of the hardship waiver recipient.

i. Impact of asset disregard on debt due. The estate of a member who is eligible for medical assistance under subrule 75.5(5) shall not be subject to a claim for medical assistance paid on the member's behalf up to the amount of the assets disregarded by asset disregard. Medical assistance paid on behalf of the member before these conditions shall be recovered from the estate, regardless of the member's having purchased precertified or approved insurance.

j. Interest on debt. Interest shall accrue on a debt due under this subrule at the rate provided pursuant to Iowa Code section 535.3, beginning six months after the death of a Medicaid member, the surviving spouse, or the surviving child, or upon the child's reaching the age of 21.

k. Reimbursement to county. If a county reimburses the department for medical assistance provided under this subrule and the amount of medical assistance is subsequently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in Iowa Code chapter 633C, the department shall reimburse the county on a proportionate basis.

ITEM 8. Adopt the following **new** rule 441—75.29(249A):

441—75.29(249A) Investigation by quality control or the department of inspections and appeals. An applicant or member shall cooperate with the department when the applicant's or member's case is selected by quality control or the department of inspections and appeals for verification of eligibility unless the investigation revolves solely around the circumstances of a person whose income and resources do not affect medical assistance eligibility. (See department of inspections and appeals rules in 481—Chapter 72.) Failure to cooperate shall serve as a basis for denial of an application or cancellation of medical assistance unless the Medicaid eligibility is determined by the Social Security

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Administration. Once a person's eligibility is denied or canceled for failure to cooperate, the person may reapply but shall not be determined eligible until cooperation occurs.

ITEM 9. Reserve rules **441—75.61** to **441—75.69**.

ITEM 10. Adopt the following **new** Division III heading in **441—Chapter 75**:

DIVISION III

FINANCIAL ELIGIBILITY BASED ON MODIFIED ADJUSTED GROSS INCOME (MAGI)

ITEM 11. Adopt the following **new** rule 441—75.70(249A):

441—75.70(249A) Financial eligibility based on modified adjusted gross income (MAGI). Notwithstanding any other provision of this chapter, effective January 1, 2014, financial eligibility for medical assistance shall be determined using “modified adjusted gross income” (MAGI) and “household income” pursuant to 42 U.S.C. § 1396a(e)(14), to the extent required by that section as a condition of federal funding under Title XIX of the Social Security Act. For this purpose, financial eligibility for medical assistance includes any applicable purpose for which a determination of income is required, including the imposition of any premiums or cost sharing.

ITEM 12. Adopt the following **new** rule 441—75.71(249A):

441—75.71(249A) Income limits. Notwithstanding any other provision of this chapter, effective January 1, 2014, the following income limits apply to the following coverage groups, as identified by the legal references provided:

Coverage Group	Legal Reference	Household Size (persons)	Income Limit (per month)
Family Medical Assistance Program and Child Medical Assistance Program	441—subrule 75.1(14) and 441—subrule 75.1(15); 42 CFR Part 435.110; Title XIX of the Social Security Act, Section 1931	1	\$447
		2	\$716
		3	\$872
		4	\$1,033
		5	\$1,177
		6	\$1,330
		7	\$1,481
		8	\$1,633
		9	\$1,784
		10	\$1,950
			over 10
Mothers and Children, for pregnant women and for infants under one year of age	441—subrule 75.1(28); 42 CFR Part 435.116; Title XIX of the Social Security Act, Section 1902		375% of the federal poverty level for the household
Mothers and Children, for children aged 1 through 18 years	441—subrule 75.1(28); 42 CFR Part 435.116; Title XIX of the Social Security Act, Section 1902		167% of the federal poverty level for the household

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Coverage Group	Legal Reference	Income Limit (per month)
Medicaid for Independent Young Adults	441—subrule 75.1(42); Title XIX of the Social Security Act, Section 1902(a)(10)(A)(ii)(VII)	254% of the federal poverty level for the household
Family Planning Services	441—subrule 75.1(41)	369% of the federal poverty level for the household

[Filed Emergency After Notice 10/2/13, effective 10/2/13]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1142C

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r,” 16.5(1)“m,” and 16.54(5), the Iowa Finance Authority hereby amends Chapter 27, “Military Service Member Home Ownership Assistance Program,” Iowa Administrative Code.

The purpose of this amendment is to bring the rules relating to the Military Home Ownership Assistance Program into compliance with 2013 Iowa Code section 16.54.

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 adoption of this amendment on an emergency basis was authorized by the Iowa Legislature’s Administrative Rules Review Committee on October 8, 2013. Accordingly, this amendment is Adopted and Filed Emergency, and the normal effective date of this amendment is waived pursuant to Iowa Code section 17A.5(2)“b”(2). The Authority is also concurrently publishing this amendment under Notice of Intended Action as **ARC 1141C** to allow for public comment.

The Authority adopted this amendment on October 9, 2013.

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

This amendment is intended to implement 2013 Iowa Code section 16.54.

This amendment became effective on October 15, 2013.

The following amendment is adopted.

Amend subrule 27.3(2) as follows:

27.3(2) *Financed home purchases.*

a. In the case of the purchase of a qualified home that is to be financed, the eligible service member must apply for assistance under the program through a participating lender or a lender approved to facilitate MHOA assistance. The mortgage financing provided shall be a mortgage loan made pursuant to one of the authority’s home buyer mortgage programs if the service member qualifies for it; provided, however, that notwithstanding the foregoing, a service member may utilize a mortgage loan that is not made pursuant to one of the authority’s home buyer mortgage programs which is from a lender approved to facilitate MHOA assistance if such mortgage loan has an annual percentage rate that is at least 25 basis points lower than the most nearly equivalent loan offered by participating lenders on the same date pursuant to one of the authority’s home buyer mortgage programs. If the service member does not qualify for one of the authority’s home buyer mortgage programs, another permanent, fully amortizing mortgage loan may be used.

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b. to d. No change.

[Filed Emergency 10/10/13, effective 10/15/13]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1145C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 218.4, the Department of Human Services amends Chapter 28, "Policies for All Institutions," Chapter 29, "Mental Health Institutes," and Chapter 30, "State Resource Centers," Iowa Administrative Code.

These amendments implement the regional administrator system of service management for mental health and disability services. The amendments also shift a county's financial liability for payment for services from a person's county of legal settlement to the person's county of residence in accordance with 2012 Iowa Acts, Senate File 2315. Finally, these amendments update language to reflect current terms and usage, as well as clarify that the Clarinda gero-psychiatric treatment program provides services statewide.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0921C** on August 7, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 9, 2013.

These amendments do not provide for waivers in specified situations except for requests for exception to policy sent to the established catchment areas for the facilities and for visitation. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). However, Iowa law places authority and responsibility with county government to accept, process, and approve applications, and the rights of individuals served to confidentiality and privacy are also defined by law. The Department has no authority to waive those requirements. Individuals are given the right to make their own decisions about maintaining confidentiality and privacy.

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

These amendments are intended to implement Iowa Code chapters 218 and 222.

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 28**, title, as follows:

POLICIES FOR ALL INSTITUTIONS MENTAL HEALTH
INSTITUTES AND RESOURCE CENTERS

ITEM 2. Amend rule 441—28.1(218) as follows:

441—28.1(218) Definitions. The definitions in this rule apply to 441—Chapters 28, 29, and 30.

"*Admission*" means the acceptance of an individual ~~for full residence~~ for receipt of services at a state mental health institute or resource center on either a voluntary or involuntary basis.

"*Adult*" means an individual who is 18 years of age or older.

"*Board of supervisors*" means the elected governing body of a county as defined in Iowa Code section 331.101.

"*Catchment area*" means the group of counties, designated by the ~~deputy director~~ division administrator, that each mental health institute or state resource center is assigned to serve.

"*Central point of coordination process*" means the process defined in Iowa Code section 331.440(1)"a."

"*Child*" means an individual who is under the age of 18.

"*County of residence*" means the same as defined in ~~rule 441—25.11(331)~~ Iowa Code section 331.394.

"*Deputy director*" means the ~~deputy director for field operations within the Iowa department of human services~~.

"*Division administrator*" means the administrator of the division of mental health and disability services.

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“Facility” means a mental health institute or state resource center referenced in Iowa Code section 218.1.

“Family contact,” for an adult individual, means:

1. The family member the individual has designated in writing to receive information concerning the individual’s services; or
2. A person, often referred to as a substitute decision maker, who has been legally authorized to make care decisions for the individual if the individual loses decision-making capacity.

“Grievance” means a written or oral complaint by or on behalf of an individual involving:

1. A rights violation or unfairness to the individual, or
2. Any aspect of the individual’s life with which the individual does not agree.

“Guardian” means the person other than a parent of a ~~child~~ minor who has been appointed by the court to have custody of the person of the individual as provided under Iowa Code section 232.2(21) or 633.3(20).

“Individual” means any person seeking or receiving services from a state mental health institute or a state resource center.

“Informed consent” means an agreement by an individual or by the individual’s parent, guardian, or legal representative to participate in an activity based upon an understanding of all of the following:

1. A full explanation of the procedures to be followed, including an identification of those that are experimental.
2. A description of the attendant discomforts and risks.
3. A description of the benefits to be expected.
4. A disclosure of appropriate alternative procedures that would be advantageous for the individual.
5. Assurance that consent is given freely and voluntarily without fear of retribution or withdrawal of services.

“Legal representative” means a person, including an attorney, who is authorized by law to act on behalf of an individual.

~~“Legal settlement” means the determination made under Iowa Code sections 252.16 and 252.17 to identify whether one of the 99 Iowa counties has a legal obligation to provide financial support for an individual.~~

“Minor” means an individual under the age of 18.

“Non-Medicaid payment-eligible” means that an individual is not eligible for Medicaid funding for the services provided by a mental health institute or state resource center.

“Official designated agent” means a person or agency designated, by a record vote of the county board of supervisors, to act on behalf of the county board of supervisors.

“Parent” means a natural or adoptive mother or father of a child but does not include a mother or father whose parental rights have been terminated.

“Regional administrator” means the same as defined in Iowa Code section 331.388.

“Rights” means the human, civil, and constitutional liberties an individual possesses through federal and state constitutions and laws.

~~“State case” means the determination made under Iowa Code section 252.16 331.394 that identifies an individual as does not having legal settlement have a county of residence in an Iowa county and places funding responsibility with the state.~~

“Superintendent” means the superintendent of any of the four mental health institutes and the two state resource centers.

This rule is intended to implement Iowa Code section 218.4.

ITEM 3. Amend rule 441—28.2(218,222) as follows:

441—28.2(218,222) Selection of facility.

28.2(1) Application for voluntary admission to a state mental health institute or resource center shall be made to the facility in the catchment area, as defined in rule 441—29.1(218) or 441—30.1(218,222),

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within which the individual for whom admission is sought is ~~has a resident as defined in:~~ county of residence.

- ~~a. Rule 441—29.1(218) for the state mental health institutes; or~~
- ~~b. Rule 441—30.1(218,222) for the state resource centers.~~

28.2(2) Court commitment of an individual shall be made:

a. To the facility in the catchment area, as defined in rule 441—29.1(218) or 441—30.1(218,222), within which the individual who is being committed ~~is a resident as defined in rule 441—29.1(218) or 441—30.1(218,222)~~ has a county of residence; or

b. As designated by the ~~deputy director~~ division administrator.

28.2(3) The ~~deputy director~~ division administrator shall consider granting exceptions to the established catchment areas when requested by the individual seeking a voluntary admission or by the committing court. The ~~deputy director's~~ division administrator's decision shall be made within 48 hours of receipt of the request. The decision shall be based on:

- a. The clinical needs of the individual;
- b. The availability of appropriate program services;
- c. Available bed space within the program at the requested facility; and
- d. The consent of the superintendents of both facilities involved.

This rule is intended to implement Iowa Code sections 218.19, 218.20, and 222.6.

ITEM 4. Rescind and reserve rule **441—28.3(222,230).**

ITEM 5. Amend rule 441—28.5(217,218) as follows:

441—28.5(217,218) Photographing and recording of individuals and use of cameras.

28.5(1) Use of still or video cameras or voice recorders by anyone other than an authorized employee, individual, parent, guardian, or legal representative to photograph or record an individual shall be allowed only with the prior authorization of the superintendent or the superintendent's designee. Permission to photograph and record shall be granted for one specific use, and the authorization shall not extend to any other use.

28.5(2) Photographs, videos, and recordings of an adult individual shall be taken for publication only with a signed informed consent from the individual or the individual's guardian or legal representative.

28.5(3) Photographs, videos, and recordings of a minor individual shall be taken for publication only with a signed informed consent from the parent, guardian, or legal representative.

28.5(4) Every effort shall be made to preserve the inherent dignity of the individual and to preclude exploitation or embarrassment of the individual or the family of the individual.

28.5(5) ~~Pictures~~ Photographs, videos, and recordings of individuals are not to be altered to prevent identification in any manner that would tend to perpetuate the stigma attached to the public image of individuals with mental illness or ~~mental retardation~~ an intellectual disability.

This rule is intended to implement Iowa Code sections 217.30 and 218.4.

ITEM 6. Amend paragraph **28.6(2)“a”** as follows:

a. When a request without known prior consent is received, the superintendent or designee shall not acknowledge the presence or nonpresence of an individual at the ~~institution~~ facility.

ITEM 7. Amend rule 441—28.7(218) as follows:

441—28.7(218) Use of grounds, facilities, or equipment.

28.7(1) The superintendent or designee may grant permission for temporary use of assembly halls, auditoriums, meeting rooms, or ~~institutional~~ facility grounds to an organization or group of citizens when the ~~facility is~~ space or grounds are available and is are not needed for regular scheduled departmental services.

28.7(2) Members of outside organizations permitted to use a facility facility's space or grounds shall observe the same rules as visitors to the ~~institution~~ facility.

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ITEM 8. Amend rule 441—28.8(218) as follows:

441—28.8(218) Tours of institution facility. Groups or persons shall be permitted to tour the ~~institution facility~~ only with approval of the superintendent or designee.

This rule is intended to implement Iowa Code section 218.4.

ITEM 9. Amend rule 441—28.9(218) as follows:

441—28.9(218) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the superintendent or designee. The superintendent or designee shall evaluate the donation in terms of the nature of the contribution to the ~~hospital facility's~~ program. The superintendent or designee shall be responsible for accepting the donation and reporting the gift to the ~~deputy director~~ division administrator. All monetary gifts shall be acknowledged in writing to the donor.

This rule is intended to implement Iowa Code chapter 218.

ITEM 10. Amend rule 441—28.12(217) as follows:

441—28.12(217) Release of confidential information.

28.12(1) Information defined by statute as confidential concerning ~~current or former patients or residents of individuals who currently receive or formerly received services from the mental health institutes or hospital-schools resource centers~~ shall not be released to a person, agency or organization that is not authorized by law to have access to the information unless the ~~patient or resident individual, parent, guardian, or legal representative~~ authorizes the release. Authorization shall be given by using Form 470-3951, Authorization to Obtain or Release Health Care Information.

28.12(2) ~~Persons admitted or committed to a mental health institute or a hospital-school and who are not able to pay their own way in full shall authorize the department to obtain information necessary to establish whether they have legal settlement in Iowa or in another state. Authorization shall be given using Form MH-2203-0, Authorization to Release Information for Settlement.~~

This rule is intended to implement Iowa Code section 217.30.

ITEM 11. Adopt the following new subrule 29.1(7):

29.1(7) Gero-psychiatric services. For the purposes of an adult individual seeking gero-psychiatric services, the Clarinda catchment area shall include the entire state.

ITEM 12. Amend rule 441—29.2(218,229) as follows:

441—29.2(218,229) Voluntary admissions.

29.2(1) No change.

29.2(2) Children Minors. A parent, guardian, or legal representative of a minor individual may make application for the individual's voluntary admission directly to the mental health institute using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute. When a minor objects to the admission and the chief medical officer of the mental health institute determines that the admission is appropriate, the parent, guardian, or custodian must petition the juvenile court for approval of admission before the minor ~~is actually~~ shall be admitted.

29.2(3) County approval. When an adult individual ~~applying or a person responsible for the individual wishes to apply~~ for voluntary admission ~~or those responsible for the individual are and is~~ unable to pay ~~eosts~~ the cost of care, application for admission shall be made to and authorized through the central point of coordination ~~of or regional administrator for~~ the individual's county of residence before application for admission ~~is~~ shall be made to the mental health institute. Authorization for admission shall be provided by the signature of one or more ~~official~~ officially designated agents ~~designated by~~ of the county board of supervisors using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute, before the form is forwarded to the mental health institute.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 13. Amend rule 441—29.3(229,230) as follows:

441—29.3(229,230) Certification of settlement county of residence.

29.3(1) Certification data. By the end of the next working day following ~~an~~ a non-Medicaid payment-eligible adult individual's admission, the facility shall send a copy of Form 470-4161, DHS Institution MHI Admission Core Data, by facsimile to the central point of coordination ~~of or the~~ regional administrator for the county of admission. ~~If the facility is aware that the county of legal settlement may be other than the admitting county, the facility shall alert the admitting county.~~

29.3(2) County response. For ~~voluntary adult~~ cases where the admitting county has accepted legal settlement using Form 470-0420, Application for Voluntary Admission to a Mental Health Institute ~~does not dispute the individual's county of residence, no further response is needed. For all other cases, within four working days after receiving Form 470-4161, DHS Institution Admission Core Data, the admitting county shall return to the facility page 3 of the form, the response sheet for determining legal settlement. If the admitting county disputes the applicant's affirmation of county of residence, the county or its officially designated agent shall be responsible for resolving the dispute using the dispute resolution process in Iowa Code section 331.394. If the state disputes the individual's affirmation of county of residence, the state shall be responsible for initiating the dispute resolution process.~~

~~a. If the central point of coordination for the admitting county accepts legal settlement, the admitting county shall mark the response sheet accordingly. No supporting evidence is necessary.~~

~~b. If the central point of coordination for another county notified by the admitting county accepts legal settlement, that county shall provide written notice to the facility of that county's acceptance.~~

~~c. If the central point of coordination for the admitting county finds the individual's legal settlement to be in another Iowa county, the admitting county shall mark the response sheet accordingly and shall send certification as described in Iowa Code section 230.4 to the county auditor of the other county. A copy of the evidence supporting the determination as prescribed in rule 441—28.3(222,230) shall accompany the certification. If the other county disputes the certification, that county may file a notice of dispute under rule 441—15.2(225C).~~

~~d. If the central point of coordination for the admitting county of residence finds that the person has not acquired legal settlement in an Iowa county, the admitting county shall mark the response sheet accordingly. The admitting county shall send certification as described in Iowa Code section 230.5 to the Administrator, DHS Division of Fiscal Management, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. A copy of the evidence supporting the determination as prescribed in rule 441—28.3(222,230) shall accompany the certification.~~

ITEM 14. Amend rule 441—29.4(218,230) as follows:

441—29.4(218,230) Charges for care. The rates for cost of hospitalization are established by the ~~deputy director division administrator~~ and shall be available by contacting the business manager of the mental health institute that serves the catchment area in which the individual's county of residence is located.

29.4(1) Individuals requesting voluntary admission without going through the central point of coordination ~~or regional administrator~~ process shall be required to pay the cost of hospitalization in advance. This cost shall be computed at 30 times the last per diem rate and shall be collected weekly in advance upon admission. The weekly amount due shall be determined by dividing the monthly rate by 4.3.

29.4(2) The ~~department~~ facility shall bill each county for services provided to individuals chargeable to the county during the preceding calendar quarter as required in Iowa Code section 230.20. In determining the charges for services, direct medical services shall include:

~~a. to l. No change.~~

29.4(3) No change.

ITEM 15. Amend subrule 29.7(1) as follows:

29.7(1) Visiting hours on Monday through Friday are from 12 noon to 8 p.m. and are from 10 a.m. to 8 p.m. on Saturday, Sunday, and holidays. Visiting hours shall be posted in each ~~institution~~ facility.

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The physician may designate exceptions for special hours on an individual or ward basis. Therapy for the individual shall take precedence over visiting. Visiting shall not interfere with the individual's treatment program or meals.

ITEM 16. Amend rule 441—30.2(218,222) as follows:

441—30.2(218,222) Admission. Express written consent of the individual or the individual's parent, guardian, or legal representative shall be secured before admission.

30.2(1) *Application for an adult.* Applications for the care, treatment, or evaluation of an adult individual by a resource center shall be made through the central point of coordination or the regional administrator for the board of supervisors of the individual's county of residence. Authorization for the submission of the application shall be provided by the signature of one or more officially designated agents for the county board of supervisors.

a. The application shall be made using Form 470-4402, Application for Admission to a State Resource Center, and shall be accompanied by:

- (1) Completed Form 470-4403, Resource Center Agreement and Consent for Services, and
- (2) Other information specifically requested in writing by the resource center.

b. The application shall be submitted through the ~~deputy director~~ division administrator or the ~~deputy director's~~ division administrator's designee.

30.2(2) *Application for a minor.* Application for a minor individual shall be made through the ~~deputy director~~ division administrator or the ~~deputy director's~~ division administrator's designee using Form 470-4402, Application for Admission to a State Resource Center. The application shall be accompanied by:

- a. Completed Form 470-4403, Resource Center Agreement and Consent for Services, and
- b. Other information specifically requested in writing by the ~~deputy director~~ division administrator

or the ~~deputy director's~~ division administrator's designee.

30.2(3) and 30.2(4) No change.

30.2(5) *Eligibility for admission.* Eligibility for admission shall be determined by:

- a. A preadmission diagnostic evaluation,
- b. An established diagnosis of ~~mental retardation~~ intellectual disability,
- c. The availability of an appropriate program, and
- d. The availability of space at the facility.

This rule is intended to implement Iowa Code sections 222.13 and 222.13A.

ITEM 17. Rescind rule 441—30.3(222) and adopt the following **new** rule in lieu thereof:

441—30.3(222) Non-Medicaid payment-eligible individuals. The cost for the care, as determined in Iowa Code sections 222.73, 222.74, and 222.75, for an individual who is not Medicaid payment eligible shall be the responsibility of the individual's county of residence. All disputes regarding the county of residence of an individual shall be resolved using the dispute resolution process in Iowa Code section 331.394.

ITEM 18. Rescind rule 441—30.6(218) and adopt the following **new** rule in lieu thereof:

441—30.6(218) Visiting.

30.6(1) Individuals are encouraged and shall be able to receive visits from persons of the individual's choice and at times desired by the individual. At the individual's choice, the individual's parents, guardian, or legal representative or other members of the individual's family may visit without prior notice given to the facility.

30.6(2) Visits determined by the individual's treatment to be inappropriate or disruptive to the individual's treatment plan or the health and safety of other individuals may be denied or terminated.

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30.6(3) An individual or other person denied visitation may file a grievance through the facility's grievance process.

[Filed 10/10/13, effective 1/1/14]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1146C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 239B.4 and 239B.8, the Department of Human Services amends Chapter 41, "Granting Assistance," and Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code.

These amendments provide program clarifications and add consistency for monthly reporting of time and attendance for participants within two programs that utilize the Temporary Assistance for Needy Families (TANF) federal block grant, specifically: the Family Investment Program (FIP) and the Promoting Independence and Self-Sufficiency through Employment, Job Opportunities and Basic Skills (PROMISE JOBS) Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0914C** on August 7, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 9, 2013.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 239B.4 and 239B.8.

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 441—41.24(239B) as follows:

441—41.24(239B) Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) program. ~~An application for assistance constitutes a registration for the program for all members of the family investment program (FIP) case. Persons who are not exempt from referral to PROMISE JOBS~~ All persons in a family investment program (FIP) household shall be referred to the PROMISE JOBS program and shall enter into a family investment agreement (FIA) as a condition of receiving FIP, unless exempt from referral, except as described at subrule 41.24(8) 41.24(2).

41.24(1) Referral to PROMISE JOBS FIA-responsible persons. The following persons are FIA-responsible unless the department determines the person is exempt:

a. ~~All persons whose needs are included in a grant under the FIP program shall be referred to PROMISE JOBS as FIA-responsible persons unless the department determines the persons are exempt.~~

b. ~~Any parent living in the home of a child receiving a grant shall also be referred to PROMISE JOBS as an FIA-responsible person unless the department determines the person is exempt.~~

c. ~~All FIP applicants shall be referred to PROMISE JOBS as FIA-responsible persons unless the department determines that the person applicant is exempt or does not meet other FIP eligibility requirements.~~

d. ~~Applicants who have chosen and are in an active limited benefit plan that began on or after June 1, 1999, (LBP). FIA-responsible applicants in an active limited benefit plan shall complete significant contact with or action in regard to PROMISE JOBS as described at paragraphs 41.24(8) "a" "d" and "d" "e" for FIP eligibility to be considered. For two-parent households, both parents must participate~~

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as previously stated except when one parent ~~meets the exemption criteria described at subrule 41.24(2) is exempt.~~ Exceptions:

(1) The applicant has become exempt from PROMISE JOBS.

(2) The applicant is in a subsequent limited benefit plan and it is prior to the last day of the six-month period of ineligibility.

41.24(2) and 41.24(3) No change.

41.24(4) Method of referral. The department shall refer each FIA-responsible person as defined at subrule 41.24(1) to PROMISE JOBS to sign a family investment agreement.

a. FIA-responsible applicants. ~~While the eligibility decision is pending, applicants in a limited benefit plan that began on or after June 1, 1999, shall receive a letter which contains information about the need to complete significant contact with or action in regard to the PROMISE JOBS program to be eligible for FIP assistance and the procedure for being referred to the PROMISE JOBS program. During the application interview, the department shall notify the applicant of the requirement to sign a family investment agreement as a condition of FIP eligibility. The department shall refer the applicant by scheduling the applicant for an appointment with the PROMISE JOBS provider agency to develop the family investment agreement.~~

(1) The appointment shall be on the earliest available date but no later than ten calendar days from the date of referral unless the applicant requests an appointment on a day that is beyond ten calendar days. The PROMISE JOBS provider agency shall make sufficient appointment times available to allow the applicant to be scheduled within this time frame.

(2) The applicant shall be notified verbally and in writing of the scheduled appointment. If the notice of a scheduled appointment is mailed to the applicant, the department shall allow at least five working days from the date the notice is mailed for the applicant to appear for the scheduled appointment. The department may allow less than five working days if the applicant is verbally notified and agrees to the appointment.

(3) If a parent fails to appear for an appointment without rescheduling or fails to sign a family investment agreement, the department shall deny FIP assistance for the entire family.

(4) If a minor parent fails to appear for an appointment without rescheduling or fails to sign a family investment agreement, the department shall deny FIP assistance for the minor parent and any child of the minor parent.

(5) If a referred person who is not a parent fails to appear for an appointment without rescheduling or fails to sign a family investment agreement, the department shall deny FIP assistance only for that person.

b. Hardship applicants. While the eligibility decision is pending, the department shall refer applicants who must qualify for a hardship exemption before approval of FIP to PROMISE JOBS to sign a family investment agreement as described in paragraph 41.24(4) "a" and shall be treated treat applicants in accordance with subrule 41.30(3).

c. Applicants in a limited benefit plan. ~~Each person required to be referred to PROMISE JOBS as described at subrule 41.24(1) must meet with PROMISE JOBS staff and sign an FIA. The department shall refer FIA-responsible applicants to PROMISE JOBS as described in paragraph 41.24(4) "a" and inform the applicant of the actions needed to reconsider and end the limited benefit plan as described at subrule 41.24(8). Failure to appear for the appointment without rescheduling or failure to sign a family investment agreement results in denial of the FIP application.~~

(1) For an applicant filing an application on or after September 1, 2004, the FIA must be signed before FIP approval, as a condition of eligibility. If a parent fails to sign an FIA, the entire family is ineligible for FIP. If a referred person who is not a parent fails to sign an FIA, only that person is ineligible.

(2) When a FIP participant loses exempt status, the FIP participant shall receive a letter which contains information about participant responsibility under PROMISE JOBS and the FIA and instructs the FIP participant to contact PROMISE JOBS within ten calendar days to schedule the PROMISE JOBS orientation.

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d. FIP participants who become FIA-responsible. When a person receiving FIP is no longer exempt, the department shall send the FIP participant a notice. The notice shall contain information about the requirement to sign a family investment agreement and shall instruct the FIP participant to contact PROMISE JOBS within ten calendar days to schedule an appointment with PROMISE JOBS to develop a family investment agreement. If the participant fails to schedule or attend the appointment or fails to sign a family investment agreement, PROMISE JOBS will send a clear written reminder. After one written reminder as described at 441—paragraph 93.3(3) “b,” the participant shall enter into a limited benefit plan as described at paragraph 41.24(8) “c.”

41.24(5) Changes in status and redetermination of exempt status. Any exempt person shall report any change affecting the exempt status to the department within ten days of the change. The department shall reevaluate exempt persons when changes in status occur and at the time of six-month or annual review. The recipient participant and the PROMISE JOBS unit shall be notified of any change in a recipient's participant's exempt status.

41.24(6) and 41.24(7) No change.

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

a. A limited benefit plan shall either be a first limited benefit plan or a subsequent limited benefit plan. From the effective date of ~~the a first limited benefit plan, for a first limited benefit plan,~~ the FIP household eligible group or individual participant shall not be eligible until the participant who chose the limited benefit plan completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph 41.24(8) “d.” If a subsequent limited benefit plan is chosen by the same participant, a six-month period of ineligibility applies to the FIP eligible group or individual participant and ineligibility continues after the six-month period is over until the participant who chose the LBP limited benefit plan completes significant contact with or action in regard to the PROMISE JOBS program as defined in paragraph 41.24(8) “d.” “e.” A limited benefit plan imposed in error as described in paragraph 41.24(8) “f.” “g” shall not be considered a limited benefit plan and shall not count when determining whether a household is subject to a subsequent limited benefit plan. ~~A limited benefit plan is considered imposed when timely and adequate notice is issued establishing the limited benefit plan.~~

b. The limited benefit plan shall be applied to participants responsible for the family investment agreement and other members of the participant's family as follows:

(1) to (3) No change.

(4) When the FIP eligible group includes children who are ~~mandatory PROMISE JOBS participants~~ FIA-responsible, the children shall not have a separate family investment agreement but shall be asked to sign the eligible group's family investment agreement and to carry out the responsibilities of that family investment agreement. A limited benefit plan shall be applied as follows:

1. When the parent or needy specified relative responsible for a family investment agreement meets those responsibilities but a child who is ~~a mandatory PROMISE JOBS participant~~ FIA-responsible chooses an individual limited benefit plan, the limited benefit plan shall apply only to the individual child choosing the plan.

2. When the child who chooses a limited benefit plan under numbered paragraph 41.24(8) “b”(4)“1” ~~above~~ is the only child in the eligible group, the parents' or needy specified relative's eligibility ceases in accordance with subrule 41.28(1). The parents or needy specified relative shall become ineligible beginning with the effective date of the child's limited benefit plan.

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(5) When the FIP eligible group includes parents or needy specified relatives who are exempt from PROMISE JOBS participation and children who are ~~mandatory PROMISE JOBS participants~~ FIA-responsible, the children are responsible for completing a family investment agreement. If a child who is a ~~mandatory PROMISE JOBS participant~~ FIA-responsible chooses the limited benefit plan, the limited benefit plan shall be applied in the manner described in subparagraph 41.24(8)“b”(4).

(6) No change.

c. A participant shall be considered to have chosen a limited benefit plan under any of the following circumstances:

(1) A participant who loses exempt status and is referred to PROMISE JOBS as described at paragraph 41.24(4)“d” and who does not establish schedule or attend an orientation appointment for orientation and development of a family investment agreement with the PROMISE JOBS program as described at 441—paragraph 93.3(3)“b” or who fails to keep or reschedule an orientation appointment shall receive after PROMISE JOBS sends one clear written reminder letter as described at 441—paragraph 93.3(3)“b” shall enter into the limited benefit plan which informs the participant that those who do not attend orientation have elected to choose the limited benefit plan. A participant who does not establish an orientation appointment within ten calendar days from the mailing date of the reminder letter or who fails to keep or reschedule an orientation appointment shall receive notice establishing the limited benefit plan. Timely and adequate notice provisions as in 441—subrule 7.7(1) apply.

(2) A participant who chooses not to sign the family investment agreement ~~after attending a PROMISE JOBS program orientation~~ shall enter into the limited benefit plan ~~as described in subparagraph (1)~~. For an applicant, signing a family investment agreement is a FIP eligibility requirement. If an applicant chooses not to sign the agreement, the limited benefit plan process is not applicable.

(3) A participant who signs a family investment agreement but does not carry out the family investment agreement responsibilities shall ~~be deemed to have chosen a limited benefit plan as described in subparagraph (1)~~, enter into a limited benefit plan whether the person signed the agreement as a FIP applicant or as a FIP participant. This includes a participant who fails to respond to the PROMISE JOBS worker's request to renegotiate the family investment agreement when the participant has not attained self-sufficiency by the date established in the family investment agreement. A limited benefit plan shall be imposed regardless of whether the request to renegotiate is made before or after expiration of the family investment agreement.

d. to f. No change.

g. Limited benefit plan imposed in error. A limited benefit plan imposed in error shall not be considered a limited benefit plan. This includes any instance when participation in PROMISE JOBS should not have been required as described in the administrative rules. Examples of instances when an error has occurred are:

(1) No change.

(2) It is verified that the person considered to have chosen the limited benefit plan moved out of state or requested cancellation of FIP prior to the date that PROMISE JOBS determined the limited benefit plan was chosen.

(3) to (5) No change.

h. No change.

41.24(9) No change.

41.24(10) *Notification of services.*

a. to d. No change.

e. The department shall explain the LBP and the process by which FIA-responsible persons ~~and mandatory PROMISE JOBS participants~~ can choose the LBP ~~or individual LBP~~.

f. and g. No change.

41.24(11) *Implementation.* ~~A limited benefit plan imposed effective on or after June 1, 1999, shall be imposed according to the revised rules becoming effective on that date. A limited benefit plan imposed effective on or before May 1, 1999, shall be imposed subject to the previous rules for the limited benefit~~

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~~plan. For a person who is in a limited benefit plan on May 1, 1999, the terms of the person's existing limited benefit plan shall continue until that limited benefit plan either ends or is lifted in accordance with previous limited benefit plan rules. A participant who chose a limited benefit plan under the previous policy and who then chooses a limited benefit plan that becomes effective on or after June 1, 1999, shall be subject to a subsequent limited benefit plan under the provisions of the revised rules.~~

ITEM 2. Amend subrule 93.3(2) as follows:

93.3(2) Referral. The department of human services shall refer all FIA-responsible persons from FIP applicant and recipient participant households to PROMISE JOBS pursuant to 441—subrule 41.24(1) 41.24(4).

ITEM 3. Amend subrule 93.3(3) as follows:

93.3(3) Initial appointment.

a. FIP applicants. FIP applicants, including those who are in a limited benefit plan, shall be offered an appointment with the PROMISE JOBS provider agency for assessment and FIA development at the earliest available time. The provider agency shall make sufficient appointment shall be times available to allow the applicant to be scheduled no later than ten calendar days after the date of the notice that FIA responsibility has begun, as required by rule 441—93.4(239B) and 441—paragraphs 41.24(1) “c,” 41.24(1) “d,” and 41.24(10) “g.”

~~(1) At the time of referral, applicants shall be notified verbally and hand-issued the notice of a scheduled appointment for FIA development.~~

~~(2) If the notice of appointment cannot be hand-issued, at least five working days shall be allowed from the date notice is mailed for an applicant to appear for the scheduled appointment for orientation and FIA development unless the applicant agrees to an appointment that is scheduled to take place in less than five working days.~~

b. Exempt status change. ~~Persons from FIP participant households who are referred to PROMISE JOBS become FIA-responsible while receiving FIP shall initiate PROMISE JOBS assessment orientation and FIA development by contacting the appropriate PROMISE JOBS office to schedule an appointment within ten calendar days of the mailing date of the notice letter explaining that exempt status has been lost and FIA responsibility has begun, as required by 441—subrule 41.24(5). If the person fails to schedule an appointment or fails to appear for an appointment, PROMISE JOBS shall send one written reminder that informs the person that those who do not develop a family investment agreement shall enter into a limited benefit plan. If the person fails to schedule an appointment within ten calendar days of the reminder letter or fails to appear for an appointment scheduled after the reminder is sent, the person shall enter into a limited benefit plan as described at 441—paragraph 41.24(8) “c.”~~

ITEM 4. Amend paragraph **93.4(6) “a”** as follows:

a. FIP applicants. An applicant's failure to develop or sign an FIA shall result in denial of the family's application for FIP assistance, as described at ~~441—paragraph 41.24(4) “c.”~~ 441—paragraphs 41.24(4) “a,” “b” and “c.”

ITEM 5. Amend subrule 93.6(2) as follows:

93.6(2) Individual job search. Individual job search shall be available to all participants for whom job club is not appropriate or not available, such as, but not limited to, participants, particularly those who have completed training or have recent ties with the workforce, have successfully removed or reduced barriers to work, or have completed job club or training and are now ready to work. The total period for each episode of individual job search shall not exceed 12 weeks or three calendar months. If after three calendar months the participant still has not found employment, the worker shall review the participant's situation for possible barriers to employment or possible need for training to increase the participant's employability. Job search may continue if appropriate, but linking with other activities should be considered.

a. Job search plan. In consultation with the PROMISE JOBS worker, the participant shall design and provide a written plan of the individual job search activities on Form 470-4481, Job Search Plan Agreement. The plan shall:

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(1) Contain a designated period for job search not to exceed five weeks ending on a Friday within the same calendar month and the specific methods for finding job openings.

(2) to (4) No change.

b. to d. No change.

ITEM 6. Amend paragraph **93.9(2)“b”** as follows:

b. ~~Aceptance~~ Inclusion of family development services by participants as a family investment agreement activity is voluntary except for unmarried parents aged 17 and younger who do not live with a parent or legal guardian as described at subparagraph 93.4(4)“c”(4).

ITEM 7. Amend paragraph **93.10(2)“c”** as follows:

c. *Documentation of job search.* The participant shall complete and provide documentation of any job search activities that cannot be ~~documented~~ verified by the PROMISE JOBS worker. The participant shall provide Form 470-3099, Job Search Record, within five working ten calendar days after the last working day of any week following the end of each month during which the participant has made a job search. The PROMISE JOBS worker shall consider the Job Search Record complete if the form includes:

(1) to (4) No change.

ITEM 8. Amend subrule 93.13(2) as follows:

93.13(2) Participation issues. Actions that may cause participants to be considered as having chosen the limited benefit plan when the participant does not have a problem or barrier to participation as defined at paragraph 93.4(5)“a” or rule 441—93.14(239B) are:

a. to h. No change.

i. *Employment and other work activity issues.* Participants who do not follow up on job referrals, who refuse offers of employment or other work activity, who reduce hours of employment or other work activity, who terminate employment or other work activity, or who are discharged from employment or other work activity due to misconduct.

(1) and (2) No change.

j. to n. No change.

ITEM 9. Amend subrule 93.14(1) as follows:

93.14(1) Problems leading to less than full participation. Problems affecting participation shall be considered to be of a temporary or incidental nature when the participation can easily be resumed. The following problems may provide good cause for participation of less than the full number of hours identified in the FIA. PROMISE JOBS may require the participant to provide verification of the problem or barrier as described at subrule 93.10(3):

a. to j. No change.

ITEM 10. Amend subrule 93.14(2) as follows:

93.14(2) Problems leading to refusing or quitting a job or limiting or reducing hours. The following problems may provide good cause for participation issues of refusing or quitting a job or limiting or reducing hours. PROMISE JOBS may require the participant to provide verification of the problem or barrier as described at subrule 93.10(3):

a. to n. No change.

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[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1147C

HUMAN SERVICES DEPARTMENT[441]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 239B.4, the Department of Human Services amends Chapter 47, "Diversion Initiatives," Iowa Administrative Code.

These amendments update language to match current practice. These amendments clarify:

- The designation of the Bureau of Refugee Services (BRS) as a distinct area, similar to that of an Iowa Workforce Development (IWD) area. This area designation will make family self-sufficiency grant (FSSG) payments more accessible for refugee clients served by BRS. BRS serves approximately 2 percent of the total population of PROMISE JOBS individuals.

- When overpayments for FSSG are allowable.
- The issuance of family self-sufficiency grant payments.
- The evaluation of family self-sufficiency grants.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0913C** on August 7, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 9, 2013.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 239B.4.

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 47, Division II preamble**, as follows:

DIVISION II
FAMILY SELF-SUFFICIENCY GRANTS PROGRAM

PREAMBLE

These rules define and structure the family self-sufficiency grants (FSSG) program provided through the PROMISE JOBS ~~service delivery regions~~ program. The purpose of the FSSG program is to provide immediate and short-term assistance to PROMISE JOBS participant families which will remove barriers related to obtaining or retaining employment. Removing the barriers to self-sufficiency might reduce the length of time a family is dependent on the family investment program (FIP). Family self-sufficiency grants shall be available for payment to families or on behalf of specific families.

ITEM 2. Amend rule 441—47.21(239B) as follows:

441—47.21(239B) Definitions.

"Appropriate responsible administrator" means:

1. For the bureau of refugee services (BRS), the administrator of the department service area with the oversight for the bureau of refugee services, or the administrator's designee.

2. For Iowa workforce development (IWD), the administrator of the department of workforce development's division of workforce development center administration, or the administrator's designee.

"Bureau of refugee services" or *"BRS"* means a unit of the department of human services that provides PROMISE JOBS services to refugees.

"Candidate" means anyone expressing an interest in the family self-sufficiency grants program.

"Department" means the Iowa department of human services.

"Department division administrator" means the administrator of the department of human services division of ~~financial, health and work supports~~ adult, children and family services, or the administrator's designee.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~“Department of workforce development” means the agency that develops and administers employment, placement and training services in Iowa, often referred to as Iowa workforce development, or IWD.~~

“Family” means “assistance unit” as defined at rule 441—40.21(239B).

“Family investment program” or “FIP” means the cash grant program provided by 441—Chapters 40 and 41, designed to sustain Iowa families.

“Family self-sufficiency grants” means the payments made to specific PROMISE JOBS participants, to vendors on behalf of specific PROMISE JOBS participants, or for services to specific PROMISE JOBS participants.

“Immediate, short-term assistance” means that assistance provided under this division shall be authorized upon determination of need and that it shall not occur on a regular basis.

~~“Iowa workforce development (IWD) division administrator” means the administrator of the department of workforce development’s division of workforce development center administration, or the administrator’s designee.~~

“Iowa workforce development (IWD)” means the agency that develops and administers employment, placement and training services in Iowa and is contracted by the department to administer PROMISE JOBS services statewide.

“Local plan for family self-sufficiency grants” means the written policies and procedures for administering the grants for families as set forth in the plan developed by the PROMISE JOBS IWD service delivery region area or BRS as described in rule 441—47.26(239B). ~~The local plan shall be approved by the Iowa workforce development division administrator.~~

“Participant” means anyone receiving assistance under this division.

“PROMISE JOBS agreement” means the agreement between the division of adult, children and family services and the division of field support regarding delivery of PROMISE JOBS services to refugees.

“PROMISE JOBS contract” means the agreement between the department and Iowa workforce development regarding delivery of PROMISE JOBS services.

“PROMISE JOBS participant” means any person receiving services through PROMISE JOBS. A PROMISE JOBS participant must be a member of an eligible FIP household.

~~“PROMISE JOBS IWD service delivery regions area” means the PROMISE JOBS service delivery entities which correspond to the 15 Iowa workforce development regions service delivery areas designated to provide PROMISE JOBS services.~~

“Promoting independence and self-sufficiency through employment, job opportunities, and basic skills (PROMISE JOBS) program” means the department’s work and training program as described in 441—Chapter 93.

ITEM 3. Amend rule 441—47.22(239B) as follows:

441—47.22(239B) Availability of the family self-sufficiency grants program. The family self-sufficiency grants program shall be available statewide in each of the 15 PROMISE JOBS service delivery regions. ~~Under the PROMISE JOBS contract, Iowa workforce development (IWD) shall allocate the funds available for authorization to each of the service delivery regions based on the allocation standards used for PROMISE JOBS service delivery purposes. The department actually retains the funds which are released through the PROMISE JOBS expense allowance authorization system.~~

47.22(1) The program shall be available for use by the IWD service delivery areas. Under the PROMISE JOBS contract, Iowa workforce development (IWD) shall allocate the funds available for authorization to each of the service delivery areas based on the allocation standards used for PROMISE JOBS service delivery purposes.

47.22(2) The program shall be available for use by the bureau of refugee services (BRS) for PROMISE JOBS participants who are refugees as delineated in the PROMISE JOBS agreement.

47.22(3) The division of funds between IWD and BRS will be negotiated based on the number of PROMISE JOBS families receiving services from each agency and history of use.

HUMAN SERVICES DEPARTMENT[441](cont'd)

47.22(4) The department retains the funds which are released through the PROMISE JOBS expense allowance authorization system.

ITEM 4. Amend subrule 47.24(2) as follows:

47.24(2) ~~Types of assistance. Family self-sufficiency grants are PROMISE JOBS benefits and shall be authorized through the PROMISE JOBS expense allowance system. The PROMISE JOBS service delivery region~~ The department, in conjunction with IWD and BRS, shall have discretion to determine those barriers to self-sufficiency which can be considered for family self-sufficiency grants such as, but not limited to, auto maintenance or repair, licensing fees, child care, and referral to other resources, including those necessary to address questions of domestic violence. Warrants may be issued to the participants, to a vendor, or for support services provided to the family. The PROMISE JOBS service delivery region shall have discretion in determining method of payment in each case, based on circumstances and needs of the family. The IWD service delivery areas and BRS shall have the opportunity to adjust the list of approvable barriers to self-sufficiency based on local resources and circumstances. These adjustments shall be approved by the division administrator and the appropriate responsible administrator prior to implementation.

ITEM 5. Adopt the following **new** subrule 47.24(7):

47.24(7) *Issuing payments.* Family self-sufficiency grants are PROMISE JOBS benefits and shall be authorized through the PROMISE JOBS expense allowance system. Warrants may be issued to the participants or to a vendor for support services provided to the family. The division administrator in conjunction with the appropriate responsible administrator shall have discretion in determining method of payment. The IWD service delivery area or BRS shall have the opportunity to adjust these payment options in an individual case based on circumstances and needs of the family with the approval of the division administrator and the appropriate responsible administrator prior to implementation.

ITEM 6. Amend subrule 47.25(1) as follows:

47.25(1) *Application elements.* ~~Each PROMISE JOBS IWD service delivery region area shall establish an use the established application form to be completed by the PROMISE JOBS participant and the PROMISE JOBS worker when the participant asks to be a candidate for a family self-sufficiency grant. The application form shall contain the following elements:~~

- a. An explanation of family self-sufficiency grants and the expectations of the program.
- b. Identification of the family and the person representing the family.
- c. A clear description of the barrier to self-sufficiency to be considered.
- d. Demonstration of how removing the barrier is related to retaining or obtaining employment, meeting the criteria from rule 441—47.24(239B).
- e. Demonstration of why the other department, PROMISE JOBS, or community resources cannot deal with the barrier to self-sufficiency.
- f. Anticipated cost of removing the barrier to self-sufficiency.

ITEM 7. Amend rule 441—47.26(239B) as follows:

441—47.26(239B) Approved local plans for family self-sufficiency grants. ~~Each PROMISE JOBS IWD service delivery region area shall create and provide to IWD their~~ the written policies and procedures for administering family self-sufficiency grants. BRS shall create and provide to the department the written policy and procedures for administering family self-sufficiency grants. The plan shall be reviewed for required elements and quality of service to ensure that it meets the purpose of the program and approved by the department division administrator and the IWD division administrator. The written policies and procedures shall be available to the public at county offices, PROMISE JOBS offices, and at IWD. At a minimum, these policies and procedures shall contain or address the following:

47.26(1) *A plan overview.* The plan overview shall contain a general description detailing:

- a. Any types of services or assistance which will be excluded from consideration for family self-sufficiency grants ~~in by the PROMISE JOBS IWD service delivery region area or BRS.~~
- b. How determinations will be made that the service or assistance requested meets the program's objective of helping the family retain employment or obtain employment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

c. How determinations will be made that the proposed family self-sufficiency grant is not supplanting as required at subrule 47.24(5).

d. Services established and any maximum (and minimum, if any) values of payments of the services established by the ~~PROMISE JOBS IWD~~ service delivery region area or BRS.

e. Verification procedures or standards for documenting barriers, using written notification policies found at 441—subrule 93.10(1).

~~*f.* The design of the application form.~~

~~*g.* *f.* Verification procedures or standards for documenting employment attempts if not already tracked by PROMISE JOBS procedures, using policies found at rule 441—93.10(239B).~~

~~*h.* *g.* How applications will be processed timely to address barriers to obtaining or retaining employment.~~

~~*i.* *h.* Follow-up procedures on participant effort.~~

~~*j.* *i.* Procedures for tracking of family self-sufficiency grant authorizations in order to stay within service delivery region allocation the amount allocated.~~

~~*k.* *j.* How staff will be trained to administer the program.~~

47.26(2) Intake and eligibility determination. The policies and procedures shall describe:

a. How families most likely to benefit from self-sufficiency grant assistance are identified.

b. How families can apply for self-sufficiency grant assistance.

c. How families will be informed of the availability of self-sufficiency grant assistance, its voluntary nature, and how the program works.

~~*d.* How county offices and PROMISE JOBS offices will maintain, provide to pilot participants, and otherwise make available, written policies and procedures describing the project.~~

~~*e.* Which PROMISE JOBS staff shall make decisions regarding identification of barriers and candidate eligibility for payment and what sign-off or approval is required before a payment is authorized.~~

~~**47.26(3) A plan for evaluation of family self-sufficiency grants.** The evaluation plan shall:~~

~~*a.* Describe tracking procedures.~~

~~*b.* Describe the plan for evaluation (e.g., what elements will be used to create significant data regarding outcomes).~~

~~*c.* Describe how measurable results will be determined.~~

~~*d.* Identify any support needed to conduct an evaluation (e.g., what assistance is needed from department and IWD).~~

~~*e.* Describe which aspects of the project were successful and which were not.~~

ITEM 8. Adopt the following **new** rule 441—47.27(239B):

441—47.27(239B) Evaluation of family self-sufficiency grants. The department, in conjunction with IWD and BRS, shall develop an evaluation plan. The evaluation plan shall:

1. Describe tracking procedures.

2. Describe the plan for evaluation (e.g., what elements will be used to create significant data regarding outcomes).

3. Describe how measurable results will be determined.

4. Identify any support needed to conduct an evaluation (e.g., what assistance is needed from the department and IWD).

5. Describe which aspects of the project were successful and which were not.

ITEM 9. Adopt the following **new** rule 441—47.28(239B):

441—47.28(239B) Recovery of FSSG overpayments. An overpayment exists when an item(s) for which the funds were awarded was not purchased, a duplicate payment was issued or when, according to receipts, the item(s) purchased costs less than the funds received. For purposes of overpayment and

HUMAN SERVICES DEPARTMENT[441](cont'd)

recovery, an FSSG payment is considered a PROMISE JOBS expense payment and is subject to rule 441—93.12(239B), recovery of PROMISE JOBS expense payments.

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ARC 1148C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6(4), the Department of Human Services amends Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

These amendments reflect approval of an extension of a demonstration project by the Food and Nutrition Service (FNS) to allow for a standard medical expense deduction to Food Assistance households eligible to claim medical expenses as a deduction. To attain cost neutrality as necessary, the calculation of the standard utility allowances for both households with heating or air-conditioning expenses and households with only other utility expenses is amended. Originally, a \$4 decrease to each standard utility allowance (SUA) was necessary. With more households choosing the standard utility allowance, Iowa must account for greater savings. Decreasing the SUAs by an additional dollar is a condition of approval for the extension.

These amendments ensure that the Department is compliant with the terms of the extension approval. With increasing numbers of households using the standard medical deduction, the additional savings resulting from lower SUA amounts is necessary to achieve the required cost neutrality.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0916C** on August 7, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 9, 2013.

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

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

These amendments are intended to implement Iowa Code section 234.12.

These amendments will become effective on January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend paragraph **65.8(1)“b”** as follows:

b. Effective October 1, ~~2007~~ 2013, ~~two~~ five dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction. ~~Effective October 1, 2008, an additional two dollars, for a total of four dollars, will be subtracted from this amount to achieve continued cost neutrality.~~

ITEM 2. Amend paragraph **65.8(5)“b”** as follows:

b. Effective October 1, ~~2007~~ 2013, ~~two~~ five dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction. ~~Effective October 1, 2008, an additional two dollars, for a total of four dollars, will be subtracted from this amount to achieve continued cost neutrality.~~

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ARC 1149C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

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

These amendments will delete child care licensure from the list of Medicaid provider qualifications for enrollment.

The Department currently allows various qualifications for enrollment of providers of respite and interim medical monitoring and treatment (IMMT) in Medicaid. One of the qualifications for providers of respite or IMMT services was an optional requirement for licensure as a child care provider. Most providers of respite and IMMT that use this qualification for enrollment in the Medicaid program are not actively providing child care, making the licensure inconsistent with its use as a requirement. These amendments clarify respite and IMMT provider qualifications so that licensure for respite and IMMT is consistent with the type of services provided. These amendments allow for a revision of the type of licensure, certification, and accreditation required for providers of respite and IMMT that more closely aligns with the type of services provided.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0911C** on August 7, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

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

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend paragraph **77.30(5)"a"** as follows:

a. The following agencies may provide respite services:

(1) to (8) No change.

~~(9) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(10) (9) Assisted living programs certified by the department of inspections and appeals.~~

ITEM 2. Amend paragraph **77.30(8)"a"** as follows:

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

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

~~(2) Rescinded IAB 9/1/04, effective 11/1/04.~~

~~(3) Rescinded IAB 9/1/04, effective 11/1/04.~~

(4) (1) Home health agencies certified to participate in the Medicare program.

~~(5) (2) Supported community living providers certified according to subrule 77.37(14) or 77.39(13).~~

ITEM 3. Amend paragraph **77.34(5)"a"** as follows:

a. The following agencies may provide respite services:

(1) to (7) No change.

~~(8) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

(9) (8) Assisted living programs certified by the department of inspections and appeals.

ITEM 4. Amend paragraph **77.37(15)"a"** as follows:

a. The following agencies may provide respite services:

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(1) to (8) No change.

~~(9) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(10) (9)~~ Assisted living programs certified by the department of inspections and appeals.

ITEM 5. Amend paragraph **77.37(22)“a”** as follows:

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

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

~~(2) Rescinded IAB 9/1/04, effective 11/1/04.~~

~~(3) Rescinded IAB 9/1/04, effective 11/1/04.~~

(4) (1) Home health agencies certified to participate in the Medicare program.

~~(5) (2)~~ Supported community living providers certified according to subrule 77.37(14) or 77.39(13).

ITEM 6. Amend paragraph **77.39(14)“a”** as follows:

a. The following agencies may provide respite services:

(1) to (9) No change.

~~(10) Child care facilities, which are defined as child care centers, preschools, or child development homes registered pursuant to 441—Chapter 110.~~

~~(11) (10)~~ Assisted living programs certified by the department of inspections and appeals.

ITEM 7. Amend paragraph **77.39(25)“a”** as follows:

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

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

~~(2) Rescinded IAB 9/1/04, effective 11/1/04.~~

~~(3) Rescinded IAB 9/1/04, effective 11/1/04.~~

(4) (1) Home health agencies certified to participate in the Medicare program.

~~(5) (2)~~ Supported community living providers certified according to subrule 77.37(14) or 77.39(13).

ITEM 8. Amend paragraph **77.46(5)“a”** as follows:

a. *Qualified providers.* The following agencies may provide respite services under the children's mental health waiver:

(1) and (2) No change.

~~(3) Child care centers licensed in good standing by the department according to 441—Chapter 109 and child development homes registered according to 441—Chapter 110.~~

(4) (3) Camps certified in good standing by the American Camping Association.

~~(5) (4)~~ Home health agencies that are certified in good standing to participate in the Medicare program.

~~(6) (5)~~ Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

~~(7) (6)~~ Adult day care providers that are certified in good standing by the department of inspections and appeals as being in compliance with the standards for adult day services programs at 481—Chapter 70.

~~(8) (7)~~ Assisted living programs certified in good standing by the department of inspections and appeals.

~~(9) (8)~~ Residential care facilities for persons with mental retardation licensed in good standing by the department of inspections and appeals.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(10)~~ (9) Nursing facilities, intermediate care facilities for the mentally retarded, and hospitals enrolled as providers in the Iowa Medicaid program.

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ARC 1151C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments allow, with prior authorization, direct, separate payment for customized wheelchairs needed by members who are residents of nursing facilities.

The Department received a formal petition for adoption of a rule, pursuant to Iowa Code section 17A.19, from a Medicaid member who resides in a nursing facility and had been denied a prescribed wheelchair by his facility and whose request to the Department for an exception to policy had also been denied. The petition requested adoption of a rule allowing for direct, separate payment for customized wheelchairs needed by members who are residents of nursing facilities.

Under current policy, nursing facilities are required to provide any wheelchair, customized or not, needed by a Medicaid resident, regardless of cost, which can be \$12,000 to more than \$15,000 in the case of customized wheelchairs. The cost is to be included as an expense on the facility's cost report, and the facility's reported costs are considered in setting future Medicaid reimbursement rates for the facility. However, the cost of a wheelchair is not immediately reflected in the facility's Medicaid reimbursement rate and may never be fully reflected in a facility's rate due to the caps on the cost-based nursing facility rates. Therefore, providing a customized wheelchair can be a financial hardship for a facility.

Because the cost of some customized wheelchairs is a financial hardship for some facilities, the Department has granted exceptions to policy in order to provide for direct, separate payment for customized wheelchairs in such cases. The petition for rule making indicated that 57 percent of requests for such exceptions had been granted from June 2003 until April 2012, based on a sample. For calendar year 2012, the Department's records show 15 such requests, 8 of which (or 53 percent) were granted. The exception to policy process is administratively inefficient for the Department, may not be known by or pursued by all nursing facility residents who need customized wheelchairs, and is inequitable both to the nursing facilities that do incur the cost of customized wheelchairs and to the nursing facility residents denied exceptions because the Department concludes that their nursing facilities can afford a customized wheelchair.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0920C** on August 7, 2013.

The Department received one comment from one respondent on these amendments.

The respondent stated that the term "customized" found in paragraph 78.10(2)"a"(4)"2" could be misread as requiring that the wheelchair must be both customized and designed to the individual. The respondent recommended that the Department drop the term "customized" in that particular paragraph to improve clarity of the intent. The Department agreed to the proposed change and has removed the word "customized" from the paragraph. No other changes from the Notice have been made.

The Council on Human Services adopted these amendments on October 9, 2013.

These amendments do not contain waiver provisions because the amendments confer a benefit by allowing direct, separate payment for customized wheelchairs needed by Medicaid members who are residents of nursing homes. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

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

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 78.10(2) as follows:

78.10(2) Durable medical equipment. DME is equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, and is appropriate for use in the home.

a. Durable medical equipment provided in a hospital, nursing facility, or intermediate care facility for persons with an intellectual disability is not separately payable.

EXCEPTIONS:

(1) to (3) No change.

(4) Medicaid will provide separate payment for customized wheelchairs for members who are residents of nursing facilities, subject to the following:

1. The member's condition must necessitate regular use of a wheelchair on a long-term basis to enable independent mobility within the facility.

2. The member must require a wheelchair that is designed, assembled, modified, or constructed for the specific individual, in whole or in part, based on the individual's condition, measurements, and needs.

3. Prior authorization pursuant to rule 441—79.8(249A) is required.

b. and c. No change.

ITEM 2. Adopt the following **new** paragraph **78.10(5)“o”**:

o. Customized wheelchairs for members who are residents of nursing facilities, subject to the requirements of 78.10(2)“a”(4).

ITEM 3. Adopt the following **new** paragraph **78.28(1)“r”**:

r. Customized wheelchairs for members who are residents of nursing facilities, subject to the requirements of 78.10(2)“a”(4).

ITEM 4. Amend subrule 81.10(5) as follows:

81.10(5) Supplementation. Only the amount of client participation may be billed to the resident for the cost of care, and the facility must accept the combination of client participation and payment made through the Iowa Medicaid program as payment in full for the care of a resident. No additional charges shall be made to residents or family members for any supplies or services required in the facility-developed plan of care for the resident.

Residents may choose to spend their personal funds on items of personal care such as professional beauty or barber services, but the facility shall not require this expenditure and shall not routinely obligate residents to any use of their personal funds.

a. Supplies or services ~~which~~ that the facility shall provide:

(1) Nursing services, social work services, activity programs, individual and group therapy, rehabilitation or habilitation programs provided by facility staff in order to carry out the plan of care for the resident.

(2) Services related to the nutrition, comfort, cleanliness and grooming of a resident as required under state licensure and Medicaid survey regulations.

(3) Medical equipment and supplies including wheelchairs except for customized wheelchairs for which separate payment may be made pursuant to 441—subparagraph 78.10(2)“a”(4), medical supplies except for those listed in 441—paragraph 78.10(4)“b,” oxygen except under circumstances specified in 441—paragraph 78.10(2)“a,” and other items required in the facility-developed plan of care.

(4) Nonprescription drugs ordered by the physician except for those specified in 441—paragraph 78.1(2)“f.”

(5) Fees charged by medical professionals for services requested by the facility ~~which~~ that do not meet criteria for direct Medicaid payment.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- b.* No change.
- c.* The Medicaid program will provide direct payment to relieve the facility of payment responsibility for certain medical equipment and services ~~which~~ that meet the Medicare definition of medical necessity and are provided by vendors enrolled in the Medicaid programs including:
- (1) Physician services.
 - (2) Ambulance services.
 - (3) Hospital services.
 - (4) Hearing aids, braces and prosthetic devices.
 - (5) Therapy services.
 - (6) Customized wheelchairs for which separate payment may be made pursuant to 441—subparagraph 78.10(2) “a”(4).
- d.* Other supplies or services for which direct Medicaid payment may be available include:
- (1) Drugs covered pursuant to 441—subrule 78.1(2).
 - (2) Dental services.
 - (3) Optician and optometrist services.
 - (4) Repair of medical equipment and appliances ~~which~~ that belong to the resident.
 - (5) Transportation to receive medical services beyond 30 miles from the facility (one way), through the broker designated by the department pursuant to a contract between the department and the broker.
 - (6) Other medical services specified in 441—Chapter 78.
- e.* No change.
- f.* Any medical equipment, supplies, appliances, or devices, personal care items, drugs, or other items of personal property that are paid for directly by the Medicaid program or are paid for by the resident or the resident’s family, on a nonrental basis, are the personal property of the resident.

[Filed 10/10/13, effective 1/1/14]

[Published 10/30/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1150C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment provides additional disproportionate share (DSH) payments to qualifying hospitals. The amendment at issue involves payment of additional DSH payments to rural prospective payment (PPS) hospitals that are not designated as critical access hospitals (CAHs) and that otherwise qualify to receive DSH payments. The source of the funds for the required nonfederal share payments must be generated from tax levy collections of a city and/or county in which the hospital is located and otherwise subject to applicable federal law and regulations regarding DSH payments.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0918C** on August 7, 2013. The Department received no comments on the proposed amendment during the comment period. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on October 9, 2013.

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

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

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

This amendment will become effective January 1, 2014.

The following amendment is adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Adopt the following **new** paragraph **79.1(5)“ac”**:

ac. Rural hospital disproportionate share payment. In addition to payments from the graduate medical education and disproportionate share fund made pursuant to paragraph 79.1(5)“y,” payment shall be made to qualifying Iowa hospitals that elect to participate in rural hospital disproportionate share payments. Interim monthly payments will be made based on the amount of state share that is transferred to the department.

(1) Qualifying criteria. A hospital that qualifies for disproportionate share payments pursuant to paragraph 79.1(5)“y” and that is a rural prospective payment hospital not designated as a critical access hospital qualifies for rural hospital disproportionate share payments.

(2) Source of nonfederal share. The required nonfederal share shall be funds generated from tax levy collections of the county or city in which the hospital is located, and is subject to the conditions specified in this subparagraph and applicable federal law and regulations.

1. The nonfederal share funds shall be distributed to the department prior to the issuance of any disproportionate share payment to a qualifying hospital.

2. The city or county providing the nonfederal share funds shall annually document and certify that the funds provided as the nonfederal share were generated from tax proceeds, and not from any other source including federal grants or another federal funding source.

3. The applicable federal matching rate for the fiscal year shall apply.

(3) Amount of payment. The total amount of disproportionate share payments made pursuant to paragraph 79.1(5)“y” and the rural hospital disproportionate share payments shall not exceed the amount of the state’s allotment under Public Law 102-234. In addition, the total amount of all disproportionate share payments shall not exceed the hospital-specific disproportionate share limits under Public Law 103-666.

(4) Final disproportionate share adjustment. Qualifying hospitals shall annually provide a disproportionate share hospital survey within the time frames specified by the department, for the purpose of calculating the hospital-specific disproportionate share limits under Public Law 103-666.

[Filed 10/10/13, effective 1/1/14]

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ARC 1152C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 129, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

The Legislature rescinded the requirement that the Department adjust payments for physician services rendered in facility settings, consistent with similar policy/methodology used under the federal Medicare program. The Department understands that the intent was to eliminate the adjustments applied to any physician services rendered in facility settings pursuant to paragraph 79.1(7)“b” adopted in 2011. Therefore, that paragraph is being rescinded.

Pursuant to the legislative intent to remove the site-of-service (SoS) payment adjustments beginning with state fiscal year 2014 (i.e., beginning July 1, 2013), the Iowa Medicaid Enterprise (IME) submitted a state plan amendment (SPA) with an effective date of July 1, 2013, to remove the SoS payment adjustments, and approval from the Centers for Medicare and Medicaid Services (CMS) has been received.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0910C** on August 7, 2013. The Department received no comments during the comment period. This amendment is identical to that published under Notice of Intended Action.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Council on Human Services adopted this amendment on October 9, 2013.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

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

This amendment will become effective January 1, 2014.

The following amendment is adopted.

Amend subrule 79.1(7) as follows:

79.1(7) Physicians.

a. No change.

b. ~~Payment reduction for services rendered in facility settings. The fee schedule amount paid to physicians based on paragraph 79.1(7) "a" shall be reduced by an adjustment factor as determined by the department. For the purpose of this provision, a "facility" place of service (POS) is defined as any of the following:~~

- ~~(1) Hospital inpatient unit (POS 21).~~
- ~~(2) Hospital outpatient unit (POS 22).~~
- ~~(3) Hospital emergency room (POS 23).~~
- ~~(4) Ambulatory surgical center (POS 24).~~
- ~~(5) Skilled nursing facility (POS 31).~~
- ~~(6) Inpatient psychiatric facility (POS 51).~~
- ~~(7) Community mental health center (POS 53).~~
- ~~(8) Comprehensive inpatient rehabilitation (POS 61).~~

c. No change.

[Filed 10/10/13, effective 1/1/14]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1154C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

Provisions regarding additional payment for Medicare crossover claims were originally adopted in anticipation of approval by the Centers for Medicare and Medicaid Services (CMS). The provisions are rescinded in this amendment because CMS did not approve the state plan amendment (SPA), and as a result, the provisions were never implemented. In light of this, paragraphs "c" and "d" of subrule 79.1(22) are rescinded, as they are not applicable without federal SPA approval.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0919C** on August 7, 2013. The Department received no comments during the comment period. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on October 9, 2013.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). After analysis and review of this rule making, no impact on jobs has been found.

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

This amendment will become effective January 1, 2014.

The following amendment is adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule 79.1(22) as follows:

79.1(22) Medicare crossover claims for inpatient and outpatient hospital services. Subject to approval of a state plan amendment by the federal Centers for Medicare and Medicaid Services, payment for crossover claims shall be made as follows.

a. and b. No change.

~~*c.*—Additional Medicaid payment for crossover claims uncollectible from Medicare. Medicaid shall reimburse hospitals for the portion of crossover claims not covered by Medicaid reimbursement pursuant to paragraph “b” and not reimbursable by Medicare as an allowable bad debt pursuant to 42 CFR 413.80, as amended June 13, 2001, up to a limit of 30 percent of the amount not paid by Medicaid pursuant to paragraph “b.” The department shall calculate these amounts for each provider on a calendar-year basis and make payment for these amounts by March 31 of each year for the preceding calendar year.~~

~~*d.*—Application of savings. Savings in Medicaid reimbursements attributable to the limits on inpatient and outpatient crossover claims established by this subrule shall be used to pay costs associated with development and implementation of this subrule before reversion to Medicaid.~~

[Filed 10/10/13, effective 1/1/14]

[Published 10/30/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1155C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

These amendments clarify the Department’s policies regarding sanctions in the Medicaid program and add detailed descriptions of actions that will cause sanctions to be imposed. The amendments also implement 2013 Iowa Acts, Senate File 357. These amendments are intended to clarify that certain Medicaid debts are nondischargeable in bankruptcy proceedings, in accordance with 11 U.S.C. § 523(a)(4). These amendments clarify when medical assistance is incorrectly paid to families caring for family members. Finally, these amendments clarify the Department’s timely filing policies for claims under Chapter 80.

The Department’s sanction rules are outdated and do not contain the specificity and detail to allow the Department to fully address the current climate of Medicaid provider fraud, waste, and abuse activities. The landscape of Medicaid fraud, waste and abuse has changed and continues to evolve. These amendments clarify current policy regarding certain bad debts and handling of claims at the Iowa Medicaid Enterprise (IME).

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0912C** on August 7, 2013.

The Department received no comments from the public during the comment period. However, the Medical Assistance Advisory Council (MAAC) and the Iowa Hospital Association reviewed the proposed amendments and provided a number of technical wording changes, specifically in subrules 79.2(1) to 79.2(6), 79.2(10), 79.4(2), and 79.9(7), to improve the clarity and intent of the rules.

The Council on Human Services adopted these amendments on October 9, 2013.

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

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

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

These amendments will become effective January 1, 2014.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendments are adopted.

ITEM 1. Amend rule 441—79.2(249A) as follows:

441—79.2(249A) Sanctions against provider of care. ~~The department reserves the right to impose sanctions against any practitioner or provider of care who has violated the requirements for participation in the medical assistance program.~~

79.2(1) Definitions.

“Affiliates” means persons having an overt or covert relationship such that any one of them directly or indirectly controls or influences or has the power to control or influence another.

“Iowa Medicaid enterprise” means the entity comprised of department staff and contractors responsible for the management and reimbursement of Medicaid services for the benefit of Medicaid members.

“Person” means any ~~natural person,~~ individual human being or any company, firm, association, corporation, institution, or other legal entity. *“Person”* includes but is not limited to a provider and any affiliate of a provider.

“Probation” means a specified period of conditional participation in the medical assistance program.

“Provider” means an individual human being, firm, corporation, association, ~~or institution, or other legal entity,~~ which is providing or has been approved to provide medical assistance to a recipient member pursuant to the state medical assistance program.

“Suspension from participation” means an exclusion from participation for a specified period of time.

“Suspension of payments” means the ~~withholding~~ temporary cessation of all payments due a provider person until the resolution of the matter in dispute between the provider person and the department.

“Termination from participation” means a permanent exclusion from participation in the medical assistance program.

“Withholding of payments” means a reduction or adjustment of the amounts paid to a provider person on pending and subsequently submitted bills for purposes of offsetting overpayments previously made to the provider a person.

79.2(2) Grounds for sanctioning providers sanctions. ~~Sanctions may be imposed by the department against a provider for any one or more of the following reasons:~~ The department may impose sanctions against any person when appropriate. Appropriate grounds for the department to impose sanctions include, but are not limited to, the following:

a. Presenting or causing to be presented for payment any false, intentionally misleading, or fraudulent claim for services or merchandise.

b. Submitting or causing to be submitted false, intentionally misleading, or fraudulent information for the purpose of obtaining greater compensation than that to which the provider person is legally entitled, including charges in excess of usual and customary charges.

c. Submitting or causing to be submitted false, intentionally misleading, or fraudulent information for the purpose of meeting prior authorization or level of care requirements.

d. ~~Failure~~ Upon lawful demand, failing to disclose or make available to the department or its, the department’s authorized agent, any law enforcement or peace officer, any agent of the department of inspections and appeals’ Medicaid fraud control unit, any agent of the auditor of state, the Iowa department of justice, any false claims investigator as defined under Iowa Code chapter 685, or any other duly authorized federal or state agent or agency records of services provided to medical assistance recipients and members or records of payments made for those services.

e. ~~Failure~~ Failing to provide and or maintain the quality of services, or a requisite assurance of a framework of quality services to medical assistance recipients within accepted medical community standards as adjudged by professional peers if applicable. For purposes of this subrule, “quality services” means services provided in accordance with the applicable rules and regulations governing the services.

f. ~~Engaging in a course of conduct or performing an act which is in violation of state or federal regulations of the medical assistance program, or continuing that conduct following notification that it should cease~~ any federal, state, or local statute, rule, regulation, or ordinance, or an applicable contractual

HUMAN SERVICES DEPARTMENT[441](cont'd)

provision, that relates to, or arises out of, any publicly or privately funded health care program, including but not limited to any state medical assistance program.

~~g. Failure to comply with the terms of the provider certification on each medical assistance check endorsement.~~ Submitting a false, intentionally misleading, or fraudulent certification or statement, whether the certification or statement is explicit or implied, to the department or the department's representative or to any other publicly or privately funded health care program.

~~h. Overutilization of the medical assistance program by inducing, furnishing or otherwise causing the recipient a member to receive services or merchandise not required or requested by the recipient.~~

~~i. Rebating or accepting a fee or portion of a fee or a charge for medical assistance patient referral.~~

~~j. i. Violating any provision of Iowa Code chapter 249A, or any rule promulgated pursuant thereto, or violating any federal or state false claims Act, including but not limited to Iowa Code chapter 685.~~

~~k. j. Submission of a~~ Submitting or causing to be submitted false, intentionally misleading, or fraudulent information in an application for provider status under the medical assistance program or any quality review or other submission required to maintain good standing in the program.

~~l. k. Violations of any laws, regulations~~ Violating any law, regulation, or code of ethics governing the conduct of occupations or professions or regulated industries an occupation, profession, or other regulated business activity, when the violation relates to, or arises out of, the delivery of services under the state medical assistance program.

~~m. l. Conviction of a criminal offense relating to performance of a provider agreement with the state or for negligent practice resulting in death or injury to patients.~~ Breaching any settlement or similar agreement with the department.

~~n. m. Failure~~ Failing to meet standards required by state or federal law for participation, for example, including but not limited to licensure.

~~o. n. Exclusion from Medicare because of fraudulent or abusive practices or any other state or federally funded medical assistance program.~~

~~p. o. Documented practice of~~ Except as authorized by law, charging recipients a person for covered services over and above that paid for by what the department, except as authorized by law paid or would pay or soliciting, offering, or receiving a kickback, bribe, or rebate, or accepting or rebating a fee or a charge for medical assistance or patient referral, or a portion thereof. This ground does not include the collection of a copayment or deductible if otherwise allowed by law.

~~q. p. Failure~~ Failing to correct deficiencies a deficiency in provider operations after receiving notice of these deficiencies the deficiency from the department or other federal or state agency.

~~r. q. Formal reprimand or censure by an association of the provider's peers for unethical practices or similar entity related to professional conduct.~~

~~s. r. Suspension or termination~~ for cause from participation in another governmental medical program such as workers' compensation, crippled children's services, rehabilitation services or Medicare, including but not limited to workers' compensation or any publicly or privately funded health care program.

~~t. s. Indictment or other institution of criminal charges for fraudulent billing practices, or plea of guilty or nolo contendere to, or conviction of, any crime punishable by a term of imprisonment greater than one year, any crime of violence, any controlled substance offense, or any crime involving an allegation of dishonesty or negligent practice resulting in death or injury to the a provider's patients patient.~~

~~u. t. Violation of a condition of probation, suspension of payments, or other sanction.~~

~~v. u. Loss, restriction, or lack of hospital privileges for cause.~~

~~w. v. Negligent, reckless, or intentional endangerment of the health, welfare, or safety of a person.~~

~~x. w. Billing for services provided by an excluded, nonenrolled, sanctioned, or otherwise ineligible provider or person.~~

~~y. x. Failing to submit a self-assessment, corrective action plan, or other requirement for continued participation in the medical assistance program, or failing to repay an overpayment of medical assistance funds, in a timely manner, as set forth in a rule or other order.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

y. Attempting, aiding or abetting, conspiring, or knowingly advising or encouraging another person in the commission of one or more of the grounds specified herein.

~~79.2(3) Sanctions. The following sanctions may be imposed on providers based on the grounds specified in 79.2(2):~~

- a. The department may impose any of the following sanctions on any person:
- ~~a. (1) A term of probation for participation in the medical assistance program.~~
 - ~~b. (2) Termination from participation in the medical assistance program.~~
 - ~~c. (3) Suspension from participation in the medical assistance program. This includes when the department is notified by the Centers for Medicare and Medicaid Services, Department of Health and Human Services, that a practitioner has been suspended from participation under the Medicare program. These practitioners shall be suspended from participation in the medical assistance program effective on the date established by the Centers for Medicare and Medicaid Services and at least for the period of time of the Medicare suspension.~~
 - ~~d. (4) Suspension or withholding of payments to provider in whole or in part.~~
 - ~~e. Referral to peer review.~~
 - ~~f. (5) Prior authorization of services.~~
 - ~~g. (6) One hundred percent review Review of the provider's claims prior to payment.~~
 - ~~h. Referral to the state licensing board for investigation.~~
 - ~~i. Referral to appropriate federal or state legal authorities for investigation and prosecution under applicable federal or state laws.~~
 - ~~j. Providers with a total Medicaid credit balance of more than \$500 for more than 60 consecutive days without repaying or reaching written agreement to repay the balance shall be charged interest at 10 percent per year on each overpayment. The interest shall begin to accrue retroactively to the first full month that the provider had a credit balance over \$500.~~

~~Nursing facilities shall make repayment or reach agreement with the division of medical services. All other providers shall make repayment or reach agreement with the Iowa Medicaid enterprise.~~

b. The withholding of payments or a recoupment of medical assistance funds is not, in itself, a sanction. Overpayments and interest charged may be withheld from future payments to the provider without imposing a sanction.

c. Mandatory suspensions and terminations.

(1) Suspension or termination from participation in the medical assistance program is mandatory when a person is suspended or terminated from participation in the Medicare program, another state's medical assistance program, or by any licensing body. The suspension or termination from participation in the medical assistance program shall be retroactive to the date established by the Centers for Medicare and Medicaid Services or other state or body and, in the case of a suspension, must continue until at least such time as the Medicare or other state's or body's suspension ends.

(2) Termination is mandatory when a person pleads guilty or nolo contendere to, or is convicted of, any crime punishable by a term of imprisonment greater than five years, any crime of violence, any controlled substance offense, or any crime involving an allegation of dishonesty. Termination is also mandatory upon entry of final judgment, in the Iowa district court or a federal district court of the United States, of liability of the person in a false claims action.

(3) Suspension from participation is mandatory whenever a person, or an affiliate of the person, has an outstanding overpayment of medical assistance funds, as defined in Iowa Code chapter 249A.

d. Notwithstanding any previous successful enrollment in the medical assistance program, the person's passing of any background check by the department or any other entity, or similar prior approval for participation as a provider in the medical assistance program, in whole or in part, termination from the medical assistance program is mandatory when, in the case of a natural person, the person has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry or, in the case of a corporation or similar entity, 5 percent or more of the corporation or similar entity is owned by a person who has within the last five years been listed on any dependent adult abuse registry, child abuse registry, or sex offender registry.

HUMAN SERVICES DEPARTMENT[441](cont'd)

79.2(4) Imposition and extent of sanction.

~~a. The decision on the sanction to be imposed shall be the commissioner's or designated representative's except in the case of a provider terminated from the Medicare program.~~

~~b. a. The following factors shall be considered~~ department shall consider the totality of the circumstances in determining the sanction or sanctions to be imposed. The factors the department may consider include, but are not limited to:

- (1) Seriousness of the offense.
- (2) Extent of violations.
- (3) History of prior violations.
- (4) Prior imposition of sanctions.
- (5) Prior provision of provider education (technical assistance).
- (6) Provider willingness to obey program rules.
- (7) Whether a lesser sanction will be sufficient to remedy the problem.
- (8) Actions taken or recommended by peer review groups or licensing boards.

~~b. A ground for sanction may precede enrollment in the medical assistance program, the person's passing of a background check, or similar prior approval for participation as a provider in the medical assistance program. The mere fact of an enrollment, a person's passing of a background check, or another approval is not relevant to the sanction decision.~~

~~c. Upon certification from the U.S. Department of Justice or the Iowa department of justice that a provider has failed to respond to a civil investigative demand in a timely manner as set forth in Iowa Code chapter 685 and the demand itself, the department shall immediately suspend the provider from participation for one year and suspend all payments to the provider. The suspension and payment suspension shall end upon certification that the provider has responded to the demand in full.~~

79.2(5) Scope of sanction.

~~a. The sanction may be applied to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The violation, failure, or inadequacy of performance may be imputed to a person with whom the violator is affiliated where the conduct was accomplished in the course of official duty or was effectuated with the knowledge or approval of that person.~~

~~b. a. Suspension or termination from participation shall preclude the provider person from submitting claims for payment, whether personally or through claims submitted by any clinic, group, corporation, or other association~~ other person or affiliate, for any services or supplies except for those services provided before the suspension or termination.

~~e. b. No clinic, group, corporation, or other association which is the provider of services shall person may submit claims for payment for any services or supplies provided by a person within the organization or affiliate who has been suspended or terminated from participation in the medical assistance program except for those services provided before the suspension or termination.~~

~~d. c. When the provisions of paragraph 79.2(5) "e" this subrule are violated by a provider of services which is a clinic, group, corporation, or other association, the department may suspend or terminate the organization, or any other individual person within the organization who is sanction any person responsible for the violation.~~

79.2(6) Notice of sanction to third parties. ~~When a provider has been sanctioned a sanction is imposed, the department shall may notify as appropriate the applicable professional society, board of registration or licensure, third parties of the findings made and the sanction imposed, including but not limited to law enforcement or peace officers and federal or state agencies of the findings made and the sanctions imposed. The imposition of a sanction is not required before the department may notify third parties of a person's conduct. In accordance with 42 CFR § 1002.212, the department must notify other state agencies, applicable licensing boards, the public, and Medicaid members, as provided in 42 CFR §§ 1001.2005 and 1001.2006, whenever the department initiates an exclusion under 42 CFR § 1002.210.~~

79.2(7) Notice of violation. ~~Should the department have information that indicates that a provider may have submitted bills or has been practicing in a manner inconsistent with the program requirements,~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~or may have received payment for which the provider may not be properly entitled, the department shall notify the provider of the discrepancies noted. Notification shall set forth:~~

~~a. The nature of the discrepancies or violations; Any order of sanction shall be in writing and include the name of the person subject to sanction, identify the ground for the sanction and its effective date, and be sent to the person's last-known address. If the department sanctions a provider, the order of sanction shall also include the national provider identification number of the provider and be sent to the provider's last address on file within the medical assistance program.~~

~~b. The known dollar value of the discrepancies or violations; In the case of a currently enrolled provider otherwise in good standing with all program requirements, the provider shall have 15 days subsequent to the date of the notice prior to the department action to show cause why the action should not be taken. If the provider fails to do so, the sanction shall remain effective pending any subsequent appeal under 441—Chapter 7. If the provider attempts to show cause but the department determines the sanction should remain effective pending any subsequent appeal under 441—Chapter 7, the provider may seek a temporary stay of the department's action from the director or the director's designee by filing an application for stay with the appeals section. The director or the director's designee shall consider the factors listed in Iowa Code section 17A.19(5) "c."~~

~~e. The method of computing the dollar value,~~

~~d. Notification of further actions to be taken or sanctions to be imposed by the department, and~~

~~e. Notification of any actions required of the provider. The provider shall have 15 days subsequent to the date of the notice prior to the department action to show cause why the action should not be taken.~~

~~79.2(8) Suspension or withholding of payments pending a final determination. Where the department has notified a provider of a violation pursuant to 79.2(7) or an overpayment any sanction, overpayment, civil monetary penalty, or other adverse action, the department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question or may suspend payment pending a final determination. Where the department intends to withhold or suspend payments it shall notify the provider in writing.~~

~~79.2(9) Civil monetary penalties and interest. Civil monetary penalties and interest assessed in accordance with 2013 Iowa Acts, Senate File 357, section 5 or section 11, are not allowable costs for any aspect of determining payment to a person within the medical assistance program. Under no circumstance shall the department reimburse a person for such civil monetary penalties or interest.~~

~~79.2(10) Report and return of identified overpayment.~~

~~a. If a person has identified an overpayment, the person must report and return the overpayment in the form and manner set forth in this subrule.~~

~~b. A person has identified an overpayment if the person has actual knowledge of the existence of the overpayment or acts in reckless disregard or deliberate ignorance of the existence of the overpayment.~~

~~c. An overpayment required to be reported under 2013 Iowa Acts, Senate File 357, section 3, must be made in writing, addressed to the Program Integrity Unit of the Iowa Medicaid Enterprise, and contain all of the following:~~

~~(1) Person's name.~~

~~(2) Person's tax identification number.~~

~~(3) How the error was discovered.~~

~~(4) The reason for the overpayment.~~

~~(5) Claim number(s), as appropriate.~~

~~(6) Date(s) of service.~~

~~(7) Member identification number(s).~~

~~(8) National provider identification (NPI) number.~~

~~(9) Description of the corrective action plan to ensure the error does not occur again, if applicable.~~

~~(10) Whether the person has a corporate integrity agreement with the Office of the Inspector General (OIG) or is under the OIG Self-Disclosure Protocol or is presently under sanction by the department.~~

~~(11) The time frame and the total amount of refund for the period during which the problem existed that caused the refund.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

(12) If a statistical sample was used to determine the overpayment amount, a description of the statistically valid methodology used to determine the overpayment.

(13) A refund in the amount of the overpayment.

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

ITEM 2. Amend subrule 79.4(2) as follows:

79.4(2) *Audit or review of clinical and fiscal records by the department.* Any Medicaid provider may be audited or reviewed at any time at the discretion of the department.

a. Authorized representatives of the department shall have the right, upon proper identification, to audit or review the clinical and fiscal records of the provider to determine whether:

- (1) The department has correctly paid claims for goods or services.
- (2) The provider has furnished the services to Medicaid members.
- (3) The provider has retained clinical and fiscal records that substantiate claims submitted for payment.
- (4) The goods or services provided were in accordance with Iowa Medicaid policy.

b. Requests for provider records by the Iowa Medicaid enterprise ~~surveillance and utilization review services~~ program integrity unit shall include Form 470-4479, Documentation Checklist, which is available at www.ime.state.ia.us/Providers/Forms.html, listing the specific records that must be provided for the audit or review pursuant to paragraph 79.3(2) "d" to document the basis for services or activities provided, ~~in the following format:~~

Iowa Department of Human Services
 Iowa Medicaid Enterprise Surveillance and Utilization Review Services
Documentation Checklist

Date of Request: _____
 Reviewer Name & Phone Number: _____
 Provider Name: _____
 Provider Number: _____
 Provider Type: _____

Please sign this form and return it with the information requested. Follow the checklist to ensure that all documents requested for each patient have been copied and enclosed with this request. The documentation must support the validity of the claim that was paid by the Medicaid program.

Please send copies. Do not send original records.

If you have any questions about this request or checklist, please contact the reviewer listed above.

[specific documentation required]
[Note: number of specific documents required varies by provider type]
Any additional documentation that demonstrates the medical necessity of the service provided or otherwise required for Medicaid payment. List additional documentation below if needed.

The person signing this form is certifying that all documentation that supports the Medicaid billed rates, units, and services is enclosed.

Signature	Title	Telephone Number
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c. Records generated and maintained by the department may be used by auditors or reviewers and in all proceedings of the department.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Adopt the following **new** subrule 79.9(6):

79.9(6) The acceptance of Medicaid funds by means of a prospective or interim rate creates an express trust. The Medicaid funds received constitute the trust res. The trust terminates when the rate is retrospectively adjusted or otherwise finalized and, if applicable, any Medicaid funds determined to be owed are repaid in full to the department.

ITEM 4. Adopt the following **new** subrule 79.9(7):

79.9(7) Medical assistance funds are incorrectly paid whenever a person who provided the service to the member for which the department paid was at the time service was provided the parent of a minor child, spouse, or legal representative of the member.

ITEM 5. Adopt the following **new** subrule 79.9(8):

79.9(8) The rules of the medical assistance program shall not be construed to require payment of medical assistance funds, in whole or in part, directly or indirectly, overtly or covertly, for the provision of non-Medicaid services. The rules of the medical assistance program shall be interpreted in such a manner to minimize any risk that medical assistance funds might be used to subsidize services to persons other than members of the medical assistance program.

ITEM 6. Amend rule 441—80.4(249A) as follows:

441—80.4(249A) Time limit for submission of claims and claim adjustments.

80.4(1) *Submission of claims.* Payment will not be made on any claim ~~where~~ when the amount of time that has elapsed between the date the service was rendered and the date the initial claim is received by the Iowa Medicaid enterprise exceeds 365 days. The department shall consider claims submitted beyond the 365-day limit for payment only if retroactive eligibility on newly approved cases is made that exceeds 365 days or if attempts to collect from a third-party payer delay the submission of a claim. In the case of retroactive eligibility, the claim must be received within 365 days of the first notice of eligibility by the department.

80.4(2) *Claim adjustments and resubmissions.* A provider's request for an adjustment to a paid claim or resubmission of a denied claim must be received by the Iowa Medicaid enterprise ~~within one year~~ within 365 days from the date the claim was ~~paid last adjudicated~~ in order to have the adjustment or resubmission considered. In no case will a claim be paid if the claim is received beyond two years from the date of service.

80.4(3) *Definition.* For purposes of this rule, a claim is "received" when entered into the department's payment system with an action of pay, deny, or suspend. Any claim returned to the provider without such action is not "received."

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.12.

[Filed 10/10/13, effective 1/1/14]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1153C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments bring the Iowa Medicaid Enterprise (IME) into compliance with Section 6401 of the Patient Protection and Affordable Care Act (PPACA), which requires state Medicaid agencies to collect application fees from enrolling and reenrolling providers unless they are otherwise exempt.

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Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0917C** on August 7, 2013. The Department received no comments during the comment period. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 9, 2013.

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

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

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

These amendments will become effective on January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 79.14(2) as follows:

79.14(2) Submittal of application. The provider shall submit the appropriate application forms, including the application fee, if required, to the Iowa Medicaid enterprise provider services unit by personal delivery, by e-mail, via online enrollment systems, or by mail to P.O. Box 36450, Des Moines, Iowa 50315.

a. to c. No change.

d. Application fees.

(1) Providers who are enrolling or reenrolling in the Iowa Medicaid program shall submit an application fee with their application unless they are exempt as set forth in this paragraph.

(2) Fee amount. The application fee shall be in the amount prescribed by the Secretary of the U.S. Department of Health and Human Services (the Secretary) for the calendar year in which the application is submitted and in accordance with 42 U.S.C. 1395cc(j)(2)(C).

(3) Nonrefundable. The application fee is nonrefundable, except if submitted with one of the following:

1. A hardship exception request that is subsequently approved by the Secretary.

2. An application that is subsequently denied as a result of a temporary moratorium under 2013 Iowa Acts, Senate File 357, section 12.

3. An application or other transaction in which the application fee is not required.

(4) The process for enrolling or reenrolling a provider will not begin until the application fee has been received by the department or a hardship exception request has been approved by the Secretary.

(5) Exempt providers. The following providers shall not be required to submit an application fee:

1. Individual physicians or nonphysician practitioners.

2. Providers that are enrolled in Medicare, another state's Medicaid program or another state's children's health insurance program.

3. Providers that have paid the applicable application fee within 12 months of the date of application submission to a Medicare contractor or another state.

(6) All application fees collected shall be used for the costs associated with the screening procedures as described in subrule 79.14(4). Any unused portion of the application fees collected shall be returned to the federal government in accordance with 42 CFR § 455.460.

ITEM 2. Amend subrule 79.14(15) as follows:

79.14(15) Temporary moratoria. The Iowa Medicaid enterprise must impose any temporary moratorium ~~as identified in 42 CFR §455.470~~ pursuant to 2013 Iowa Acts, Senate File 357, section 12.

[Filed 10/10/13, effective 1/1/14]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1156C**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 235.3 and 2013 Iowa Acts, House File 590, the Department of Human Services amends Chapter 172, “Family-Centered Child Welfare Services,” Chapter 175, “Abuse of Children,” and Chapter 186, “Community Care,” Iowa Administrative Code.

These amendments establish a new assessment process (a Differential Response System) for reports that constitute child abuse allegations. The amendments require a current determination of abuse to be founded if a previous incident of abuse was confirmed within the past five years. The amendments also provide for the removal of a person’s name from the central abuse registry after five years if the report and disposition data determined the person committed physical abuse, failure to provide critical care, or the presence of an illegal drug in a child’s body so long as the abuse did not result in the child’s death or serious injury and there was not further confirmed abuse within that five-year time period. Finally, the amendments define and structure community care services and family-centered child welfare services as they relate to differential response.

The amendments bring the Department into compliance with legislative requirements found in 2013 Iowa Acts, House File 590, and the CAPTA Reauthorization Act of 2010.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0915C** on August 7, 2013.

The Department received comments from one respondent on the proposed amendments. A compilation of the comments and the Department’s response are as follows:

Respondent comment: The proposed amendment of rule 441—175.39(232) allows for removal of a person’s name from the central abuse registry after five years if the report and disposition data determined the person to have committed physical abuse, failure to provide critical care, or the presence of illegal drugs in a child’s body, so long as the abuse did not result in serious injury or death to the child. There is no provision in this amendment for allowing people who are currently on the central abuse registry to be removed after five years.

The regulation needs to specify that individuals who have been on the registry for five years for physical abuse, failure to provide critical care, or the presence of illegal drugs in a child’s body that did not result in serious injury or death to the child will have their names removed from the registry. This change in the statute and regulation reflects a realization that a one-size-fits-all response to founded abuse reports is essentially unfair and not good public policy. The state is now committed to the utilization of a fairer process. It is a righteous change, but it is incomplete if it does not apply to those who have already been on the registry for five years. Justification cannot be found in the fact that the assessment was made before or after a given date. This is especially so given the number of individuals who were unlawfully placed on the registry for denial of critical care regarding supervision prior to the *Doe vs. Iowa Department of Human Services* case.

Department response: Pursuant to 2013 Iowa Acts, House File 590, section 20(2), Iowa Code section 235A.18 as amended by 2013 Iowa Acts, House File 590, section 13, “shall apply to the name of an alleged perpetrator of the alleged child abuse which is placed in the central registry pursuant to [Iowa Code] section 232.71D on or after the effective date,” which is stated in the Act as January 1, 2014. This law does not allow the Department to create administrative rules which would contradict the amendment as set forth in the law.

It should also be noted that pursuant to the direction of 2012 Iowa Acts, House File 2226, section 6, the Department was charged with reviewing and recommending “the length of time a person named in a child abuse report as having abused a child should remain on the child abuse registry and the circumstances under which the department may remove the name of a person named in the report as having abused a child from the report and disposition data prior to the expiration of a ten-year period.” As the legislative report “Summary of Child Abuse Registry Length of Time Review” indicated, the workgroup discussed the potential for discretion to allow the Department to remove a person from the registry prior to the

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expiration of the time period mandated in Iowa Code chapter 235A. The Department ultimately decided against that recommendation due to two critical factors:

1. The entire purpose of the review was to make recommendations that would reduce the number of appeals in the system and reduce the amount of time for appeals to be satisfied. A recommendation to allow the Department such discretion was considered to be wholly counterproductive to the purpose of the effort.

2. All persons listed on the registry have had the opportunity to pursue reevaluation of their placement on the registry using their due process rights, and many have taken advantage of that opportunity. As a result of that review and the corresponding rulings, those persons continue to be listed on the registry. To open the whole registry to a potential second or third review was not feasible because, even though it was initially thought that such a “discretionary decision” by the Department would not be subject to due process rights, the Department with confirmed support by the Attorney General’s Office ascertained it was not possible to deny such rights. As a result, an entirely new loop of appeal processes and decisions would have to be enacted. Again, this strategy was deemed to be wholly counterproductive to the purpose.

In addition to the comments received from the respondent, the Department conducted an internal review of the proposed amendments to ensure compliance with legislative intent. As a direct result of the review, changes were made in subrules 175.24(2), 175.24(3), 175.25(9), 175.26(1), 175.26(2), 175.31(2), 175.32(2), 175.32(4) and 175.32(5) and in rule 441—175.33(232,235A).

The Council on Human Services adopted these amendments on October 9, 2013.

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

After analysis and review of this rule making, there is a potential impact on private sector jobs. More individuals across the state will have the ability to work in additional fields of employment and have access to additional educational opportunities if their names are removed from the registry in five years versus ten years.

These amendments are intended to implement Iowa Code chapter 235 and 2013 Iowa Acts, House File 590.

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend rule **441—172.1(234)**, definition of “Conditionally safe,” as follows:

“*Conditionally safe*” means that one or more signs of present or impending danger to a child that are identified on ~~Form 470-4132 or 470-4132(S)~~, on the Safety Assessment form, ~~which~~ are not offset by the child’s degree of vulnerability or the caretaker’s protective capacity. A safety plan is required.

ITEM 2. Amend rule 441—172.3(234) as follows:

441—172.3(234) Authorization. When the agency has approved provision of family-centered child welfare services for a child and family, the agency worker shall notify the contractor by issuing ~~Form 470-3055~~, the Referral and Authorization for Child Welfare Services form. ~~The~~ This referral form shall indicate:

1. The specific service category authorized (safety plan; family safety, risk, and permanency; ~~drug testing; family team meeting facilitation; or legal services for permanency~~); and
2. The duration of the authorization.

ITEM 3. Amend paragraph **172.13(2)“d”** as follows:

d. Make daily face-to-face contact with the alleged child victim or child subject and the child’s parents as identified in ~~Form 470-4661 or 470-4661(S)~~, the Safety Plan, form and Form 470-5011, the Safety Plan Services Referral Face Sheet. The frequency of contact with siblings and others involved in the case shall be as identified on ~~Form 470-5011~~ the Safety Plan Service Referral Face Sheet.

ITEM 4. Amend paragraph **172.22(1)“c”** as follows:

c. Evaluation of the ~~child’s age~~, the findings of a child abuse assessment report, and the family’s risk assessment score.

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ITEM 5. Amend rule 441—175.21(232,235A) as follows:

441—175.21(232,235A) Definitions.

“Adequate food, shelter, clothing, medical or mental health treatment, supervision or other care” means that food, shelter, clothing, medical or mental health treatment, supervision or other care which, if not provided, would constitute a denial of critical care.

“Allegation” means a statement setting forth a condition or circumstance yet to be proven.

“Assessment” means the process by which the department carries out its legal mandate to ascertain if child abuse has occurred, to record findings, to develop conclusions based upon evidence, to address the safety of the responds to all accepted reports of alleged child abuse. An “assessment” addresses child and safety, family functioning, engage culturally competent practice, and identifies the family strengths and needs, and engages the family in services if needed, enhance family strengths and address needs in a culturally sensitive manner. The department’s assessment process occurs either through a child abuse assessment or a family assessment.

“Assessment intake” means the process by which the department receives and records reports a report of suspected child abuse.

“Caretaker” means a person responsible for the care of a child as defined in Iowa Code section 232.68.

“Case” means a report of suspected child abuse that has been accepted for assessment services.

“Child abuse assessment” means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in Iowa Code section 232.68(2) “a”(1) through (3) and (5) through (10); or which allege child abuse as defined in Iowa Code section 232.68(2) “a”(4) that also allege imminent danger, death, or injury to a child. A “child abuse assessment” results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the registry are met.

“Community care,” as provided in rule 441—186.1(234), means child- and family-focused services and supports provided to families referred from the department. Services shall be geared toward keeping the children in the family safe from abuse and neglect; keeping the family intact; preventing the need for further intervention by the department, including removal of the child from the home; and building ongoing linkages to community-based resources that improve the safety, health, stability, and well-being of families served.

“Denial of critical care” means the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision or other care necessary for the child’s health and welfare when financially able to do so, or when offered financial or other reasonable means to do so, and shall mean any of the following:

1. Failure to provide adequate food and nutrition to the extent that there is danger of the child suffering injury or death.

2. Failure to provide adequate shelter to the extent that there is danger of the child suffering injury or death.

3. Failure to provide adequate clothing to the extent that there is danger of the child suffering injury or death.

4. Failure to provide adequate health care to the extent that there is danger of the child suffering injury or death. A parent or guardian legitimately practicing religious beliefs who does not provide specified medical treatment for a child for that reason alone shall not be considered abusing the child and shall not be placed on the child abuse registry. However, a court may order that medical service be provided where the child’s health requires it.

5. Failure to provide the mental health care necessary to adequately treat an observable and substantial impairment in the child’s ability to function.

6. Gross failure to meet the emotional needs of the child necessary for normal development.

7. Failure to provide for the adequate supervision of the child that a reasonable and prudent person would provide under similar facts and circumstances when the failure results in direct harm or creates a risk of harm to the child.

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8. Failure to respond to the infant's life-threatening conditions (also known as withholding medically indicated treatment) by providing treatment (including appropriate nutrition, hydration and medication) which in the treating physician's reasonable medical judgment will be most likely to be effective in ameliorating or correcting all conditions, except that the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's reasonable medical judgment any of the following circumstances apply: the infant is chronically and irreversibly comatose; the provision of the treatment would merely prolong dying, not be effective in ameliorating or correcting all of the infant's life-threatening conditions, or otherwise be futile in terms of the survival of the infant; the provision of the treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane.

"Department" means the department of human services.

"Differential response" means an assessment system in which there are two discrete pathways to respond to accepted reports of child abuse, a child abuse assessment and a family assessment. The child abuse assessment pathway shall require a determination of abuse and a determination of whether criteria for placement on the central abuse registry are met.

"Facility providing care to a child" means any public or private facility, including an institution, hospital, health care facility, intermediate care facility for ~~mentally retarded~~ persons with an intellectual disability, residential care facility for ~~mentally retarded~~ persons with an intellectual disability, or skilled nursing facility, group home, mental health facility, residential treatment facility, shelter care facility, detention facility, or child care facility which includes licensed day care centers, all registered family and group day care homes and licensed family foster homes. A public or private school is not a facility providing care to a child, unless it provides overnight care. Public facilities which are operated by the department of human services are assessed by the department of inspections and appeals.

"Family assessment" means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in Iowa Code section 232.68(2)"a"(4), but do not allege imminent danger, death, or injury to a child. A "family assessment" does not include a determination of whether a case meets the definition of child abuse and does not include a determination of whether criteria for placement on the central abuse registry are met.

"Illegal drug" means cocaine, heroin, amphetamine, methamphetamine or other illegal drugs, including marijuana, or combinations or derivatives of illegal drugs which were not prescribed by a health practitioner.

"Immediate threat" or "imminent danger" means conditions which, if no response were made, would be more likely than not to result in sexual abuse, injury or death to a child.

"Infant," as used in the definition of "denial of critical care," numbered paragraph "8," means an infant less than one year of age or an infant older than one year of age who has been hospitalized continuously since birth, who was born extremely prematurely, or who has a long-term disability.

"Nonaccidental physical injury" means an injury which was the natural and probable result of a caretaker's actions which the caretaker could have reasonably foreseen, or which a reasonable person could have foreseen in similar circumstances, or which resulted from an act administered for the specific purpose of causing an injury.

"Physical injury" means damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition or damage to any bodily tissue which results in the death of the person who has sustained the damage.

"Preponderance of evidence" means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.

"Proper supervision" means that supervision which a reasonable and prudent person would exercise under similar facts and circumstances, but in no event shall the person place a child in a situation that may endanger the child's life or health, or cruelly or unduly confine the child. Dangerous operation of a motor vehicle is a failure to provide proper supervision when the person responsible for the care of a child is driving recklessly, or driving while intoxicated with the child in the motor vehicle. The failure to restrain a child in a motor vehicle does not, by itself, constitute a cause to assess a child abuse report.

"Rejected intake" means a report of suspected child abuse that has not been accepted for assessment.

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“*Reporter*” means the person making a verbal or written statement to the department, alleging child abuse.

“*Report of suspected child abuse*” means a verbal or written statement made to the department by a person who suspects that child abuse has occurred.

“*Subject of a report of child abuse*” means any of the following:

1. A child named in a report as having been abused, or the child’s attorney or guardian ad litem.
2. A parent or the attorney for the parent of a child named in a child abuse assessment summary as having been abused.
3. A guardian or legal custodian, or that person’s attorney, of a child named in a child abuse assessment summary as having been abused.
4. A person or the attorney for the person named in a child abuse assessment summary as having abused a child.

“*Unduly*” shall mean improper or unjust, or excessive.

ITEM 6. Amend rule 441—175.22(232) as follows:

441—175.22(232) Receipt of a report of suspected child abuse. Reports of suspected child abuse shall be received by local department offices, the central abuse registry, or the Child Abuse Hotline.

175.22(1) No change.

175.22(2) Reports of suspected child abuse which do not meet the legal definition of child abuse shall become rejected intakes.

a. If a report of suspected child abuse does not meet the legal definition of child abuse or is accepted as a family assessment, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency.

b. If a report constitutes an allegation of child sexual abuse as defined under Iowa Code section 232.68(2) “*c,*” ~~paragraph “*e*” or “*e,*”~~ except that the suspected abuse resulted from the acts or omissions of a person who was not a caretaker, the department shall refer the report to law enforcement orally and, as soon as practicable, follow up in writing within 72 hours of receiving the report.

ITEM 7. Amend rule 441—175.23(232) as follows:

441—175.23(232) Sources of report of suspected child abuse.

175.23(1) Mandatory reporters. Any person meeting the criteria of a mandatory reporter is required to make an oral report of the suspected child abuse to the department within 24 hours of becoming aware of the abusive incident and make a written report to the department within 48 hours following the oral report. If the person making the report has reason to believe that immediate protection for the child is advisable, that person shall also make an oral report to an appropriate law enforcement agency.

175.23(2) Others required to report. In addition to mandatory reporters which are so designated by the Iowa Code, there are other classifications of persons who are required, either by administrative rule or department policy, to report suspected child abuse when this is a duty identified through the person’s employment. Others required to report include:

- a.* Income maintenance workers.
- b.* Certified adoption investigators.

175.23(3) No change.

ITEM 8. Amend rule 441—175.24(232) as follows:

441—175.24(232) Child abuse assessment Assessment intake process. The primary purpose of intake is to obtain available and pertinent information regarding an allegation of child abuse and determine whether a report of suspected child abuse becomes a ~~case~~ accepted for assessment or a rejected intake.

175.24(1) To result in a ~~case~~ an assessment, the report of suspected child abuse must include some information to indicate all of the following.

- a.* The alleged victim of child abuse is a child.
- b.* The alleged perpetrator of child abuse is a caretaker.

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c. The alleged incident falls within the definition of child abuse.

175.24(2) If the report constitutes a child abuse allegation, a determination is made as to whether the assessment will be assigned as a child abuse assessment, to be commenced within 24 hours of receiving the report, or a family assessment, to be commenced within 72 hours of receiving the report.

a. A child abuse assessment is required for all accepted reports which allege child abuse as defined in Iowa Code section 232.68(2) "a"(1) through (3) and (5) through (10); or which allege child abuse as defined in Iowa Code section 232.68(4) that also allege imminent danger, death, or injury to a child. If one or more of the following factors are met, a child abuse assessment shall be required:

(1) The alleged abuse type includes a category other than denial of critical care.

(2) The allegation requires a one-hour response or alleges imminent danger, death, or injury to a child.

(3) The child has been taken into protective custody as a result of the allegation.

(4) There is an open service case on the alleged child victim or any sibling or any other child who resides in the home or in the home of the noncustodial parent if the noncustodial parent is the alleged person responsible.

(5) The alleged person responsible is not a birth or adoptive parent, a legal guardian, or a member of the child's household.

(6) There has been a termination of parental rights in juvenile court on the alleged person responsible or on any caretaker who resides in the home.

(7) There has been prior confirmed or founded abuse within the past six months which lists any caretaker who resides in the home as the person responsible.

(8) It is alleged that illegal drugs are being manufactured or sold from the family home.

(9) The allegation is failure to thrive or that the caretaker has failed to respond to an infant's life-threatening condition.

(10) The allegation involves an incident for which the caretaker has been charged with a felony under Iowa Code chapter 726.

b. A family assessment is required for all accepted reports which allege child abuse as defined in Iowa Code section 232.68(2) "a"(4) but do not allege imminent danger, death, or injury to a child. If all of the following factors are met, a family assessment shall be required:

(1) The alleged abuse type is denial of critical care only.

(2) The allegation does not require a one-hour response or allege imminent danger, death, or injury to a child.

(3) The child has not been taken into protective custody as a result of the allegation.

(4) There is no current open service case on the alleged child victim or any sibling or any other child who resides in the home or in the home of the noncustodial parent if the noncustodial parent is the alleged person responsible.

(5) The alleged person responsible is a birth or adoptive parent, a legal guardian, or a member of the child's household.

(6) There has not been a termination of parental rights in juvenile court on the alleged person responsible or on any caretaker who resides in the home.

(7) There has been no prior confirmed or founded abuse within the past six months which lists any caretaker who resides in the home as the person responsible.

(8) It is not alleged that illegal drugs are being manufactured or sold from the family home.

(9) The allegation is not failure to thrive or that the caretaker has failed to respond to an infant's life-threatening condition.

(10) The allegation does not involve an incident for which the caretaker has been charged with a felony under Iowa Code chapter 726.

175.24(2) 175.24(3) Only mandatory reporters or the person making the a report of suspected abuse may be contacted during the intake process to expand upon or to clarify information in the report. Any contact with subjects of the report or with nonmandatory reporters anyone outside the department of human services, other than the original reporter reporter(s), automatically causes the report of suspected child abuse to be accepted for assessment.

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~~175.24(3)~~ **175.24(4)** When it is determined that the report of suspected child abuse fails to constitute an allegation of child abuse, the report of suspected child abuse shall become a rejected intake. Rejected intake information shall be maintained by the department for three years from the date the report was rejected and shall then be destroyed.

~~175.24(4)~~ **175.24(5)** The county attorney shall be notified of all reports of suspected child abuse. When a report of suspected child abuse is received which does not meet the requirements ~~to become a case, but has~~ for an assessment or is accepted as a family assessment, and there is information about illegal activity a criminal act harming a child, the department shall notify law enforcement of the report.

~~175.24(5)~~ **175.24(6)** When it is determined that a report of a child needing the assistance of the court fails to meet the definition of “child in need of assistance” in Iowa Code section 232.2(6), the report shall become a rejected child in need of assistance intake. The department shall maintain the report for three years from the date the report was rejected and shall then destroy it.

ITEM 9. Amend rule 441—175.25(232) as follows:

~~441—175.25(232) Child abuse assessment~~ **Assessment process.** ~~An~~ A child abuse assessment shall be initiated within 24 hours following the report of suspected child abuse ~~becoming a case.~~ A family assessment shall be initiated within 72 hours following the report of suspected child abuse. The primary purpose in conducting an assessment is to protect the safety of the child named in the report. The secondary purpose of the assessment is to engage the child’s family in services in a culturally competent way, to enhance family strengths and to address needs, where this is necessary and desired. ~~There are eight tasks associated with completion of the assessment. These are:~~

175.25(1) Observing and evaluating the child’s safety. A safety assessment and risk assessment will be completed during the course of a child abuse assessment or family assessment.

a. In instances During a child abuse assessment, when there is an immediate threat to the child’s safety, reasonable efforts shall be made to observe the alleged child victim and evaluate the safety of the child named in the report within one hour of receipt of the report of suspected child abuse. Otherwise, reasonable efforts shall be made to observe the alleged child victim and evaluate the child’s safety within 24 hours of receipt of the report of suspected child abuse ~~becoming a case~~.

(1) When the alleged perpetrator clearly does not have access to the alleged child victim, reasonable efforts shall be made to observe the alleged child victim and evaluate the child’s safety within 96 hours of receipt of the report of suspected child abuse.

(2) When reasonable efforts have been made to observe the alleged child victim within the specified time frames and the worker has established that there is no risk to the alleged child victim, the observation of the alleged child victim may be delayed or waived with supervisory approval.

b. During a family assessment, reasonable efforts shall be made to observe the alleged child victim and evaluate the child’s safety within 72 hours of receipt of the report of suspected child abuse.

(1) When reasonable efforts have been made to observe the alleged child victim within the specified time frame and the worker has established that there is no risk to the alleged child victim, the observation of the alleged child victim may be delayed or waived with supervisory approval.

(2) If at any time during a family assessment a child is determined unsafe or in imminent danger, it appears that the immediate safety or well-being of a child is endangered, it appears that the family may flee or the child may disappear, or that the facts otherwise warrant, the department shall immediately commence a child abuse assessment as defined in Iowa Code section 232.71B as amended by 2013 Iowa Acts, House File 590.

(3) If the department determines that safety issues continue to require a child to reside outside of the child’s home at the conclusion of a family assessment, the department shall transfer the assessment to the child abuse assessment pathway for a disposition.

175.25(2) Interviewing the alleged child victim. The primary purpose of an interview with the child, during the course of a child abuse assessment or family assessment, is to gather information regarding the abuse allegation, the child’s immediate safety, and risk of abuse. During a child abuse assessment, the child protection worker shall also identify the person or persons responsible for the alleged abuse as

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well as the nature, extent, and cause of injuries, if any, to the child named in the report of suspected child abuse.

175.25(3) *Interviewing subjects of the report and other sources.*

a. Attempts During a child abuse assessment, attempts shall be made to conduct interviews with subjects of the report and persons who have relevant information to share regarding the allegations. This may include contact with physicians to assess the child's condition. The child's custodial parents or guardians and the alleged perpetrator (if different) shall be interviewed; or offered the opportunity to be interviewed. The court may waive the requirement of the interview for good cause.

b. During a family assessment, the child's custodial parents or guardians shall be interviewed or offered the opportunity to be interviewed. The child protection worker may request information from any person believed to have knowledge regarding a child named in an assessment. A family assessment requires the cooperation of the family; should a family choose not to participate, the department is required to transfer the assessment to the child abuse assessment pathway for a disposition.

175.25(4) *Gathering of physical and documentary evidence.* ~~Evidence~~ During a child abuse assessment, evidence shall be gathered from, but not be limited to, interviews, observations, photographs, medical and psychological reports and records, reports from child protection centers, written reports, audiotapes and their transcripts or summaries, videotapes and their transcripts or summaries, or other electronic forms.

175.25(5) *Evaluating the home environment and relationships of household members.* ~~The evaluation may,~~ An evaluation of the home environment shall be conducted during the course of an assessment with the consent of the parent or guardian, include a visit to the home where the child resides. If permission is refused, the juvenile court may authorize the worker to enter the home to observe or interview the child. An evaluation of the home environment shall be conducted during the course of the child abuse assessment.

a. If protective concerns are identified, the child protection worker shall evaluate the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

(1) Each assessment shall include a full description of observations and information gathered during the assessment process. This description shall provide information which evaluates the safety of the child named in the report.

(2) If the child protection worker has concerns about a child's safety or a family's functioning, the worker shall conduct a more intensive assessment until those concerns are addressed.

b. When an assessment is conducted at an out-of-home setting, an evaluation of the environment and relationships where the abuse allegedly occurred shall be conducted.

c. The child abuse assessment shall include a description of the name, age, and condition of other children in the same home as the child named in the report.

175.25(6) *Evaluating the information.* ~~Evaluation~~ During a child abuse assessment, evaluation of information shall include an analysis, which considers the credibility of the physical evidence, observations, and interviews, and shall result in a conclusion of whether or not to confirm the report of suspected child abuse.

175.25(7) *Determining placement on central abuse registry.* ~~A~~ During a child abuse assessment, a determination of whether the report data and disposition data of a confirmed case of child abuse is subject to placement on the central abuse registry pursuant to Iowa Code section 232.71D as amended by 2011 Iowa Acts, House File 562, shall be made on each assessment. Determining placement on the central abuse registry is not applicable in a family assessment.

175.25(8) *Service recommendations and referrals.* During or at the conclusion of a child abuse assessment or a family assessment, the department shall consult with the child's family to offer services to the child and the child's family which address strengths and needs identified in the assessment. The department may recommend information, information and referral, community care referral, or services provided by the department. If it is believed that treatment services are necessary for the protection of the abused child or other children in the home, juvenile court intervention shall be sought.

a. Information or information and referral.

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~~(1) Families with children of any age that have confirmed or not confirmed abuse and low risk of abuse shall be provided either information or information and referral when: Either information or information and referral shall be offered when:~~

- ~~1. A family assessment has identified the child to be at low risk of future abuse or neglect; or~~
- ~~2. A child abuse assessment has identified the abuse is not confirmed and the child is believed to be at low risk of future abuse or neglect; or~~
- ~~3. A child abuse assessment has identified the abuse is confirmed and not placed on the registry and the child is believed to be at low risk of future abuse or neglect.~~

~~(2) Recommendation options for information and information and referral.~~

- ~~(1) 1. No When no service needs are identified, and the worker recommends may recommend no service; or~~
- ~~(2) 2. Service When service needs are identified, and the worker recommends may recommend new or continuing services to the family to be provided through informal supports; or~~
- ~~(3) 3. Service When service needs are identified, and the worker recommends may recommend new or continuing services to the family to be provided through community agencies organizations.~~

~~b. Referral to community care.~~

~~(1) With the exception of families of children with an open department service case, court action pending, or abuse in an out-of-home setting, a referral to community care shall be offered to: A referral to community care shall be offered when:~~

- ~~(1) 1. Families with children whose abuse is not confirmed when there is moderate to high risk of abuse, service needs are identified, and the worker recommends community care. A family assessment has identified the child to be at moderate or high risk of future abuse or neglect; or~~
- ~~(2) 2. Families with children that have confirmed but not founded abuse and moderate or high risk of abuse when service needs are identified and the worker recommends community care. A child abuse assessment has identified the abuse is not confirmed and the child is believed to be at moderate or high risk of future abuse or neglect; or~~
- ~~(3) 3. Families with children with founded abuse, a victim child six years of age or older, and a low risk of repeat abuse when service needs are identified and the worker recommends community care. A child abuse assessment has identified the abuse is confirmed and not placed on the registry and the child is believed to be at moderate risk of future abuse or neglect.~~

~~(2) Referral to community care not offered. A referral to community care shall not be offered when any child in the family has an open child welfare service case with the department, a child in need of assistance petition was filed or is pending, or if the abuse occurred in an out-of-home setting.~~

~~(3) Responsibilities for community care referral.~~

- ~~1. At the conclusion of a family assessment, the department shall transfer the case, if appropriate, to a contracted provider to review the service plan for the child and family.~~
- ~~2. The contracted provider shall make a referral to the department abuse hotline if a family's noncompliance with a service plan places a child at risk.~~
 - ~~• If any of the criteria for child abuse as defined in Iowa Code section 232.68 are met, the department shall commence a child abuse assessment.~~
 - ~~• If criteria for a child in need of assistance as defined in Iowa Code section 232.2(6) are met, the department shall determine whether to request a child in need of assistance petition.~~

~~c. Referral for department services.~~

~~(1) Families with children that have founded abuse and moderate to high risk of abuse and families with victim children under age six that have founded abuse and low risk of abuse shall be offered department services on a voluntary basis. The department shall provide or arrange for and monitor services for abused children and their families on a voluntary basis or under a final or intermediate order of the juvenile court when:~~

- ~~1. A child abuse assessment has identified the abuse is confirmed and not placed on the registry and the child is believed to be at high risk of future abuse or neglect; or~~
- ~~2. A child abuse assessment has identified the abuse is founded.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(1)~~ (2) The worker shall recommend new or continuing ~~treatment~~ services to the family to be provided by the department, either directly or through contracted agencies.

~~(2)~~ (3) Families that refuse voluntary services shall be referred for a child in need of assistance ~~action~~ petition through juvenile court.

175.25(9) Court action following assessment. If, upon completion of an assessment performed under Iowa Code section 232.71B as amended by 2013 Iowa Acts, House File 590, the department determines that the best interests of the child require juvenile court action, the department shall act appropriately to initiate the action.

a. If at any time during the assessment process the department believes court action is necessary to safeguard a child, the department shall act appropriately to initiate the action.

b. The department shall assist the juvenile court or district court during all stages of court proceedings involving an alleged child abuse case in accordance with Iowa Code section 232.71C as amended by 2013 Iowa Acts, House File 590.

ITEM 10. Amend rule 441—175.26(232) as follows:

441—175.26(232) Completion of a child protective written assessment summary report. The child protection worker shall complete a ~~child protective~~ written assessment summary report within 20 business days from the date of the report of child abuse becoming a case. In most instances, the ~~child protective~~ assessment summary shall be developed in conjunction with the child and family being assessed. A ~~child protective~~ assessment summary shall consist of two parts as follows:

175.26(1) Report and disposition data ~~Completion of a child abuse assessment report. Form 470-3240, Child Protective Services Assessment Summary, shall include report and dispositional data as follows:~~ A child abuse assessment report shall be completed within 20 business days of the receipt of the child abuse report. In most instances, a child abuse assessment report shall be developed in conjunction with the child and family being assessed. A child abuse assessment report shall consist of two parts as follows:

a. Report and disposition data. A child abuse assessment report shall include report and disposition data as follows:

~~a.~~ (1) Allegations: the report of suspected child abuse which caused the assessment to be initiated and additional allegations raised after the report of suspected child abuse becomes a case that have not been previously investigated or assessed. If the report of suspected child abuse was initially accepted as a family assessment, the reason why it was transferred to a child abuse assessment shall be identified.

~~b.~~ (2) Evaluation of the child's safety: evaluation of the child's safety and the risk for occurrence or reoccurrence of abuse. Criteria to be used in the evaluation of the child's safety include, but are not limited to, the severity of the incident or condition, chronicity of the incident or condition, age of the child, attitude of the person alleged responsible, current ~~treatment~~ services or supports, access of the person alleged responsible for the abuse to the child, and protectiveness of the parent or caretaker who is not alleged responsible for the abuse.

~~c.~~ (3) Findings and contacts: a description of the child's condition including identification of the nature, extent, and cause of the injuries, if any, to the child named in the report; identification of the injury or risk to which the child was exposed; the circumstances which led to the injury or risk to the child; the identity of the person alleged to be responsible for the injury or risk to the child; an evaluation of the home environment; the name and condition of other children in the same home as the child named in the report if protective concerns are identified; a list of collateral contacts; and a history of confirmed or founded abuse.

~~d.~~ (4) Determination regarding the allegations of child abuse: a statement of determination of whether the allegation of child abuse was founded, confirmed but not placed on the central abuse registry, or not confirmed. The statement shall include a rationale for placing or not placing the case report on the central abuse registry.

~~e.~~ (5) Recommendation for ~~treatment~~ services as specified in 175.25(8) and a statement describing whether ~~treatment~~ services are necessary to ensure the safety of the child or to prevent or remedy other identified problems.

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~~(1)~~ 1. The statement shall include the type of ~~treatment~~ services recommended, if any, and whether these ~~treatment~~ services are to be provided by the department, a child welfare service contractor, another community ~~agencies~~ organization, other informal supports, or another ~~treatment~~ source.

~~(2)~~ 2. If ~~treatment~~ services are already being provided, the statement shall include a recommendation whether these ~~treatment~~ services should continue.

~~f.~~ (6) Juvenile court recommendation: a statement describing whether juvenile court action is necessary to ensure the safety of the child; the type of action needed, if any; and the rationale for the recommendation.

~~g.~~ (7) Criminal court recommendation: a statement describing whether criminal court action is necessary and the rationale for the recommendation.

~~h.~~ (8) Addendum: An addendum to ~~an~~ a child abuse assessment ~~summary report~~ shall be completed within 20 business days when any of the following occur:

~~(1)~~ 1. New information becomes available that would alter the finding, conclusion, or recommendation of the ~~summary report~~.

~~(2)~~ 2. Substantive information that supports the finding becomes available.

~~(3)~~ 3. A subject who was not previously interviewed requests an interview to address the allegations of the ~~ease report~~.

~~(4)~~ 4. A review or a final appeal decision modifies the ~~summary report~~.

~~175.26(2)~~ b. *Assessment Use of assessment data.* Form 470-4133, Family Risk Assessment, Form 470-4132, Safety Assessment, and Form 470-4461, Safety Plan, if applicable, may be used as part of the child's initial case plan, referenced at 441—subrule 130.7(3), for cases in which the department will provide ~~treatment services~~. A safety assessment, family risk assessment, and safety plan, if applicable, may be used as part of the child's initial case plan, referenced at 441—subrule 130.7(3), for cases in which the department will provide services.

~~175.26(2)~~ *Completion of a family assessment report.* A family assessment report shall be completed within ten business days of the receipt of the report of suspected child abuse. A family assessment report shall consist of assessment data only.

a. *Assessment data.* A family assessment report shall include information pertaining to the department's evaluation of a family, which includes:

(1) Allegations: the report of suspected child abuse which caused the assessment to be initiated and additional allegations raised after the report of suspected child abuse becomes a case that have not been previously assessed.

(2) Evaluation of the child's safety: evaluation of the child's safety and the risk for occurrence or reoccurrence of abuse. Criteria to be used in the evaluation of the child's safety include, but are not limited to, the severity of the incident or condition, chronicity of the incident or condition, age of the child, attitude of the person alleged responsible, current services or supports, access of the person alleged responsible for the abuse to the child, and protectiveness of the parent or caretaker who is not alleged responsible for the abuse.

(3) Contacts: description of the circumstances that led to the allegations of abuse; strengths and needs of the child, and of the child's parent, home, and family; any information obtained from others during the assessment; a history of confirmed or founded abuse; and an evaluation of the home environment and evaluation of any other children in the same home as the parents or other persons responsible for the children's care.

(4) Recommendation for services as specified in 175.25(8) and a statement describing whether services are necessary to ensure the safety of the child or to prevent or remedy other identified problems.

1. The statement shall include the type of services recommended, if any, and whether these services are to be provided by the department, a child welfare service contractor, another community organization, other informal supports, or another source.

2. If services are already being provided, the statement shall include a recommendation whether these services should continue.

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b. Use of assessment data. A safety assessment, family risk assessment, and safety plan may be used as part of the information referred for any services in which the family voluntarily agrees to participate.

ITEM 11. Amend rule 441—175.27(232) as follows:

441—175.27(232) Contact with juvenile court or the county attorney. The child protection worker may orally contact juvenile court or the county attorney, or both, as circumstances warrant.

175.27(1) Report of intake. When a report of suspected child abuse is accepted or rejected for assessment, the county attorney shall be provided ~~Form 470-0607~~, a Child Protective Service Intake form, with information about the allegation of child abuse and with identifying information about the subjects of the report.

175.27(2) Report of disposition. The child protection worker shall provide the juvenile court and the county attorney with a copy of ~~Form 470-3240, Child Protective Services Assessment Summary~~ the child abuse assessment report, which pertains to the findings, determinations, and recommendations regarding the ~~report of child abuse assessment~~.

175.27(3) Report of assessment. The child protection worker shall provide the county attorney and the juvenile court with a copy of ~~Form 470-4133~~, the Family Risk Assessment, ~~and Forms 470-4132, Safety Assessment, and 470-4461~~, Safety Plan, and family assessment report when any of the following occur:

a. *County attorney's or juvenile court's assistance necessary.* The worker requires the court's or the county attorney's assistance to complete the assessment process.

b. *Court's protection needed.* The worker believes that the child requires the court's protection.

c. *Child adjudicated.* The child is currently adjudicated or pending adjudication under a child in need of assistance petition or a delinquency petition.

d. *County attorney or juvenile court requests copy.* The county attorney or juvenile court requests a copy of the child abuse assessment data. The child protection worker shall document when the assessment data is provided to the county attorney or juvenile court and the rationale provided for the request.

ITEM 12. Amend rule 441—175.28(232) as follows:

441—175.28(232) Consultation with health practitioners or mental health professionals. The child protection worker may contact a health practitioner or a mental health professional as circumstances warrant and shall contact a health practitioner or a mental health professional when the worker requires the assistance of the health practitioner or mental health professional in order to complete the assessment process or when the worker requires the opinion or advice of the health practitioner or mental health professional in order to determine if the child requires or should have required medical, health or mental health care as a result of suspected abuse.

ITEM 13. Amend rule 441—175.29(232) as follows:

441—175.29(232) Consultation with law enforcement.

175.29(1) ~~The~~ During the course of a child abuse assessment, the child protection worker may contact law enforcement as warranted and shall contact law enforcement when the worker believes that:

~~1.~~ a. The abuse reported may require a criminal investigation and subsequent prosecution.

~~2.~~ b. The child must be separated from the person responsible for the abuse.

~~3.~~ c. Contact by the child protection worker with the family will result in a volatile and dangerous response by the child or family members.

175.29(2) During the course of a family assessment, the child protection worker shall not involve law enforcement for the purposes of a joint investigation, but shall immediately refer any information regarding a criminal act harming a child to the appropriate law enforcement agency.

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ITEM 14. Amend rule 441—175.30(232) as follows:

441—175.30(232) Information shared with law enforcement. When the department is jointly conducting a child abuse assessment with law enforcement personnel, the department may share information gathered during the child abuse assessment process when an assessment is conducted in conjunction with a criminal investigation ~~or the reported abuse has been referred to law enforcement.~~ When the department has rejected an intake or an intake is accepted for a family assessment, only the information collected at intake (excluding reporter information) may be shared with law enforcement.

ITEM 15. Amend rule 441—175.31(232) as follows:

441—175.31(232) Completion of required correspondence.

175.31(1) Notification to parents that ~~a child abuse~~ an assessment is being conducted. Written notice shall be provided to the parents of a child who is the subject of an assessment within five working days of commencing an assessment ~~unless the assessment is completed within the five working days.~~ Both custodial and noncustodial parents shall be notified, if their whereabouts are known. If it is believed that notification will result in danger to the child or others, an emergency order to prohibit parental notification shall be sought from juvenile court.

175.31(2) Notification of completion of assessment and right to request correction. Written notice which indicates that the child abuse assessment is completed shall be provided to all subjects of a child abuse assessment and to the mandatory reporter who made the report of child abuse. Both custodial and noncustodial parents shall be notified if their whereabouts are known.

a. The notice shall contain the following information pursuant to Iowa Code section 235A.19:

(1) A subject may request correction of the information contained within the child ~~protection~~ abuse assessment ~~summary report~~ if the subject disagrees with the information.

(2) A person ~~alleged~~ named responsible for the abuse has the right to appeal if the department does not correct the data or findings as requested.

(3) A subject, other than the person ~~alleged~~ named responsible for the abuse, has the opportunity to file a motion to intervene in an appeal hearing.

b. If the child ~~protective~~ abuse assessment results in a determination that abuse is confirmed, the notice shall indicate the type of abuse, name of the child and name of the person responsible for the abuse and whether the report has been placed on the central abuse registry.

c. The department shall provide written notice to the parent or guardian of each child listed in the family assessment report of the completion of the assessment and review any service recommendations. Because no determination concerning child abuse or neglect is made and nothing is reported to the central abuse registry, a subject of a family assessment shall not be afforded the opportunity for a contested case hearing pursuant to Iowa Code chapter 17A.

ITEM 16. Amend rule 441—175.32(232,235A) as follows:

441—175.32(232,235A) Case records. The assessment case record shall contain the ~~child protective assessment summary report~~ as described in rule 441—175.26(232) and any related correspondence or information which pertains to the assessment or to the child and family. The name of the person who made the report of child abuse shall not be disclosed ~~to the subjects of the report.~~ The child protective assessment summary has two parts.

~~1.—Report and disposition data as described in 175.26(1). Subjects of the report have access to report and disposition data, including, where applicable, confirmation of placement on the central abuse registry for abuse reports meeting the criteria pursuant to Iowa Code section 232.71D as amended by 2011 Iowa Acts, House File 562. Form 470-3240, Child Protective Services Assessment Summary, shall be submitted to the central abuse registry only if the abuse is confirmed and determined to meet the criteria pursuant to Iowa Code section 232.71D as amended by 2011 Iowa Acts, House File 562.~~

~~2.—Assessment data as described in 175.26(2). Assessment data shall be available to subjects. Release of assessment data shall be accomplished only when the parent or guardian approves the release~~

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as provided through Iowa Code chapter 217, or as specified in Iowa Code section 235A.15. Assessment data shall not be submitted to the central abuse registry.

175.32(1) *Assessments where abuse was confirmed but not placed on the central abuse registry.* The following conditions apply to case records for assessments in which abuse was confirmed but not placed on the central registry:

a.— Access to the report data and disposition data is authorized only to the subjects of the report, the child protection worker, law enforcement officer responsible for assisting in the assessment or for the temporary emergency removal of a child from the child's home, the multidisciplinary team assisting the department in the assessment of the abuse, county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department or contract personnel necessary for official duties, the department of justice, and the attorney for the department.

b.— The child protective assessment summary is retained five years from date of intake or five years from the date of closure of the service record, whichever occurs later.

c.— The child protective assessment summary is subject to confidentiality provisions of Iowa Code chapter 217 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.

175.32(1) *Child abuse assessment report.* A child abuse assessment report has two parts.

a. Report and disposition data as described in 175.26(1) "a." Subjects of the report have access to report and disposition data, including, where applicable, confirmation of placement on the central abuse registry for abuse reports meeting the criteria pursuant to Iowa Code section 232.71D as amended by 2013 Iowa Acts, House File 590. A child abuse assessment report shall be submitted to the central abuse registry only if the abuse is confirmed and determined to meet the criteria pursuant to Iowa Code section 232.71D as amended by 2013 Iowa Acts, House File 590.

b. Assessment data as described in 175.26(1) "b" shall be available to subjects. Release of assessment data shall be accomplished only when the parent or guardian approves the release as provided in Iowa Code section 217.30 or as specified in Iowa Code section 235A.15. Assessment data shall not be submitted to the central abuse registry.

175.32(2) *Assessments not placed on the central abuse registry where abuse was not confirmed.* The following conditions apply to case records for assessments in which abuse was not confirmed and not placed on the central registry:

a.— Access to the report data on a child abuse assessment summary where abuse was not determined to have occurred and, therefore, the assessment was not placed on the central abuse registry is authorized only to the subjects of the assessment, the child protection worker, county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department of justice, and department or contract personnel necessary for official duties.

b.— Records are retained five years from date of intake or five years from the date of closure of the service record, whichever occurs later.

c.— The child protective assessment summary is subject to confidentiality provisions of Iowa Code chapter 217 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.

175.32(2) *Family assessment report.* A family assessment report includes assessment data only as described in 175.26(2) "b." Assessment data shall be available to subjects. Release of assessment data shall be accomplished only when the parent or guardian of a child named in a family assessment report approves the release as provided in Iowa Code section 217.30 or as specified in Iowa Code section 235A.15. Assessment data shall not be submitted to the central abuse registry.

175.32(3) *Child abuse assessments where abuse was confirmed but not placed on the central abuse registry.* The following conditions apply to case records for assessments in which abuse was confirmed but not placed on the central registry.

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a. Access to the report data and disposition data is authorized only to the subjects of the report, the child protection worker, the law enforcement officer responsible for assisting in the assessment or for the temporary emergency removal of a child from the child's home, the multidisciplinary team assisting the department in the assessment of the abuse, the county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department or contract personnel necessary for official duties, the department of justice, and the attorney for the department.

b. The child abuse assessment is retained for five years from the date of intake or five years from the date of closure of the service record, whichever occurs later.

c. The child abuse assessment report is subject to the confidentiality provisions of Iowa Code section 217.30 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.

175.32(4) *Child abuse assessments not placed on the central abuse registry where abuse was not confirmed.* The following conditions apply to case records for assessments in which abuse was not confirmed and not placed on the central registry:

a. Access to the assessment data on a child abuse assessment summary where abuse was not determined to have occurred and, therefore, the assessment was not placed on the central abuse registry is authorized only to the subjects of the assessment, the child protection worker, the county attorney, juvenile court, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department of justice, and department or contract personnel necessary for official duties.

b. Records are retained for five years from the date of intake or five years from the date of closure of the service record, whichever occurs later.

c. The child abuse assessment report is subject to the confidentiality provisions of Iowa Code section 217.30 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.

175.32(5) *Family assessment.* The following conditions apply to case records for all family assessments:

a. Access to the assessment data on a family assessment report is authorized only to the subjects of the assessment, the child protection worker, a person or agency responsible for the care of the child if the department or juvenile court determines that access is necessary, the department of justice, and department or contract personnel necessary for official duties.

b. Records are retained for five years from the date of intake or five years from the date of closure of the service record, whichever occurs later.

c. The family assessment report is subject to the confidentiality provisions of Iowa Code section 217.30 and 441—Chapter 9. No confidential information shall be released without consent except where there is otherwise authorized access to information as specified in the provisions of Iowa Code section 235A.15.

ITEM 17. Amend rule 441—175.33(232,235A) as follows:

441—175.33(232,235A) Child protection centers. The department may contract with designated child protection centers for assistance in conducting child abuse assessments. When a child who is the subject of an assessment is interviewed by staff at a child protection center, that interview may be used in conjunction with an interview conducted by the child protection worker. Written reports developed by the child protection center shall be provided to the child protection worker and may be included in the assessment case record. Video or audio records are considered to be part of the assessment process and shall be maintained by the child protection center under the same confidentiality provisions of Iowa Code ~~chapter 217~~ section 217.30 and 441—Chapter 9. Services or assistance from a child protection center will not be available through a family assessment. Law enforcement may refer families as appropriate.

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ITEM 18. Amend rule 441—175.35(232,235A) as follows:

441—175.35(232,235A) Jurisdiction of assessments. Child protection workers serving the county in which the child's home is located have primary responsibility for completing the ~~child abuse~~ assessment except when the suspected abuse occurs in an out-of-home placement. Circumstances in which the department shall conduct an assessment when another state is involved include the following:

175.35(1) *Child resides in Iowa but incident occurred in another state.* When the child who is the subject of a report of suspected abuse physically resides in Iowa, but has allegedly been abused in another state, the worker shall do all of the following:

- a. Obtain available information from the reporter.
- b. Make an oral report to the office of the other state's protective services agency and request assistance from the other state in completing the assessment.
- c. Complete the assessment with assistance, as available, of the other state.

175.35(2) and **175.35(3)** No change.

ITEM 19. Amend rule 441—175.36(235A) as follows:

441—175.36(235A) Multidisciplinary teams. Multidisciplinary teams shall be developed in county or multicounty areas in which more than 50 child abuse cases are received annually. These teams may be used as an advisory group to assist the department in conducting child abuse assessments. Multidisciplinary teams consist of professionals practicing in the disciplines of medicine, public health, mental health, social work, child development, education, law, juvenile probation, law enforcement, nursing, and substance abuse counseling. Members of multidisciplinary teams shall maintain confidentiality of cases in which they provide consultation. Rejected intakes shall not be shared with multidisciplinary teams since ~~they~~ the rejected intakes are not considered to be child abuse information. During the course of ~~an~~ a child abuse assessment, information regarding the initial report of child abuse and information related to the child and family functioning may be shared with the multidisciplinary team. After a conclusion is made, only report data and disposition data on confirmed cases of child abuse may be shared with the team members. When the multidisciplinary team is created, all team members shall execute an agreement, filed with the central abuse registry, which specifies:

175.36(1) Consultation. The team shall be consulted solely for the purpose of assisting the department in the child abuse assessment, and diagnosis ~~and treatment~~ of child abuse cases.

175.36(2) and **175.36(3)** No change.

175.36(4) Confidentiality provisions. Any written report or document produced by the team pertaining to an assessment case shall be made a part of the file for the case and shall be subject to all confidentiality provisions of 441—Chapter 9, unless the child abuse assessment results in placement on the central abuse registry in which case the written report or document shall be subject to all confidentiality provisions of Iowa Code chapter 235A.

175.36(5) Written records. Any written records maintained by the team which identify an individual child abuse assessment case shall be destroyed when the agreement lapses.

175.36(6) to **175.36(8)** No change.

ITEM 20. Amend rule 441—175.38(235) as follows:

441—175.38(235) Written authorizations. Requests for information from members of the general public as to whether a person is named on the central abuse registry as having abused a child shall be submitted on ~~Form 470-3301~~, the Authorization for Release of Child Abuse Information form ; to the county office of the department or the central abuse registry. The form shall be completed and signed by the person requesting the information and the person authorizing the check for the release of child abuse information.

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ITEM 21. Amend rule 441—175.39(232) as follows:

441—175.39(232) Founded child abuse. Reports of child abuse where abuse has been confirmed shall be placed on the central abuse registry as founded child abuse for either five or ten years under any of the circumstances specified by Iowa Code section 232.71D as amended by 2013 Iowa Acts, House File 590. When none of the placement criteria listed in Iowa Code section 232.71D(3) “b” as amended by 2013 Iowa Acts, House File 590, are applicable, reports of denial of critical care by failure to provide adequate clothing or failure to provide adequate supervision and physical abuse where abuse has been confirmed and determined to be minor, isolated, and unlikely to reoccur shall not be placed on the central abuse registry as a case of founded child abuse. The confirmed abuse shall be placed on the registry unless all three conditions are met.

175.39(1) and 175.39(2) No change.

ITEM 22. Amend rule 441—175.41(235A) as follows:

441—175.41(235A) Access to child abuse information. Requests for child abuse information shall include sufficient information to demonstrate that the requesting party has authorized access to the information.

175.41(1) Written requests. Requests for child abuse information shall be submitted on ~~Form 470-0643~~, a Request for Child Abuse Information, form to the county office of the department, except requests made for the purpose of determining employability of a person in a department-operated facility shall be submitted to the central abuse registry. Subjects of a report may submit a request for child abuse information to the county office of the department on ~~Form 470-0643~~, a Request for Child Abuse Information form, ~~or on Form 470-3243~~, a Notice of Child Abuse Assessment: Founded form; ~~Form 470-3575~~, a Notice of Child Abuse Assessment: Confirmed Not Registered form; ~~or on Form 470-3242~~, a Notice of Child Abuse Assessment: Not Confirmed form, or a family assessment report form. The county office is granted permission to release child abuse information to the subject of a report immediately upon verification of the identity and subject status.

175.41(2) Oral requests. Oral requests for child abuse information may be made when a person making the request believes that the information is needed immediately and if the person is authorized to access the information. When an oral request to obtain child abuse information is granted, the person approving the request shall document the approval to the central abuse registry through use of a ~~Form 470-0643~~, Request for Child Abuse Information, form or ~~Form 470-3243~~, a Notice of Child Abuse Assessment: Founded form.

Upon approval of any request for child abuse information authorized by this rule, the department shall withhold the name of the person who made the report of child abuse unless ordered by a juvenile court or district court after a finding that the person’s name is needed to resolve an issue in any phase of a case involving child abuse. Written requests and oral requests do not apply to child abuse information that is disseminated to an employee of the department, to a juvenile court, or to the attorney representing the department as authorized by Iowa Code section 235A.15.

175.41(3) Written authorizations. Requests for information from members of the general public as to whether a person is named on the central abuse registry as having abused a child shall be submitted on ~~Form 470-3301~~, an Authorization for Release of Child Abuse Information, form to the county office of the department or the central abuse registry. The form shall be completed and signed by the person requesting the information and the person authorizing the check for the release of child abuse information. The department shall not provide requested information when the authorization form is incomplete. Incomplete authorization forms shall be returned to the requester.

ITEM 23. Amend subrule 175.43(2) as follows:

175.43(2) Membership of panels. Each panel established shall be composed of a multidisciplinary team of volunteer members who are broadly representative of the community in which the panel is established, including members who possess knowledge and skills related to the diagnosis, assessments, and disposition of child abuse cases, and who have expertise in the prevention and treatment of child

HUMAN SERVICES DEPARTMENT[441](cont'd)

abuse. The membership of each panel shall include professionals practicing in the disciplines of medicine, nursing, public health, substance abuse, domestic violence, mental health, social work, child development, education, law, juvenile probation, law enforcement; or representatives from organizations that advocate for the protection of children. The panel shall function under the leadership of a chairperson and vice-chairperson who are elected annually by the membership. Members shall enter into a contract with the department by signing Form 470-3602, Iowa Child Protection System Citizens' Review Panel Contract.

ITEM 24. Adopt the following new definition of "Assessment" in rule ~~441—186.1(234)~~:

"Assessment" means the process by which the department responds to all accepted reports of alleged child abuse. An "assessment" addresses child safety, family functioning, culturally competent practice, and identifies the family strengths and needs, and engages the family in services if needed. The department's assessment process occurs either through a child abuse assessment or a family assessment.

ITEM 25. Amend rule ~~441—186.1(234)~~, definition of "Child abuse assessment," as follows:

"Child abuse assessment" means ~~the an assessment process by which the department carries out its legal mandate to ascertain if child abuse has occurred, record findings, develop conclusions based upon evidence, address the safety of the child and family functioning, engage the family in services if needed, enhance family strengths, and address needs in a culturally sensitive manner~~ responds to all accepted reports of child abuse which allege child abuse as defined in Iowa Code section 232.68(2) "a"(1) through (3) and (5) through (10); or which allege child abuse as defined in Iowa Code section 232.68(2) "a"(4) that also allege imminent danger, death, or injury to a child. A "child abuse assessment" results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the central abuse registry are met.

ITEM 26. Amend rule ~~441—186.2(234)~~ as follows:

~~441—186.2(234) Eligibility.~~ A family's eligibility for community care is established by department referral to the community care contractor.

~~186.2(1) Referral indicated.~~ The department will refer a family for community care when ~~all of the following conditions exist:~~

~~a. A child abuse assessment has identified a need for community care. and the child abuse assessment findings are one of the following:~~

~~b. The child abuse assessment findings are one of the following:~~

~~(1) Abuse is not confirmed, but the child is believed to be at moderate to high risk of future abuse or neglect; or~~

~~(2) Abuse is confirmed but not founded, and the child is believed to be at moderate ~~or high~~ risk of future abuse or neglect; ~~or~~~~

~~(3) Abuse is founded, the child is six years of age or older, and the child is believed to be at low risk of repeat abuse.~~

~~b. A family assessment has identified a need for community care, and the child is believed to be at moderate to high risk of future abuse or neglect.~~

~~c. The family has voluntarily agreed to be referred to community care.~~

~~186.2(2) Referral not indicated.~~ The department will not refer a family for community care when:

~~a. A child has been adjudicated a child in need of assistance or a child in need of assistance petition was filed or is pending. Court orders are not used as a mechanism for families to receive community care.~~

~~b. Any child in the household has an open child welfare service case with the department.~~

~~c. The abuse occurred in an out-of-home setting.~~

[Filed 10/10/13, effective 1/1/14]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1139C**IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 16.5(1)“r,” 16.52 and 17A.3(1)“b,” the Iowa Finance Authority hereby amends Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

These amendments replace the 2013 qualified allocation plan with the 2014 Low Income Tax Credit Qualified Allocation Plan (QAP), which is incorporated by reference in rule 265—12.1(16).

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0929C**. The Authority received public comment on the QAP and made certain changes to the QAP based on those comments; however, these amendments are identical to those published under Notice.

The Iowa Finance Authority adopted these amendments on October 2, 2013.

After analysis and review of this rule making, it has been found that the QAP incorporated into the rules by reference will have a strong positive impact on jobs, in that the award of tax credits pursuant to the QAP will result in a substantial amount of construction and related work within the state of Iowa.

These amendments are intended to implement Iowa Code sections 16.5(1)“r,” 16.52, 17A.12, and 17A.16 and Internal Revenue Code Section 42.

These amendments will become effective on December 4, 2013.

The following amendments are adopted.

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 ~~2013~~ 2014 Qualified Allocation Plan shall be the qualified allocation plan for the allocation of ~~2013~~ 2014 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 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 October ~~4~~ 2, ~~2012~~ 2013.

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 October ~~4~~ 2, ~~2012~~ 2013. 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.

[Filed 10/9/13, effective 12/4/13]

[Published 10/30/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1140C**IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

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 hereby amends Chapter 39, “HOME Investment Partnerships Program,” Iowa Administrative Code.

IOWA FINANCE AUTHORITY[265](cont'd)

These amendments are intended to clarify the rules and update definitions, partly in response to recent changes in relevant federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 4, 2013, as **ARC 0997C**. The Authority received public comment on the proposed amendments and made certain changes to the amendments based on those comments. To comply with federal regulations and provide clarification, definitions were revised and underwriting review was added to the amendments.

The Iowa Finance Authority adopted these amendments on October 9, 2013.

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

These amendments are intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Sections 12701 et seq.

These amendments will become effective on December 4, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 265—39.1(16) as follows:

265—39.1(16) Purpose. The primary purpose of the HOME investment partnerships program is to ~~expand or retain the supply of decent and affordable housing for low- and moderate-income Iowans~~ fund a wide range of activities that build, buy or rehabilitate (or both buy and rehabilitate) affordable housing for rent or homeownership or to provide direct rental assistance to low-income people.

ITEM 2. Adopt the following **new** definitions of “Fully accessible unit” and “Qualified veteran” in rule **265—39.2(16)**:

“*Fully accessible unit*” means a unit designed and constructed for full accessibility in accordance with Section 1002 of the International Code Council (ICC) A117.1.

“*Qualified veteran*” means a person who served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable.

ITEM 3. Rescind the definition of “Accessible” in rule **265—39.2(16)**.

ITEM 4. Amend the following definitions in rule **265—39.2(16)**:

“*CHDO*” means a community housing development organization, which is a nonprofit organization registered with the Iowa secretary of state and certified as such by IFA, pursuant to 24 CFR 92.2 (~~September 16, 1996~~) (July 24, 2013).

“*Contract*” means a binding written agreement between IFA and the recipient or subrecipient for the purpose of utilizing HOME funds to ~~produce affordable housing or provide tenant-based rental assistance~~ build, buy or rehabilitate (or both buy and rehabilitate) affordable housing for rent or homeownership or to provide direct rental assistance to low-income people.

“*Developer*” means any individual or entity responsible for initiating and controlling the development process and ensuring that all phases of the development process, or any material portion thereof, are accomplished. The development process applies to transitional housing, rental housing, rehabilitation; and ~~rental housing new construction, and homeowner assistance with development subsidies.~~

“*Local support*” means involvement, endorsement and investment by local citizens, local organizations and or the governing body of the local government in which the housing project is located. ~~that~~ The local support shall promote the objectives of the housing activity or projects assisted through the HOME partnership program.

“*Net proceeds*” means the amount determined by calculating the difference between the ~~resale~~ sale price and the amount of the outstanding principal loan balance owed plus any seller’s reasonable and customary closing costs associated with the ~~resale~~ sale.

ITEM 5. 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, homebuyer assistance that includes some form of direct subsidy to the homebuyer (~~including development subsidies~~), and other housing-related activities as may be deemed appropriate by IFA. Assisted

IOWA FINANCE AUTHORITY[265](cont'd)

housing may be single-family housing or multifamily housing and may be designed for occupancy by homebuyers or tenants.

a. Assisted units shall meet the period of affordability as set forth in the federal program requirements.

b. For homebuyer assistance, the initial purchase price for newly constructed units or the after-rehabilitation value for rehabilitated units shall not exceed the ~~single-family housing mortgage limits as set forth by HUD's most current maximum purchase price or after-rehabilitation value limits~~ homeownership value limit as established by HUD.

c. For a rental project, rents shall be limited to the rents allowed by HUD for HOME.

~~*b. d.*~~ Assisted households shall meet income limits established by federal program requirements.

(1) For a rental activities project, all assisted units shall be rented to low-income households; at initial occupancy, ~~400~~ at least 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 or more units, at least 20 percent of the units shall be rented ~~initially~~ to very low-income households.

(2) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; at least 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.

(3) For homebuyer assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted.

e. e. Property standards. All newly constructed housing (single-family and multifamily housing) shall be constructed in accordance with any locally adopted and enforced building codes, standards and ordinances. In the absence of locally adopted and enforced building codes, the requirements of the state building code shall apply.

(1) All rental housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted and enforced building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the state building code shall apply.

(2) All single-family housing involving rehabilitation shall be rehabilitated in accordance with any locally adopted building or housing codes, standards and ordinances. In the absence of locally adopted and enforced building or housing codes, the requirements of the most current version of Iowa's Minimum Housing Rehabilitation Standards shall apply (all communities with populations of 15,000 or less).

~~*d. f.*~~ Energy Star. All new rental construction must obtain Energy Star certification verified by an Energy Star rater.

ITEM 6. Amend subrule 39.6(7) as follows:

39.6(7) Maximum per-unit subsidy amount, ~~and~~ subsidy layering, and underwriting review. The following shall apply to all applications:

a. The total amount of HOME funds awarded on a per-unit basis may not exceed the per-unit dollar limitations established under Section 221(d)(3)(ii) of the National Housing Act (12 U.S.C. 17151(d)(3)(ii)) for nonprofit elevator-type projects that apply to the area in which the housing is located.

b. IFA shall evaluate the project in accordance with subsidy layering guidelines adopted by HUD for this purpose.

c. The total amount of HOME funds awarded on a per-unit basis cannot exceed the pro rata or fair share of the total project costs when compared to a similar unit in a rental activity.

d. IFA shall conduct an underwriting review of the project.

ITEM 7. Amend subrule 39.6(9) as follows:

39.6(9) An application for a homebuyer assistance activity must stipulate that homebuyer assistance is for first-time homebuyers or qualified veterans only and that the assisted unit will remain as the assisted homebuyer's principal residence throughout the required period of affordability, which must be verified annually by the subrecipient. If the assisted homebuyer fails to maintain the home as the principal residence during the period of affordability, then all HOME funds associated with that address must be repaid to IFA.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 8. Amend subrule 39.6(10) as follows:

39.6(10) An application for a homebuyer assistance activity must ~~stipulate that all assisted units will be insured for at least the full value of the assisted unit, which must be verified annually by the subrecipient.~~ include a system for:

- a. Annual verification that all assisted units are insured for at least the full value of the assisted unit;
- b. Underwriting review of the potential homebuyer;
- c. Housing counseling to homebuyers; and
- d. Application of IFA policies and procedures regarding homebuyer assistance activities.

ITEM 9. Amend subrule 39.7(3) as follows:

39.7(3) Special consideration will be given to applications where 100 percent of the HOME-funded rental units are fully accessible ~~(not adaptable)~~ units.

ITEM 10. Amend subrules 39.8(6) and 39.8(7) as follows:

39.8(6) ~~An A single award shall be limited to no more than: \$600,000 for single-family housing activities assisting homebuyers. An award shall be limited to no more than \$1,000,000 for multifamily housing rental activities.~~

- a. \$600,000 for single-family housing activity, or
- b. \$1,000,000 for rental project, or
- c. \$1,000,000 for tenant-based rental assistance activity.

39.8(7) Single-family per-unit subsidies.

a. The maximum per-unit subsidy for all single-family housing activities involving rehabilitation is \$37,500. The \$37,500 per-unit limit includes all applicable costs including, but not limited to, the hard costs of rehabilitation or the acquisition subsidy or both; homebuyer assistance activities; technical services costs, including lead hazard reduction carrying costs; lead hazard reduction costs; and temporary relocation. All rehabilitation hard costs funded with HOME funds are limited to \$24,999. All applicable technical services costs, including any lead hazard reduction carrying costs, are limited to \$4,500 per unit.

b. Assistance for single-family housing activities providing acquisition assistance for ~~newly constructed~~ housing (mortgage buy-down, down payment or closing costs assistance or both, or combinations thereof) is limited to \$35,000 per unit, inclusive of all costs, including technical services costs.

ITEM 11. Amend subrule 39.9(8) as follows:

39.9(8) *Compliance with federal, state and local laws and regulations.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable federal, state and local regulations. IFA may require a construction sign meeting specifications outlined by IFA to be erected on the property at the initiation of construction or rehabilitation of rental projects.

[Filed 10/9/13, effective 12/4/13]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1159C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby amends Chapter 71, "Administration of the Conveyance Safety Program," Iowa Administrative Code.

The American Society of Mechanical Engineers standard pertaining to elevator inspector qualifications will end effective January 1, 2014. Currently, Iowa relies on that standard to determine

LABOR SERVICES DIVISION[875](cont'd)

if an applicant is qualified to be an elevator inspector. To stay current, Iowa must update a related definition.

The purposes of this amendment are to make the rule current, protect the health and safety of the public and implement legislative intent.

Notice of Intended Action was published in the August 21, 2013, Iowa Administrative Bulletin as **ARC 0951C**. No public comment was received on the proposed amendment. This amendment is identical to the amendment published under Notice of Intended Action.

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

After analysis and review of this rule making, no impact on jobs will occur.

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

This amendment shall become effective on December 4, 2013.

The following amendment is adopted.

Amend rule **875—71.1(89A)**, definition of “CEI,” as follows:

“CEI” means a person who is a certified elevator inspector or a certified elevator inspector supervisor pursuant to ASME QEI-1-2007 and who received the certification from a certifying organization that holds a valid document of accreditation issued by an accreditation body in accordance with ANSI/ISO/IEC 17024.

[Filed 10/10/13, effective 12/4/13]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1158C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby amends Chapter 71, “Administration of the Conveyance Safety Program,” Iowa Administrative Code.

The Elevator Safety Board must set conveyance safety program fees at “an amount sufficient to cover costs” of operating the program. The last significant change in the fee schedule was in 2005. In conjunction with the Labor Commissioner, the Elevator Safety Board conducted a careful review of the conveyance safety program’s finances and the fee structures of similar programs in the region. The Elevator Safety Board concluded that these fee increases are essential.

The purposes of this amendment are to maintain the financial solvency of the program, protect the health and safety of the public, and implement legislative intent.

Notice of Intended Action was published in the September 4, 2013, Iowa Administrative Bulletin as **ARC 1009C**. No public comment was received on the proposed amendment. This amendment is identical to the amendment published under Notice of Intended Action.

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

After analysis and review of this rule making, no impact on jobs will occur.

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

This amendment shall become effective on December 4, 2013.

The following amendment is adopted.

Rescind rule 875—71.16(89A) and adopt the following **new** rule in lieu thereof:

875—71.16(89A) Fees. Except as noted in this rule, all fees are nonrefundable and due in advance.

71.16(1) Operating permits. The annual operating permit fee shall be \$75 per conveyance.

LABOR SERVICES DIVISION[875](cont'd)

71.16(2) Periodic inspections. Fees shall be remitted to the division of labor services within 30 days of the date of inspection. The fees for periodic inspections shall be as follows:

- a. Hydraulic elevator: \$100.
- b. Wind tower lift: \$225.
- c. Hand-powered elevator: \$90.
- d. Television tower elevator: \$500.
- e. Other traction elevator: \$150.
- f. Escalator: \$150.
- g. Dumbwaiter: \$90.
- h. Wheelchair lift: \$90.
- i. CPH.
 - (1) Annual: \$500.
 - (2) Quarterly: \$200.
- j. Moving walk: \$150.

71.16(3) Installation permits. The fees in this subrule cover the initial print review, installation permit, initial inspection and first-year operating permit. Each print revision submitted to the division shall be subject to an additional fee of \$100. The fees for new installations shall be as follows:

- a. Wind tower lift: \$500.
- b. Hydraulic elevator: \$750.
- c. Traction elevator: \$1000.
- d. Escalator: \$1000.
- e. Dumbwaiter: \$500.
- f. Wheelchair lift: \$500.
- g. CPH: \$500.
- h. Moving walk: \$500.

71.16(4) Alteration permits.

- a. The fee for any elevator alteration permit except a CPH extension shall be \$500 and shall cover the initial print review, alteration permit, and initial inspection.
- b. The fee for each CPH extension shall be \$150. The total fee required for all planned CPH extensions shall be submitted with the installation permit application pursuant to subrule 71.5(3).
- c. For all other conveyances, the fees for new installations shall apply to alterations.

71.16(5) Construction permits. The construction permit fee shall be \$200 per conveyance. This fee includes the fee for initial inspection.

71.16(6) Controller upgrade permits. The controller upgrade permit fee shall be \$250. This fee includes one inspection.

71.16(7) Consultative inspections. Consultative inspections may be performed at the discretion of the labor commissioner for \$125 per hour, including travel time, with a minimum charge of \$250.

71.16(8) Special inspector commission. The special inspector commission fee shall be \$60 annually.

71.16(9) Witness of safety tests. The fee for division employees to witness safety tests shall be \$125 per hour, including travel time, with a minimum charge of \$250.

71.16(10) Permit extensions. The fee to extend an installation permit, alteration permit, or construction permit shall be \$100.

71.16(11) Inspections outside of normal business hours. Inspections outside the normal business hours may be performed at the discretion of the labor commissioner. If the owner or contractor requests an inspection outside of normal business hours and the labor commissioner agrees to the schedule, an additional fee will be charged. The additional fee will be calculated at a rate of \$200 per hour, including travel time, with a minimum charge of \$400.

71.16(12) Reinspections. The fees for reinspections are \$400 for television tower elevators and CPHs, \$200 for wind tower lifts, and \$300 for all other conveyances.

71.16(13) Inspection for temporary removal from service. The inspection fee for temporary removal from service pursuant to rule 875—71.20(89A) shall be \$125 per hour, including travel time, with a minimum charge of \$250.

LABOR SERVICES DIVISION[875](cont'd)

71.16(14) Fee waiver: When a state inspector combines in one visit two different types of inspection on a single conveyance, the commissioner may waive the lesser of the fees.

[Filed 10/10/13, effective 12/4/13]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1130C

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

The amendments remove language relating to charging a convenience fee for online applications and also remove language regarding fees being processed as repayment receipts.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 26, 2013, as **ARC 0810C**. The Board received no comments. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board on September 18, 2013.

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

These amendments are intended to implement Iowa Code sections 147.80 and 8.2.

These amendments will become effective December 4, 2013.

The following amendments are adopted.

ITEM 1. Amend rule **655—3.1(17A,147,152,272C)**, definition of "Fees," as follows:

"Fees" means those fees collected which are based upon the cost of sustaining the board's mission to protect the public health, safety and welfare. The nonrefundable fees set by the board are as follows:

1. to 13. No change.

~~14. For the convenience of online license renewal, a charge will be assessed.~~

~~15. 14. Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, \$50. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

ITEM 2. Rescind the definition of "Repayment receipts" in rule **655—3.1(17A,147,152,272C)**.

[Filed 10/1/13, effective 12/4/13]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1131C

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

This amendment adds an additional testing option to verify English skills of an individual educated and licensed in another country.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 24, 2013, as **ARC 0876C**. The Board received no comments. This amendment is identical to that published under Notice of Intended Action.

NURSING BOARD[655](cont'd)

This amendment was adopted by the Board on September 18, 2013.

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

This amendment is intended to implement Iowa Code sections 147.36 and 152.7.

This amendment will become effective December 4, 2013.

The following amendment is adopted.

Amend subrule 3.4(4) as follows:

3.4(4) Application—individuals educated and licensed in another country.

a. The board shall:

(1) Provide information about licensure application to applicants and others upon request.

(2) Determine eligibility of each applicant upon receipt of:

1. to 7. No change.

8. Verification of ability to read, write, speak and understand the English language as determined by the results of the ~~Test of English as a Foreign Language (TOEFL)~~ or the International English Language Testing System (IELTS), Pearson Test of English Academic (PTE), or Test of English as a Foreign Language (TOEFL) for licensed practical nurse and registered nurse applicants. Applicants shall be exempt from the ~~TOEFL or IELTS~~, PTE or TOEFL examination when the native language is English; nursing education was completed in a college, university or professional school located in Australia, Canada (except Quebec), Ireland, New Zealand or the United Kingdom; language of instruction in the nursing program was English; and language of the textbooks in the nursing program was English.

b. The applicant shall:

(1) to (6) No change.

(7) Complete ~~TOEFL or IELTS~~, PTE or TOEFL requirements for licensed practical nurse and registered nurse applicants.

(8) to (11) No change.

[Filed 10/1/13, effective 12/4/13]

[Published 10/30/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/30/13.

ARC 1137C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 421.17, the Department of Revenue hereby amends Chapter 40, "Determination of Net Income," and Chapter 86, "Inheritance Tax," Iowa Administrative Code.

The amendments repeal rules that are no longer relevant as a result of 2012 Iowa Acts, House File 609. Additional amendments have been made to update Iowa Code references and examples, add clarity to the rules, and eliminate unnecessary administrative burdens on the public.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1002C** on September 4, 2013. No comments were received from the public. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 422.7, 450.2 to 450.4, 450.9, 450.22, 450.27 to 450.37, 450.44 to 450.49, 450.51, 450.52, 633.276, and 633.800 to 633.811.

These amendments will become effective December 4, 2013.

The following amendments are adopted.

REVENUE DEPARTMENT[701](cont'd)

ITEM 1. Rescind and reserve rule **701—40.59(422)**.

ITEM 2. Amend subrule 86.1(6) as follows:

86.1(6) Safe deposit boxes and joint accounts. Effective July 1, 1998, there is no longer a requirement for safe deposit boxes to be inventoried and reported to the department prior to the delivery of the assets to the personal representative, transferee, joint owner, or beneficiary. ~~However,~~ Additionally, effective July 1, 2005, there is no longer a requirement that all persons, banks, credit unions, and savings and loan associations are required to notify the department of the balance in a joint account on the date of a deceased joint owner's death and the name and address of the surviving joint owner prior to permitting the withdrawal of funds from the joint account by a surviving joint owner.

ITEM 3. Amend paragraph **86.2(1)“c”** as follows:

c. Who is not required to file a return for estate of decedents dying on or after July 1, 2004. Effective for estates with decedents dying on or after July 1, 2004, if an estate has no Iowa inheritance tax due and there is no obligation for the estate to file a federal estate tax return, even though real estate is involved, an Iowa inheritance tax return need not be filed if one of the following situations is applicable:

(1) to (3) No change.

(4) All estate assets are passed by will or intestate succession as set forth in Iowa Code chapter 633, division IV, and beginning with section 633.210, solely to individuals who are statutorily exempt from Iowa inheritance tax as set forth above in ~~subsection~~ subparagraph (3); or

(5) For estates of decedents dying on or after July 1, 2007, if the total aggregate value of all the tangible personal property in the estate is \$5,000 or less and in-kind distributions are made. Any in-kind distribution of personal property is exempt from inheritance tax when the total aggregate value of the tangible personal property in the estate is \$5,000 or less. If the total aggregate amount of tangible personal property is greater than \$5,000, then the exemption for in-kind distributions of tangible personal property does not apply. See Iowa Code section 450.4(7); see also Iowa Code section 633.276 for a description of tangible personal property that qualifies.

EXAMPLE 1: The total aggregate value of the tangible personal property in the estate is \$3,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is not subject to inheritance tax.

EXAMPLE 2: The total aggregate value of the tangible personal property in the estate is \$15,000. The executor makes an in-kind distribution of a diamond ring worth \$1,000 to a neighbor. The diamond ring is subject to inheritance tax because the total aggregate value of tangible personal property is greater than \$5,000.

Paragraph 86.2(1)“c” does not apply to interests in an asset or assets that pass to both an individual listed in Iowa Code section 450.9 and that individual's spouse.

ITEM 4. Amend subparagraph **86.2(1)“d”(2)** as follows:

(2) If any interest in real estate passes on account of the decedent's death and no Iowa inheritance tax return is required to be filed and the real estate does not pass through probate administration, then one of the persons succeeding to the interest in the real property must file an affidavit in the county in which the real property is located setting forth the legal description of the real property and the fact that an Iowa inheritance tax return is not required to be filed with the department. ~~A copy of this affidavit must also be filed with the department with a schedule showing the value of the property for the purpose of ascertaining the basis of the property.~~ A copy of this affidavit must be retained by the beneficiary that holds the real estate.

ITEM 5. Amend paragraph **86.2(2)“b”** as follows:

b. Estates of decedents dying on or after July 1, 1983. For estates of decedents dying on or after July 1, 1983, the preliminary inheritance tax return is abolished and a single inheritance tax return is ~~substituted in lieu thereof shall be filed.~~ The return shall provide for schedules listing the assets includable in the gross estate, a listing of the liabilities deductible in computing the net estate, and a computation of the tax due, if any, on each share of the net estate. The return shall conform as nearly as possible to the

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federal estate tax return, Form 706. For information regarding Iowa returns, see subrule 86.1(5). If the estate has filed a federal estate tax return, a copy must be submitted with the Iowa return. If the federal estate return includes the schedules of assets and liabilities, the taxpayer may omit the Iowa schedules of assets from the return. However, any Iowa schedules indicating liabilities must be filed with the Iowa return due to proration of liabilities. When Iowa schedules are filed with the return, only those schedules which apply to the particular assets and liabilities of the estate are required. A return merely listing the assets and their values when the gross estate is in excess of \$25,000 (\$10,000 for estates of decedents dying before July 1, 2001) is not sufficient in nontaxable estates. In this case, the return must be amended to list the schedule of liabilities and the computation of the shares of the net estate before an inheritance tax clearance will be issued.

ITEM 6. Amend paragraph **86.2(2)“d”** as follows:

d. Estates of decedents dying on or after July 1, 1999. In addition to the special rule for surviving spouses set forth in paragraph “c” of this subrule, effective for estates of decedents dying on or after July 1, 1999, an estate that consists solely of property includable in the gross estate that is held in joint tenancy with right of survivorship and that is exclusively owned by the decedent and a lineal ascendant of the decedent, lineal descendant of the decedent, a child legally adopted in compliance with the laws of this state by the decedent or a stepchild of the decedent, or any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, or a combination solely consisting of such persons, is not required to file an Iowa inheritance tax return, unless such an estate has an obligation to file a federal estate tax return. Property of the estate passing by means other than by joint tenancy with right of survivorship or if any property passes by joint tenancy with right of survivorship when the title of property is held by persons other than a lineal ascendant, lineal descendant, a child legally adopted in compliance with the laws of this state, or a stepchild of the decedent or by any other person declared exempt from Iowa inheritance tax pursuant to Iowa Code section 450.9, an inheritance tax return is required to be filed.

The exemption granted to stepchildren is limited to that class of step relationships exclusively. The exemption is not extended to include any lineal ascendants or descendants of the step relationship, such as stepgrandchild, stepparent or stepgrandparent. For a definition of “stepchild” for estates of decedents dying on or after July 1, 2003, please see the definition found in 701—86.1(450).

The rate of Iowa inheritance tax imposed on a share is based upon the relationship of the beneficiary to the decedent or the type of entity that is the beneficiary. A For estates of decedents dying before July 1, 2001, a net estate that is less than \$10,000 does not have an Iowa inheritance tax obligation. For estates of decedents dying on or after July 1, 2001, the net estate that is less than \$25,000 does not have an Iowa inheritance tax obligation. The following is the most current Iowa inheritance tax rate schedule for net estates over \$25,000:

SCHEDULE B			
Brother, sister (including half-brother, half-sister), son-in-law, and daughter-in-law. There is no exemption.			
If the share is:			
Not over \$12,500, the tax is 5% of the share.			
If over	But not over	Tax is	Of excess over
\$ 12,500	\$ 25,000	\$ 625 + 6%	\$ 12,500
25,000	75,000	1,375 + 7%	25,000
75,000	100,000	4,875 + 8%	75,000
100,000	150,000	6,875 + 9%	100,000
150,000	and up	11,375 + 10%	150,000

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<p>SCHEDULE C</p> <p>Uncle, aunt, niece, nephew, foster child, cousin, brother-in-law, sister-in-law, stepgrandchild, and all other individual persons. There is no exemption.</p> <p>If the share is: Not over \$50,000, tax is 10% of the share.</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">If over</th> <th style="text-align: center;">But not over</th> <th style="text-align: center;">Tax is</th> <th style="text-align: center;">Of excess over</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">\$ 50,000</td> <td style="text-align: center;">\$100,000</td> <td style="text-align: center;">\$ 5,000 + 12%</td> <td style="text-align: center;">\$ 50,000</td> </tr> <tr> <td style="text-align: center;">100,000</td> <td style="text-align: center;">and up</td> <td style="text-align: center;">11,000 + 15%</td> <td style="text-align: center;">100,000</td> </tr> </tbody> </table>				If over	But not over	Tax is	Of excess over	\$ 50,000	\$100,000	\$ 5,000 + 12%	\$ 50,000	100,000	and up	11,000 + 15%	100,000
If over	But not over	Tax is	Of excess over												
\$ 50,000	\$100,000	\$ 5,000 + 12%	\$ 50,000												
100,000	and up	11,000 + 15%	100,000												
<p>SCHEDULE D</p> <p>A firm, corporation or society organized for profit, including an organization failing to qualify as a charitable, educational or religious organization:</p> <p>Effective July 1, 2001, any fraternal and social organization which does not qualify for exemption under IRC Section 170(c) and <u>or</u> 2055:</p> <p>15% of the amount.</p>															
<p>SCHEDULE E</p> <p>Any society, institution or association incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to a cemetery association, including a humane society not organized under the laws of this state, or to a resident trustee for use without this state, the rate of tax imposed in excess of \$500:</p> <p>10% of the amount.</p>															
<p>SCHEDULE F</p> <p>An unknown heir, as distinguished from an heir who is not presently ascertainable, due to contingent events:</p> <p>5% of the amount.</p>															
<p>SCHEDULE G</p> <p>A public library or public art gallery within this state, open to the use of the public and not operated for gain, or to a hospital within this state, or a trustee for such use within this state, or to a municipal corporation for purely public purposes:</p> <p>Entirely exempt: No tax.</p> <p>(Also included in this class are bequests for the care and maintenance of the cemetery or burial lot of a decedent or the decedent's family.)</p> <p><u>A charitable, religious, educational, or veterans organization as defined in IRC Section 170(c) or 2055.</u></p>															

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All other shares to income tax exempt organizations that are not defined in IRC Section 170(c) must provide their IRS letter of determination. Organizations may also be required to provide evidence that the bequest has restricted the funds to a conforming activity.

Public libraries, public art galleries, hospitals, humane societies, municipal corporations, bequests for care of cemetery or burial lots of the decedent or the decedent's family, and bequests for religious services the total of which does not exceed \$500.

Entirely exempt: No tax.

ITEM 7. Amend subrule 86.2(4) as follows:

86.2(4) Supplemental return—deferred interest. When the tax has been deferred on a property interest to take effect in possession or enjoyment after the termination of a prior property interest, it shall be the duty of the owner of the future interest to file a supplemental inheritance tax return with the department, reporting the future interest for taxation. At the top of the front page of the return, the word “SUPPLEMENTAL” shall be printed.

ITEM 8. Amend subrule 86.5(1) as follows:

86.5(1) Iowa real and tangible personal property.

a. Real estate and tangible personal property with a situs in the state of Iowa and in which the decedent had an interest at the time of death is includable in the gross estate regardless of whether the decedent was a resident of Iowa. It is immaterial whether the property, or interest, is owned singly, jointly, or in common.

b. Certain other real and tangible personal property with a situs in the state of Iowa in which the decedent did not have an interest at death may also be part of the gross estate for tax purposes. Examples of such property transfers include, but are not limited to, transfers of real estate in which the grantor retained a life estate, life interest, interest or the power of revocation, property or interest in property in trust, and gifts made within three years of death in excess of the federal gift tax exclusion. These constitute transfers of property in which the decedent may not have an interest at death, but are includable in the gross estate for inheritance tax purposes. *In re Dieleman's Estate v. Dept. of Revenue*, 222 N.W.2d 459 (Iowa 1974); *In re English's Estate*, 206 N.W.2d 305 (Iowa 1973); and *Lincoln's Estate v. Briggs*, 199 N.W.2d 337 (Iowa 1972).

c. A nonresident decedent's interest in a corporation, limited liability company, or partnership that owns real or tangible personal property with an Iowa situs that is titled in the name of that business entity is not subject to inheritance tax. An interest in a business entity is intangible personal property which follows the residence of the decedent for the purposes of inheritance tax.

d. Tangible personal property as defined in Iowa Code section 633.276 with an Iowa situs which is distributed in kind from the estate is not subject to inheritance tax if the aggregate value of all tangible personal property in the estate does not exceed \$5,000. See 86.2(1) “c”(5).

ITEM 9. Rescind and reserve subrule **86.5(4)**.

ITEM 10. Amend paragraph **86.5(7)“d”** as follows:

d. *Gifts made within three years prior to death—for estates of decedents dying on or after July 1, 1984.* All gifts made by the donor within three years prior to death, which are in excess of the annual calendar year federal gift tax exclusion provided for in 26 U.S.C. Section 2503, subsections b and e, are included in the gross estate for inheritance tax purposes. The motive, intention or state of mind of the donor is not relevant. Date of valuation for a gift in which there was a full transfer of ownership is valued at the date in which the gift is completed. However, for a gift of an interest in property that is less than a full transfer of ownership, which includes, but is not limited to, a life estate or conditional gift, the date of valuation is the date of the death of the decedent, unless alternative valuation is chosen. Effective for estates of decedents dying on or after July 1, 2003, valuation of property transferred by the grantor or donor is based on the net market value at the date of transfer. The fact alone that the transfer

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is a gift, in whole or in part, and exceeds the annual calendar year exclusion for federal gift tax purposes, is sufficient to subject the excess of the transfer over the exclusion to tax. The exclusion is applied to the total amount of the gifts made to a donee in a calendar year, allocating the exclusion to the gifts in the order made during the calendar year. This rule has important application to the earliest year of the three-year period before death because the three-year period for inheritance tax purposes is measured from the date the decedent-donor died. This will only rarely coincide with a calendar year. As a result, none of the gifts made in the earliest calendar year of the three-year period prior to death, regardless of the amount, which are made before the beginning of the three-year period, measured by the decedent's death date, are subject to tax. However, gifts made before the three-year period begins in this earliest year will reduce or may completely absorb the exclusion amount that is available for the remaining part of this first-year period. The significance of the difference between the three-year period prior to death and the calendar year exclusion amount is illustrated by the following:

EXAMPLE. The decedent-donor, A, died July 1, ~~1995~~ 2012. The three-year period during which gifts may be subject to inheritance tax begins July 1, ~~1992~~ 2009. During the calendar year ~~1992~~ 2009, A made a cash gift to nephew B of ~~\$11,000~~ \$14,000 on May 1, ~~1992~~ 2009, and a second gift to B of \$4,000 on August 1, ~~1992~~ 2009. In this example, none of the ~~\$11,000~~ \$14,000 gift made on May 1, ~~1992~~ 2009, is includable for inheritance tax purposes because it was made before the three-year period began, based on A's date of death. All of the \$4,000 gift made on August 1, ~~1992~~ 2009, is includable for inheritance tax purposes because it is in excess of the calendar year ~~1992~~ 2009 federal gift tax exclusion of ~~\$10,000~~ \$13,000.

(1) Split gift. At the election of the donor's spouse, a gift made by a donor to a person, other than the spouse, shall be considered, for inheritance tax purposes, as made one half by the donor and one half by the donor's spouse. This split gift election for inheritance tax purposes is subject to the same terms and conditions that govern split gifts for federal gift tax purposes under 26 U.S.C. Section 2513.

The consent of the donor's spouse signified under 26 U.S.C. Section 2513(b) shall also be presumed to be consent for Iowa inheritance tax purposes, unless the contrary is shown. If the split gift election is made, the election shall apply to all gifts made during the calendar year. Therefore, if the election is made, each spouse may use the annual federal gift tax exclusion (~~\$10,000 for 1994~~) which shall be applied to one-half of the total value of all gifts made by both spouses during the calendar year to each donee.

(2) Types of transfers which may result in a gift. Whether a transfer of property constitutes a gift depends on the facts and circumstances surrounding each individual transfer. Transfers which may result in a gift, in whole or in part, include, but are not limited to: sales of property where the purchase price, or terms of sale, are less than fair market value; a loan of money, interest free, even though the loan is payable on demand; the release of a retained life use of property; and the payment of a debt or other obligation of another person.

(3) Types of transfers that are not a gift. However, certain transfers which in property law would be considered a present transfer of an interest in property may not be considered gifts within the Iowa three-year rule under Iowa Code section 450.3(2). Rather the transfers may be transfers intended to take effect in possession or enjoyment at death. Examples of this kind of transfer would include, but are not limited to, transfers in trust or otherwise, with a retained life use or interest; commercial annuities where payments are made to a beneficiary upon the death of the primary annuitant; transfers that place property in joint tenancy; irrevocable transfers of real or personal property where the deed or bill of sale is placed in escrow to be delivered only upon the grantor's death. Transfers of this kind are subject to inheritance tax under Iowa Code section 450.3(3) as a transfer to take effect in possession or enjoyment at death, even though under property law an interest in the property may have been transferred prior to death. Different kinds of transfers that may constitute a taxable gift, in whole or in part, include but are not limited to the following:

EXAMPLE A. Grantor-decedent, A, on July 1, 1992, transferred to nephew B, without consideration, a 160-acre Iowa farm, reserving the life use. On the date of transfer, the farm had a fair market value of \$2,000 per acre, or \$320,000. On August 1, 1994, A released the retained life estate without any consideration being given and then died on December 1, 1994. The release on August 1, 1994, constitutes

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a gift, for inheritance tax purposes, of the value of the entire farm (less the annual gift tax exclusion), within the three-year period prior to death. What is taxable is what would have been taxable had the release not been given. *United States v. Allen*, 293 F.2d 916 (10th Cir. 1961); Rev. Ruling 56-324, 1956 2 C.B. 999. In this example, the gift is not to be valued at the time of the release of the life use, but rather at its fair market value at the time of death. See subrule 86.9(1). The real estate cannot be valued at its alternate valuation date because it is not included in the federal gross estate for federal estate tax purposes, but rather it constitutes an adjusted taxable gift not eligible for the alternate valuation date. See rule 701—86.10(450) and Federal Estate Tax Regulation Section 20.2032-1(a) and (d).

EXAMPLE B. A, on August 1, ~~1992~~ 2009, loaned brother B \$450,000 which was evidenced by a non-interest-bearing promissory note, payable on demand. A died on October 1, ~~1994~~ 2011, with no part of the loan having been repaid. The principal amount of the note is includable in A's gross estate. The free use of money is a valuable property right to the debtor. *Dickman v. Commissioner*, 465 U.S. 330 (1984). Thus, in effect, A has made a gift of the value of the interest to B each year the debt remains unpaid. Assuming for purposes of illustration that the applicable federal short-term rate for the entire year is 9 percent for each year and no other gifts were made to B, A has made a gift to B of \$40,500 through August ~~1993~~ 2010 (one year after the note was executed) and an additional gift of \$40,500 through August 1, ~~1994~~ 2011, and two months' interest of \$6,750 from August 1, ~~1994~~ 2011, to the date of death on October 1, ~~1994~~ 2011. Therefore, in calendar year ~~1992~~ 2009 A has made a gift of 5/12 of \$40,500, or \$16,875. After deducting the annual calendar year exclusion of ~~\$10,000~~ \$13,000, ~~\$6,875~~ \$3,875 is subject to inheritance tax. Since the loan was outstanding for all of calendar year ~~1993~~ 2010, \$40,500, less the ~~\$10,000~~ \$13,000 exclusion, or ~~\$30,500~~ \$27,500, is subject to inheritance tax. For calendar year ~~1994~~ 2011 the loan was outstanding for nine months. Three-fourths of \$40,500, less ~~\$10,000~~ \$13,000, or ~~\$20,375~~ \$17,375, is subject to inheritance tax.

In this example it is not necessary that the loan be made within the three-year period prior to death. It is the free use of the loan during the three-year period prior to death that constitutes the gift.

EXAMPLE C. On March 1, ~~1992~~ 2010, A sold a 160-acre Iowa farm to niece B for \$1,500 per acre, or \$240,000. On the date of sale, the fair market value of the farm was \$2,500 per acre, or \$400,000. A died on August 1, ~~1994~~ 2012. This sale is, in part, a gift. It is not a bona fide sale for an adequate and full consideration in money or money's worth, and as a result, the difference between the sale price and the fair market value of the farm on the date of sale constitutes a gift. The sale price in this example represents only 60 percent of the farm's fair market value; therefore, 40 percent of the farm is a gift. However, the gift percentage to apply to the farm's value at death is ~~38~~ 37 percent, not 40 percent, because the ~~\$10,000~~ \$13,000 annual gift tax exclusion must be deducted from the value of the gift. See the computation of this percentage in Example D immediately following.

EXAMPLE D. On March 1, ~~1992~~ 2010, A sold a 160-acre Iowa farm to niece B for \$2,500 per acre, or \$400,000, which was also the fair market value of the farm on the date of sale. The sale was an installment sale contract, payable in 20 equal annual installments of principal and interest. The unpaid principal balance is to draw interest at one-half of the prevailing Federal Land Bank loan rate, which for purposes of illustration we will assume to be the rate of 12 percent, or 6 percent per year. The annual payments of principal and interest are \$34,873.82 per year. A died on August 1, ~~1994~~ 2012. In this example, the sale price in and of itself does not constitute a gift because the sale price was also the fair market value of the farm. However, the difference between the prevailing Federal Land Bank loan rate of 12 percent and the contract rate of 6 percent constitutes a gift from A to B.

The amount of the gift that is includable in the gross estate is computed by determining the present value of the future annual payments of \$34,873.82 discounted to reflect a 12 percent return on the investment. The discounted value is then divided by the fair market value of the farm on the date of the sale to determine the percentage of the sale price that is a bona fide sale for full consideration and the percentage of the sale price that represents a gift before the annual exclusion. The gift percentage is then applied to the fair market value of the farm (or special use value, if applicable) at death, to determine the amount that is includable in the gross estate.

The computation in this example is as follows:

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The present value of the future annual payments of \$34,873.82 for 20 years to reflect a 12 percent return on an investment is \$260,488.05. That is, an investor who desires to earn the market rate of return of 12 percent on an investment would only pay \$260,488.05 for this 6 percent \$400,000 contract of sale.

Bona Fide Sale Percentage

Present value: 260,488.05 = 65%

Sale price: 400,000.00

This is the percentage of the sale price of \$400,000 that represents a bona fide sale for full consideration.

Gift Percentage

The sale price of \$400,000 - \$260,488.05 or \$139,511.95 is the gift portion of the sale price due to the 6 percent interest rate on the contract, before the ~~\$10,000~~ \$13,000 annual exclusion is deducted.

The gift percentage is computed as follows:

$$\frac{\$139,511.95 - \cancel{\$10,000} \underline{\$13,000}}{400,000.00} = \frac{\underline{\$129,511.95} \underline{\$126,511.95}}{400,000.00} = 32\%$$

In this example the gift percentage used to determine the amount of the farm value at death that is taxable is only 32 percent of the value because deducting the ~~\$10,000~~ \$13,000 exclusion reduced the gift percentage from 35 percent to 32 percent. The gift took place in the year of sale, not in the year of death. As a result, 32 percent of fair market value (or special use value, if applicable) of the farm at the time of the donor's death is includable in the gross estate for inheritance tax purposes.

ITEM 11. Amend subrule 86.5(9) as follows:

86.5(9) *Transfers reserving a life income or interest.* If the grantor transfers property, except in the case of a bona fide sale for fair consideration, reserving the income, use, possession, or a portion thereof for life, the property is includable in the gross estate for inheritance tax purposes. *In re Sayres' Estate*, 245 Iowa 132, 60 N.W.2d 120 (1953); *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973). If there is a full reservation of income, the entire value of the property in which the reservation exists is includable for tax purposes. If only a portion of the income is reserved, the amount subject to tax is the full value of the property at death multiplied by a fraction of which the total income reserved is the numerator and the total average earning capacity of like property is the denominator. See *In re Estate of English*, 206 N.W.2d at 310.

The reservation of the life income, or portion thereof, need not necessarily be stated or contained in the instrument of transfer to be includable for taxation. The transfer of property may contain no reservation of income or other incidents of ownership in the grantor, but if there is a contemporaneous agreement between the grantor and grantee to pay the income, or portion thereof, to the grantor for life, the two instruments or agreements when considered together may be construed to be reservation of the income from the transferred property. See *In re Sayres' Estate*, 245 Iowa 132 at 141, 142, 60 N.W.2d 120 (1953) for a full discussion of the subject.

The instrument need not be in any special form. For example, it may take the form of a contract of sale to terminate at death where the payments consist of the income from the property only. In addition, the transfer to be includable for taxation is not limited to income-producing property. For example, the transfer of the grantor's dwelling, reserving the life occupancy, falls within the meaning of a reserved life income or interest. Generally, revocable trusts can be classified as reserving a life income or interest. This type of transfer does not fall within the ~~\$10,000~~ annual gift exclusion.

ITEM 12. Amend paragraph **86.5(12)“a”** as follows:

a. *General rule.* Annuities in general, including the earnings, are considered to be taxable under Iowa Code section 450.3(3) as a transfer made or intended to take effect in possession or enjoyment

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after the death of the grantor or donor. *In re Estate of English*, 206 N.W.2d 305 (Iowa 1973); *In re Endemann's Estate*, 307 N.Y. 100, 120 N.E.2d 514 (1954); *Cochrane v. Commission of Corps & Taxation*, 350 Mass. 237, 214 N.E.2d 283 (1966). For exceptions for employee-sponsored retirement plans, including annuities, see 86.5(13).

ITEM 13. Rescind paragraph **86.5(12)“b.”**

ITEM 14. Renumber subrules **86.5(13)** and **86.5(14)** as **86.5(14)** and **86.5(15)**.

ITEM 15. Adopt the following new subrule 86.5(13):

86.5(13) *Employer-provided or employer-sponsored retirement plans and individual retirement accounts.* Iowa Code section 450.4(5) provides an exemption on that portion of the decedent's interest in an employer-provided or employer-sponsored retirement plan or on that portion of the decedent's individual retirement account that will be subject to federal income tax when paid to the beneficiary. This exemption applies regardless of the identity of the beneficiary and regardless of the number of payments to be made after the decedent's death.

For the purposes of this exemption:

a. An “individual retirement account” includes an individual retirement annuity or any other arrangement as defined in Section 408 of the Internal Revenue Code.

b. An “employer-provided or employer-sponsored retirement plan” includes a qualified retirement plan as defined in Section 401 of the Internal Revenue Code, a governmental or nonprofit employer's deferred compensation plan as defined in Section 457 of the Internal Revenue Code, and an annuity as defined in Section 403 of the Internal Revenue Code.

EXAMPLE 1. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the retirement plan is the decedent's niece. The balance in the retirement plan will be fully subject to federal income tax and included as net income pursuant to Iowa Code section 422.7 when paid to the beneficiary. As a result, Iowa inheritance tax would not be imposed on the value of the retirement plan.

EXAMPLE 2. The decedent was a participant in a qualified retirement plan through the decedent's employer. The beneficiary of the pension is the decedent's niece. A portion of the payments received by the niece will be fully subject to federal income tax and included as net income pursuant to Iowa Code section 422.7. As a result, Iowa inheritance tax would not be imposed on the value of the portion of payments included as net income. However, the remaining portion of the payments not reported as net income pursuant to Iowa Code section 422.7 would be subject to Iowa inheritance tax. See Iowa Code section 450.4.

An exemption from Iowa inheritance tax for a qualified plan does not depend on the relationship of the beneficiary to the decedent. Payments under a qualified plan made to the estate of the decedent are exempt from Iowa inheritance tax. See *In re Estate of Heuermann*, Docket No. 88-70-0388 (September 21, 1989). In addition, for the purpose of determining the taxable or exempt status of payments under a qualified plan, it is not relevant that the decedent rolled over or changed the terms of payment prior to death. Taxation or exemption of payments made under a qualified plan is determined at the date of the decedent's death.

ITEM 16. Rescind and reserve paragraph **86.6(2)“d.”**

ITEM 17. Amend subparagraph **86.6(3)“a”(1)**, numbered paragraph **“2,”** as follows:

2. The liability can be deducted only from property that is included in the gross estate for Iowa inheritance tax purposes. This rule would exclude, among others, that portion of joint tenancy property which is excluded from the gross estate, wrongful death proceeds, the first \$10,000 in gifts to each donee made within three years of death up to an amount equal to the annual federal gift tax exclusion, and property with a situs outside Iowa.

ITEM 18. Amend subrule 86.7(4), introductory paragraph, as follows:

86.7(4) *Tables for life estates and remainders for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* For estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004, the following tables are to be used in computing the value of a life estate, an annuity

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for life and the value of a remainder in property. The table is based on the commissioners' standard ordinary mortality tables of life expectancy, with no distinction being made between the life expectancy of males and females of the same age. As a result, the sex of the recipient is not relevant in computing the value of the property interest received. *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 463 U.S. 1073, 103 S.Ct. 3492, 77 L.Ed.2d 1236 (1983). Valuation is based on the age at the nearest birthday. The following ~~tables are~~ table is to be applied in the same manner as specified in subrule 86.7(1).

ITEM 19. Amend subrule 86.7(5), introductory paragraph, as follows:

86.7(5) *Table for an annuity for life—for estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 1986, and prior to January 1, 2004. The table is to be used in the same manner as the table listed in subrule 86.7(2).

ITEM 20. Adopt the following new subrule 86.7(6):

86.7(6) *Table for life estates and remainders for estates of decedents dying on or after January 1, 2004.* For estates of decedents dying on or after January 1, 2004, the following table is to be used in computing the value of a life estate, an annuity for life and the value of a remainder in property. The following table is to be applied in the same manner as specified in subrule 86.7(1).

2001 CSO-D MORTALITY TABLE
BASED ON BLENDING 50% MALE—50% FEMALE
(PIVOTAL AGE 45)
AGE NEAREST BIRTHDAY
4% INTEREST

The two factors across the page equal 100 percent. Multiply the corpus of the estate by the first factor to obtain value of the life estate.

Use the second factor to obtain the remainder interest if the tax is to be paid at the time of probate or to determine if there would be any tax due.

<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
0	0.94022	0.05978	60	0.54240	0.45760
1	0.93854	0.06146	61	0.52918	0.47082
2	0.93653	0.06347	62	0.51579	0.48421
3	0.93431	0.06569	63	0.50229	0.49771
4	0.93192	0.06808	64	0.48868	0.51132
5	0.92939	0.07061	65	0.47495	0.52505
6	0.92676	0.07324	66	0.46112	0.53888
7	0.92402	0.07598	67	0.44717	0.55283
8	0.92119	0.07881	68	0.43306	0.56694
9	0.91825	0.08175	69	0.41882	0.58118
10	0.91519	0.08481	70	0.40442	0.59558
11	0.91202	0.08789	71	0.38991	0.61009
12	0.90874	0.09126	72	0.37533	0.62467
13	0.90537	0.09463	73	0.36081	0.63919
14	0.90192	0.09808	74	0.34633	0.65367
15	0.89837	0.10163	75	0.33189	0.66811
16	0.89475	0.10525	76	0.31751	0.68249
17	0.89107	0.10893	77	0.30318	0.69682

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<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>	<u>AGE OF LIFE TENANT</u>	<u>LIFE ESTATE</u>	<u>REMAINDER</u>
18	0.88731	0.11269	78	0.28898	0.71102
19	0.88344	0.11656	79	0.27495	0.72505
20	0.87944	0.12056	80	0.26116	0.73884
21	0.87529	0.12471	81	0.24761	0.75239
22	0.87098	0.12902	82	0.23452	0.76548
23	0.86651	0.13349	83	0.22188	0.77812
24	0.86186	0.13814	84	0.20962	0.79038
25	0.85704	0.14296	85	0.19778	0.80222
26	0.85205	0.14795	86	0.18642	0.81358
27	0.84688	0.15312	87	0.17540	0.82460
28	0.84154	0.15846	88	0.16507	0.83493
29	0.83599	0.16401	89	0.15544	0.84456
30	0.83022	0.16978	90	0.14650	0.85350
31	0.82421	0.17579	91	0.13802	0.86198
32	0.81798	0.18202	92	0.12909	0.87091
33	0.81151	0.18849	93	0.12008	0.87992
34	0.80480	0.19520	94	0.11133	0.88867
35	0.79786	0.20214	95	0.10320	0.89680
36	0.79068	0.20932	96	0.09618	0.90382
37	0.78326	0.21674	97	0.09014	0.90986
38	0.77559	0.22441	98	0.08532	0.91468
39	0.76767	0.23233	99	0.07952	0.92048
40	0.75949	0.24051	100	0.07338	0.92662
41	0.75104	0.24896	101	0.06745	0.93255
42	0.74233	0.25767	102	0.06160	0.93840
43	0.73335	0.26665	103	0.05590	0.94410
44	0.72412	0.27588	104	0.05042	0.94958
45	0.71463	0.28537	105	0.04523	0.95477
46	0.70490	0.29510	106	0.04045	0.95955
47	0.69491	0.30509	107	0.03604	0.96396
48	0.68468	0.31532	108	0.03199	0.96801
49	0.67415	0.32585	109	0.02823	0.97177
50	0.66333	0.33667	110	0.02479	0.97521
51	0.65223	0.34777	111	0.02174	0.97826
52	0.64086	0.35914	112	0.01899	0.98101
53	0.62926	0.37074	113	0.01643	0.98357
54	0.61743	0.38257	114	0.01357	0.98643
55	0.60539	0.39461	115	0.01107	0.98893
56	0.59317	0.40683	116	0.00869	0.99131
57	0.58077	0.41923	117	0.00638	0.99362
58	0.56821	0.43179	118	0.00437	0.99563
59	0.55542	0.44458	119	0.00246	0.99754
			120	0.00000	1.00000

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ITEM 21. Adopt the following **new** subrule 86.7(7):

86.7(7) *Table for an annuity for life—for estates of decedents dying on or after January 1, 2004.* The following table is to be used in computing the present value of an annuity of a given amount (specified sum) for life in estates of decedents dying on or after January 1, 2004. The table is to be used in the same manner as the table listed in subrule 86.7(2).

2001 CSO-D MORTALITY TABLE
 BASED ON BLENDING 50% MALE—50% FEMALE
 (PIVOTAL AGE 45)
 AGE NEAREST BIRTHDAY
 4% INTEREST

To find the present value of an annuity or a given amount (specified sum) for life, multiply the annuity by the annuity factor opposite the age at the nearest birthday of the person receiving the annuity.

AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES \$1.00
0	78.65	23.505
1	77.73	23.464
2	76.78	23.413
3	75.81	23.358
4	74.84	23.298
5	73.86	23.235
6	72.87	23.169
7	71.89	23.101
8	70.91	23.030
9	69.92	22.956
10	68.94	22.880
11	67.95	22.801
12	66.97	22.718
13	65.99	22.634
14	65.01	22.548
15	64.04	22.459
16	63.07	22.369
17	62.11	22.277
18	61.15	22.183
19	60.19	22.086
20	59.23	21.986
21	58.27	21.882
22	57.32	21.774
23	56.36	21.663
24	55.40	21.547
25	54.45	21.426
26	53.49	21.301
27	52.53	21.172
28	51.58	21.038
29	50.63	20.900
30	49.67	20.755

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<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
31	48.72	20.605
32	47.76	20.449
33	46.81	20.288
34	45.85	20.120
35	44.90	19.946
36	43.95	19.767
37	43.00	19.581
38	42.05	19.390
39	41.11	19.192
40	40.16	18.987
41	39.22	18.776
42	38.28	18.558
43	37.35	18.334
44	36.42	18.103
45	35.49	17.866
46	34.57	17.623
47	33.65	17.373
48	32.74	17.117
49	31.84	16.854
50	30.94	16.583
51	30.04	16.306
52	29.15	16.021
53	28.27	15.731
54	27.40	15.436
55	26.54	15.135
56	25.68	14.829
57	24.84	14.519
58	24.01	14.205
59	23.19	13.886
60	22.38	13.560
61	21.57	13.229
62	20.78	12.895
63	20.00	12.557
64	19.24	12.217
65	18.49	11.874
66	17.75	11.528
67	17.02	11.179
68	16.31	10.827
69	15.60	10.470
70	14.91	10.110
71	14.23	9.748
72	13.56	9.383
73	12.91	9.020

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<u>AGE IN YEARS</u>	<u>LIFE EXPECTANCY IN YEARS</u>	<u>ANNUITIES \$1.00</u>
74	12.28	8.658
75	11.66	8.297
76	11.06	7.938
77	10.47	7.580
78	9.91	7.224
79	9.36	6.874
80	8.83	6.529
81	8.32	6.190
82	7.84	5.863
83	7.38	5.547
84	6.94	5.240
85	6.52	4.944
86	6.13	4.660
87	5.75	4.385
88	5.41	4.127
89	5.09	3.886
90	4.79	3.662
91	4.51	3.451
92	4.23	3.227
93	3.94	3.002
94	3.67	2.783
95	3.43	2.580
96	3.21	2.405
97	3.03	2.253
98	2.88	2.133
99	2.71	1.988
100	2.53	1.835
101	2.35	1.686
102	2.18	1.540
103	2.02	1.398
104	1.87	1.260
105	1.72	1.131
106	1.59	1.011
107	1.47	0.901
108	1.35	0.800
109	1.25	0.706
110	1.16	0.620
111	1.08	0.544
112	1.00	0.475
113	0.93	0.411
114	0.86	0.339

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AGE IN YEARS	LIFE EXPECTANCY IN YEARS	ANNUITIES \$1.00
115	0.79	0.277
116	0.73	0.217
117	0.67	0.159
118	0.61	0.109
119	0.56	0.062
120	0.50	0.000

ITEM 22. Amend subparagraph **86.9(2)“e”(2)** as follows:

(2) Acceptance of values by the department. The values offered on the inheritance tax return by the estate and its beneficiaries are accepted by the department when:

1. The department has accepted the offered values in writing, or
2. A clearance certifying full payment of the tax due or a clearance certifying no tax due is issued by the department, or
3. The department does not request an appraisal within ~~30~~ 60 days after the return has been filed in the case of the value of real estate. Notice of appraisal must be served by certified mail, and the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery. However, see 86.9(2)“e”(3) for the rule governing values listed as “unknown” or “undetermined.” See Iowa Code sections 622.105 and 622.106 for the law determining the filing date of a tax return that is mailed.

ITEM 23. Amend subparagraph **86.9(2)“e”(3)** as follows:

(3) Values listed on the return as “undetermined” or “unknown.” If at the time the inheritance tax return is filed the information necessary to determine the value of an asset cannot be presently ascertained, the taxpayer may list the value of that asset as “unknown” or “undetermined.” The return must contain a statement signed by the taxpayer on behalf of the estate and the beneficiaries with an interest in the property granting the department an extension of time for requesting an appraisal until ~~30~~ 60 days after an amended return is filed listing a value for the real estate. Failure to grant an extension of time will subject the real estate to an immediate request for an appraisal. The amended return shall be accompanied with sufficient facts and other information necessary to substantiate the value offered. An agreement concerning the value of an asset presupposes that ~~both~~ the department, the beneficiaries and the estate have knowledge of the relevant facts necessary to determine value. There can be no meaningful agreement or appraisal until the relevant facts relating to value are known. See *Bair v. Randall*, 258 N.W.2d 333 (Iowa 1977), regarding the criteria that may be used to determine the value of an asset which was unknown at the time of the decedent’s death.

ITEM 24. Amend rule 701—86.11(450) as follows:

701—86.11(450) Valuation—special problem areas.

86.11(1) *Valuation of life estate and remainder interests—in general.* ~~In general.~~ Life or term estates and remainders in property cannot be valued separately for inheritance tax purposes without reference to the value of the property in which the life or term estate and remainder exists. The first valuation step is to determine the value of the property as a whole. This rule applies equally to fair market value in the ordinary course of trade, whether it be valued at death or on the alternate valuation date six months after death, or at its special use value under Iowa Code chapter 450B. The second step is to apply the life estate-remainder or term tables in rule 701—86.7(450) to the whole value of the property in which the life estate-remainder or term exists. Iowa Code section 450.51 requires that value of annuities, life or term, deferred or future estates in property be computed on the basis that the use of the property is worth a return of 4 percent per year. The life estate-remainder tables in rule 701—86.7(450) make no distinction between the life expectancy of males and females. See *City of Los Angeles v. Manhart*, 435 U.S. 702, 98 S.Ct. 1370, 55 L.Ed. 657 (1978) and *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 51 U.S. Law Week 5243, 77 L.Ed.2d 1238 (1983)

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for the requirement that retirement annuities must not discriminate on the basis of sex. However, the actual life expectancy of the particular person receiving the life estate is not relevant in determining the value of the life estate for inheritance tax purposes. *In re Estate of Evans*, 255 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.2d 62.

86.11(2) *Single life estate and remainder.* The value of a single life estate and remainder in property is computed by first determining the value of the property as a whole. The life estate is then computed by multiplying the value of the property as a whole by the life estate factor in rule 701—86.7(450) for the age of the life tenant. The value of property remaining after the value of the life estate is subtracted is the value of the remainder interest in the property.

The computation of the value of a single life estate and remainder in property is illustrated by the following:

EXAMPLE: Decedent A, by will, devised to surviving spouse B, aged 68, a life estate in a 160-acre farm, with the remainder at B's death to niece C. Special use value and the alternate value were not elected. The 160-acre farm at the time of the decedent's death had a fair market value of \$2,000 per acre, or \$320,000.

COMPUTATION OF B's LIFE ESTATE: The life estate factor for a life tenant aged 68 under 701—86.7(450) is ~~.37936~~ .43306; that is, the use of the \$320,000 for life at the statutory rate of return of 4 percent is worth ~~37.936~~ 43.306 percent of the value of the farm. Niece C's remainder factor is ~~.62064~~ .56694. The life estate-remainder factors when combined equal 100 percent of the value of the property. It is the age of the life tenant which governs the value of the remainder. The age of the person receiving the remainder is not relevant.

Value of B's Life Estate	$\$320,000 \times \text{.37936}$	$\text{.43306} =$	\$121,395.20	<u>\$138,579.20</u>
Value of C's Remainder	$\$320,000 \times \text{.62064}$	$\text{.56694} =$	\$198,604.80	<u>\$181,420.80</u>
Total Value				<u>\$320,000.00</u>

86.11(3) *Joint and succeeding life estates.* If property includable in the gross estate is subject to succeeding or joint life estates, the following general rules shall govern their valuation:

a. There can be no greater value assigned to all of the life estate interests than the value of the life estate of the youngest life tenant. The value of the life estate of the youngest life tenant fixes the value of the remainder interest in the property.

b. If two or more persons share in a life estate, the life tenants are presumed to share equally in the life estate during the life of the older life tenant, unless the will or trust instrument specifically directs that the income or use may be allocated otherwise.

c. The age of a life tenant alone determines the value of that life tenant's interest in the property. The life tenant's state of health is not relevant to valuation. *In re Estate of Evans*, 225 N.W.2d 99 (Iowa 1977), appeal dismissed, 434 U.S. 805, 98 S.Ct. 34, 54 L.Ed.62. As a result, if a succeeding life tenant is older than the preceding life tenant, the value of the succeeding life estate is zero. These general rules can be illustrated by the following examples:

EXAMPLE 1. Decedent A, by will, devised a 160-acre farm to surviving spouse B, aged 68, for life, and upon B's death, to daughter C, aged 45, for life, and the remainder upon C's death to nephews, D and E, in equal shares. The 160-acre farm had a fair market value at A's death of \$320,000. Neither the alternate valuation date nor special use value was elected.

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COMPUTATION OF THE SUCCEEDING LIFE ESTATES AND REMAINDER

1. Value of B's Life Estate:		
Life estate factor for age 68 is .37936 <u>.43306</u>		
$\$320,000 \times \text{.37936 } \underline{\text{.43306}} =$		\$121,395.20
		<u>\$138,579.20</u>
2. Value of C's Succeeding Life Estate		
Life estate factor for age 45 is .67131 <u>.71463</u>		
$\$320,000 \times \text{.67131 } \underline{\text{.71463}} =$	\$214,819.20	
	<u>\$228,681.60</u>	
Less: B's life estate	\$121,395.20	
	<u>\$138,579.20</u>	
Value of C's life estate		\$ 93,424.00
		<u>\$ 90,102.40</u>
3. Value of D's 1/2 remainder		
Remainder factor for a life tenant aged 45 is .32869 <u>.28537</u>		
as 1/2 of $\$320,000 \times \text{.32869 } \underline{\text{.28537}} =$	\$ 52,590.40	
	<u>\$ 91,318.40</u>	
4. Value of E's 1/2 remainder		
1/2 of $\$320,000 \times \text{.32869 } \underline{\text{.28537}}$	\$ 52,590.40	
	<u>\$ 91,318.40</u>	
Total Value — life estates and remainders		<u>\$320,000.00</u>

NOTE: In this example, the value of C's succeeding life estate is reduced by the value of B's preceding life estate because C does not have the use of the farm during B's lifetime. The value of the remainder to D and E is fixed by the age of C, the succeeding life tenant.

EXAMPLE 2: Joint and survivorship life estates and remainder. In this example, the estate elected both the alternate valuation date and special use value. This is permitted by Federal Revenue Ruling 83-31 (1983) if the gross estate and the real estate are otherwise qualified.

Decedent A, a widow, by will devised her 240-acre Iowa farm to her nephew, B, aged 52, and the nephew's wife, C, aged 48, for their joint lives and for the life of the survivor, with the remainder to D and E in equal shares. The farm had a fair market value at death of \$2,200 per acre, or \$528,000; the alternate value of the farm six months after death was \$2,100 per acre, or \$504,000. Its special use value is \$1,000 per acre or \$240,000. The life estates and the remainder are computed on the basis of the special use value of \$240,000.

COMPUTATION OF JOINT LIFE ESTATE — REMAINDER VALUES

1. B's share of joint life estate.		
$\$240,000 \times \text{.59399 } \underline{\text{.64086}}$ (life estate factor, age 52) =	\$142,557.60	
	<u>\$153,806.40</u>	
1/2 as B's share =		\$ 71,278.80
		<u>\$ 76,903.20</u>
2. C's share of joint life estate.		
$\$240,000 \times \text{.63966 } \underline{\text{.68468}}$ (life estate factor, age 48) =	\$153,518.40	
	<u>\$164,323.20</u>	
Less: 1/2 value of life estate for B's life	\$ 71,278.80	\$ 82,239.60
	<u>\$ 76,903.20</u>	<u>\$ 87,420.00</u>

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3. Value of the remainder.

The value of the remainder is computed by using the remainder factor at the age of the youngest life tenant. In this example, it is ~~.36034~~ .31532, based on C's age of 48.

D's share of the remainder.

$$\frac{1}{2} \$240,000 \times \del{.36034} \underline{.31532} = \begin{array}{r} \$ 43,240.80 \\ \$ 37,838.40 \end{array}$$

E's share of the remainder.

Same as D's

$$\begin{array}{r} \$ 43,240.80 \\ \$ 37,838.40 \end{array}$$

Total value of joint life estates and the remainder \$240,000.00

NOTE: In this example, B and C share equally in the life use of the farm during the life of B, who is the eldest. As a result, each life tenant's share during B's life is worth ~~\$71,278.80~~ \$76,903.20. Since C is younger than B, the difference between the value of the life estates for B and C is set off to C alone. The age of the youngest life tenant (C in this example) fixes the value of the remainder interest in the farm.

86.11(4) Fixed sum annuity for life or for a term of years. The value of an annuity for a fixed sum of money, either for the life of the annuitant or for a specific period of time, shall be computed by determining the present value of the future annuity payments using the 4 percent annuity tables in rule ~~701—86.7(450)~~. A fixed sum annuity, either for life or for a term of years, is to be distinguished from a life estate and remainder in property. A life estate in property is the use of property, and the present value of the life use cannot exceed the value of the property in which the life estate-remainder exists, regardless of the rate of return used to determine the life estate factor. A fixed sum annuity on the other hand is different. The amount of the annuity does not necessarily bear any relationship to the earning capacity or value of the property which funds the annuity. The fixed sum annuity may be for an amount larger than the 4 percent used to compute a life estate. As a result, the present value of the fixed sum annuity, computed at the statutory rate of 4 percent per year, may exceed the value of the property which funds the fixed annuity. In this case, the present value of the future annuity payments cannot exceed the value of the property which funds the annuity. The remainder in this situation has no value for inheritance tax purposes.

This subrule is illustrated by the following examples:

EXAMPLE 1. Decedent A devises a 240-acre farm to daughter B, with the provision that B pay the sum \$5,000 per year to C for life. The farm is subject to a lien as security for the payment of the annuity. C, the annuitant, is 54 years old. The fair market value of the farm at A's death is \$2,000 per acre, or \$480,000. Neither special use value nor the alternate valuation date was elected.

COMPUTATION OF THE VALUE OF THE \$5,000 ANNUITY AND THE REMAINDER REVERSION TO B. Under rule ~~701—86.7(450)~~, the 4 percent annuity factor for life at age 54 is ~~14.245~~ 15.436 for each dollar of the annuity received. Therefore, C's life annuity is computed as follows:

C's Annuity

$$\$5,000 \times \del{14.245} \underline{15.436} = \begin{array}{r} \$ 71,225 \\ \$ 77,180 \end{array}$$

B's Reversionary — Remainder Interest

Value of farm	\$480,000	
Less: C's annuity	\$ 71,225	\$408,775
	<u>\$ 77,180</u>	<u>\$402,820</u>

Total annuity and reversion — Remainder \$480,000

REVENUE DEPARTMENT[701](cont'd)

NOTE: In this example, the \$5,000 annuity is worth less than a life estate in the farm. A life estate would be worth \$273,499.20 because the use of \$480,000 at 4 percent per year would return \$19,200 per year, which is much greater than the \$5,000 annuity.

EXAMPLE 2: Decedent A, by will, directed that the sum of \$100,000 be set aside from the residuary estate to be held in trust to pay \$500 per month to B for life, and upon B's death, the remaining principal and income, if any, is are to be paid to C and D in equal shares. B, the annuitant, was 35 years old at the time of A's death.

Under rule 701—86.7(450), the annuity factor for a person 35 years of age is ~~19.048~~ 19.946 for each dollar of the annuity. The annuity factor is multiplied by the annual amount of the annuity, which in this case is \$6,000 per year.

COMPUTATION OF THE PRESENT VALUE OF B'S \$6,000 ANNUITY

$\$500.00 \times 12 = \$6,000 \times \del{19.048} \u{19.946} = \del{\$114,288} \u{\$119,676}$, which exceeds the value of the property funding the annuity. As a result, the value for inheritance tax purposes is \$100,000, the maximum amount allowed by subrule 86.11(4). The remainder to C and D has no value for inheritance tax purposes.

86.11(5) Valuation of remainder interests. Iowa Code section 450.51 and rule 701—86.7(450) require the value of a remainder interest in property to be computed by subtracting the present value of the preceding life or term estate from the total value of the property in which the remainder exists. Since age or time is the controlling factor in valuing life or term estates in property, the time when the preceding life or term estate is valued is crucial for determining the value of the remainder interests in the property. Iowa Code sections 450.6, 450.44 and 450.52 provide three alternative dates for valuing a remainder, or other property interest in future possession or enjoyment, for inheritance tax purposes. Each of the three dates requires valuing the preceding life or term estate on the date selected, thus in effect, valuing the remainder interest at the same time. The value of the remainder interest is based on the value of the property on the date elected for payment. *In re Estate of Wickham*, 241 Iowa 198, 40 N.W.2d 469 (1950). The remainder or term factor in rule 701—86.7(450) which is based on the age of the life tenant, or the number of years remaining in the term on the date of payment, is then applied to the value of the property to determine the value of the remainder interest. *In re Estate of Millard*, 251 Iowa 1282, 105 N.W. 2d 95 (1960). Therefore, the remainder, or other future property interest, shall be valued by the following general rules.

a. to f. No change.

These rules can be illustrated by the following examples:

For an example of computing remainder interests, see Examples 1 and 2 in ~~701~~—subrule 86.11(3).

EXAMPLE 1: Decedent A died July 1, ~~1993~~ 2009, and, by will, devised all of her personal property to her surviving spouse, B, and her 240-acre Iowa farm to B for his life with the remainder at B's death to two nephews, C and D, in equal shares. The surviving spouse, B, was 74 years of age when A died. The fair market value of the 240-acre farm was \$2,000 per acre, or \$480,000 on the date of A's death. Neither the alternate valuation date nor special use value was elected by the estate. On March 15, ~~1994~~ 2010, the tax on B's life estate was paid. The tax on the remainder to C and D was therefore deferred, to be paid no later than nine months after the death of B, the life tenant. However, on October 15, ~~1995~~ 2011, due to adverse economic circumstances, B, C, and D voluntarily sold the 240-acre farm at public auction to an unrelated person for \$2,100 per acre, or \$504,000. B's life estate was not preserved in the sale proceeds. The tax on the remainder in this fact situation must be computed under subrule 86.11(5), paragraph "b," when the life estate is terminated before the life tenant's death. The sale price of the farm and the life estate remainder factor reflecting B's age on October 15, ~~1995~~ 2011, (B's age is now 76) control the value of the remainder.

COMPUTATION OF THE REMAINDER INTEREST OF C AND D

The remainder factor in rule ~~701~~—86.7(450) for a life tenant aged 76 is ~~.73595~~ .68249.

REVENUE DEPARTMENT[701](cont'd)

C's ½ remainder interest	½ (\$504,000 × .73595 .68249) =	\$185,459.40	\$171,987.48
D's ½ remainder interest	same as C's	185,459.40	\$171,987.48
Total value of remainder		\$370,918.80	\$343,974.96

NOTE: In this example, the value of C's and D's remainder interest in the sale proceeds is greater than the value of the remainder at the time of A's death due to the increase in the remainder factor because of B's increased age and the increase in the fair market value of the farm. However, if B's life estate had been preserved in the sale proceeds, the tax could continue to be deferred on C's and D's remainder interest. C and D cannot be required to pay the tax on their remainder until they come into possession or enjoyment of the property.

EXAMPLE 2: Decedent A at the time of her death on July 1, ~~1993~~ 2005, owned a vested remainder in a 240-acre Iowa farm, which was subject to the life use of her mother, B, who was 87 years old when A died. A's ownership of the remainder interest was not discovered until after life tenant B's death on October 15, ~~1995~~ 2007. The fair market value of the farm was \$2,000 per acre or \$480,000 on July 1, ~~1993~~ 2005, and \$2,200 per acre or \$528,000 on October 15, ~~1995~~ 2007. Neither the alternate valuation date nor special use valuation can be used in this fact situation. See rule 701—86.10(450) and subrule 86.8(4), paragraph "c." A's estate was reopened to include the omitted remainder in the 240-acre farm. An amended inheritance tax return was filed December 10, ~~1995~~ 2007, basing the tax on the fair market value and the remainder factor corresponding with the life tenant's age (87) on July 1, ~~1993~~ 2005. In this fact situation, the tax on A's remainder is not computed correctly, even if A's estate has offered to pay a penalty and interest on the tax due. The tax must be computed on the basis of a fair market value of \$2,200 per acre and a remainder factor of 100 percent of the value of the farm. No penalty or interest would be assessed if the correct tax is paid prior to July 15, ~~1996~~ 2008, which is nine months after the life tenant's death. The life tenant's age at death is not relevant.

86.11(6) Valuation of contingent property interests. Contingent remainders, succeeding life estates and other contingent property interests must be valued as if no contingency exists. Factors to be considered to determine if a contingency interest exists include, but are not limited to, the interest is generally a future interest, it is not a vested interest, and vesting of the interest depends upon the occurrence of a specific event or condition being met. As a result, 701—subrule 86.11(5) applies equally to the valuation of vested and contingent property interests. The tax on a contingent property interest may be deferred until such time as it can be determined who will come into possession or enjoyment of the property. By deferring the tax under Iowa Code sections 450.44 to 450.49, a person does not have to speculate as to who will be the probable owner of the contingent interest. As a result, no one is required to pay tax on a property interest to which a vested right has not been received. Therefore, if a person exercises the right to pay the tax during the period of the contingency, that person cannot obtain a tax advantage by asserting that the value should be reduced due to a contingency, when the person would not be entitled to a reduction in value if the tax had been deferred until the ownership is determined.

This rule is illustrated by the following example.

COMPREHENSIVE EXAMPLE: Decedent A, by will, devised a 240-acre Iowa farm to B for life and upon B's death, then to C for life and the remainder after C's death to D and E in equal shares. In this example, C's succeeding life estate is contingent upon surviving B, the first life tenant. If C elects to pay the tax on the succeeding life estate within nine months after A's death, the tax is computed according to Example 1 in subrule 86.11(3) with no discount for the contingency that C may not survive B. However, C may defer the tax to be paid no later than nine months after B's death. In this case, if C does not survive B, the succeeding life estate lapses, and D and E, who own the remainder, will come into possession or enjoyment of the 240-acre farm. No tax will be owing on the succeeding life estate because C receives nothing. D and E will owe tax on the remainder within nine months after the death of B, if the tax was not previously paid.

For another example of computing a contingent remainder interest see *In re Estate of Schnepf*, 258 Iowa 33, 138 N.W.2d 886 (1965).

REVENUE DEPARTMENT[701](cont'd)

86.11(7) Valuation of growing crops owned by the decedent. Valuation of growing crops owned by the decedent is determined by using a proration formula. Based on the formula, the cash value of the actual crop realized in the fall of the year is prorated by attributing a portion of the value to the period before death and a portion after death. The portion attributed to the period before death is the value for Iowa inheritance tax purposes. The numerator of the ratio expresses the number of days the decedent lived during the growing season. In Iowa, the growing season for corn and beans is generally considered to be from May 15 through October 15, or 153 days. This 153-day period is the denominator of the ratio. This ratio should then be multiplied by the number of bushels realized in the fall, and then multiplied by the local elevator price at the time of maturity. However, if the estate sells the crop within a reasonable time after harvest, and the sale is an “arm’s-length transaction,” then the sale price of the crop can be used as a fair market value basis.

EXAMPLE: The decedent grew crops consisting of corn and beans. The decedent died August 15. The decedent lived 92 days of the growing season. In the fall of the year, 2,000 bushels of corn were harvested by the estate and sold to the local elevator for \$3.10 per bushel. The value of the crop for the purpose of Iowa inheritance tax purposes is calculated as follows:

$$\frac{92}{153} \times 2,000 \text{ bushels} \times \$3.10 \text{ per bushel} = \$3,728.10$$

86.11(8) Valuation of cash rent farm leases. If the decedent at the time of death owns farm property that was subject to lease, or if the decedent rents such property, the value of the cash rent farm for inheritance tax purposes must be determined. The formula to be used is the total cash rent for the entire rental period prorated over the entire year. The proration percentage is the number of days the decedent lived during the rental period, divided by 365 days. This percentage shall then be applied to the total cash rent for the entire year. Deductions from the resulting sum are allowed for rent payments made prior to the death of the decedent. If the deduction results in a negative amount, no refund or credit is allowed.

This valuation formula is to be utilized whether the decedent is the lessor or lessee of such property.

EXAMPLES: The decedent has a cash rent farm lease agreement (beginning March 1 through the end of February of the next year) with farmer X for automatic yearly rentals. The rent is due in two installments: \$10,000 on March 1 and \$10,000 on September 1.

1. Decedent dies February 1, 2011. $\$20,000 \times 338/365 = \$18,520.55$. Farmer X had paid his two installments in 2010. His next installment is due March 1, 2011, for the new farm rental year. Farmer X has overpaid by \$1,479.45 ($\$18,520.55 - \$20,000 = -\$1,479.45$). No refund or credit is allowed.

2. Decedent dies April 20, 2011. $\$20,000 \times 51/365 = \$2,794.52$. Farmer X has paid his March 1 installment of \$10,000. Farmer X has overpaid by \$7,205.48 ($\$2,794.52 - \$10,000 = -\$7,205.48$). No refund or credit is allowed.

3. Decedent dies October 10, 2011. $\$20,000 \times 224/365 = \$12,273.97$. Farmer X paid his March installment but has not paid his September installment. Farmer X has underpaid at the date of death. $\$12,273.97 - \$10,000 = \$2,273.97$. This amount must be reported as an asset. It is an accounts receivable due at date of decedent’s death.

This rule is intended to implement Iowa Code sections 450.44 to 450.49, 450.51 and 450.52.

ITEM 25. Amend subrule 86.14(5) as follows:

86.14(5) “Stepped-up” basis. If a decedent’s will provides that taxes are to be paid from the residue of the estate and not the respective beneficial shares, a “stepped-up” basis will be utilized when computing the shares which will result in the appropriate beneficiaries’ shares to include the tax obligation that was paid as an additional inheritance. A “stepped-up” basis is based on gifts prior to the residual share; shares paid out of the residue are not stepped-up.

EXAMPLE: Decedent’s will gives \$1,000 to a nephew and directs that the inheritance tax on this bequest be paid from the residue of the estate. The stepped-up share is computed as follows:

Tax: $\$1,000 \times 10\% = \100 . Divide the tax by the difference between the tax rate and 100 percent (90 percent in this example): $\$100 \text{ divided by } 90\% = \111.11 . Add the stepped-up tax of \$111.11 to the

REVENUE DEPARTMENT[701](cont'd)

original bequest of \$1,000. This results in a stepped-up share of \$1,111.11, which allows the nephew to keep \$1,000 after the tax is paid.

ITEM 26. Amend subrule 86.14(10) as follows:

86.14(10) Credit on prior transfers. A credit is allowed for inheritance tax paid by certain beneficiaries that have received shares from a prior estate. The credit can be claimed only by the brother, sister, son-in-law and daughter-in-law of the decedent. The decedent in whose estate the credit is to be used must have died within two years of the death of the decedent in whose estate the tax for which the credit is requested was paid and the property inherited. The credit is subject to two limitations:

a. The maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate. In other words, the inheritance tax the present decedent paid on the property in the prior estate must be prorated on the basis such property bears to the total property inherited in the prior estate; and

b. The amount of the credit cannot exceed the tax generated in the current estate on the property which was inherited from the ~~earlier~~ prior estate. This means that the tax in the current estate must be apportioned on the basis the prior estate property bears to the total property inherited by the beneficiary in the second estate. The credit cannot exceed this apportioned amount.

EXAMPLE 1: Limitation—maximum credit allowed cannot exceed the amount of the prior inheritance tax that was paid on the property in the prior estate.

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

<u>Real estate</u>	<u>\$400,000</u>
<u>Cash, etc.</u>	<u>\$250,000</u>
<u>Expenses</u>	<u>\$150,000</u>

Each brother inherits \$250,000. The tax due from each brother is \$21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

<u>½ interest in Sister's real estate (current value)</u>	<u>\$225,000</u>
<u>Full interest in his own real estate</u>	<u>\$500,000</u>
<u>½ interest in Sister's cash, etc.</u>	<u>\$ 50,000</u>
<u>Full interest in his own cash, etc.</u>	<u>\$500,000</u>
<u>Expenses</u>	<u>\$200,000</u>

Brother A inherits \$1,075,000 with a current tax due of \$103,875. Reduce the current tax due, \$103,875, by the amount of tax paid in the prior estate, \$21,375. The result is \$82,500.

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Percentage of Brother A's tax of \$103,875 generated by Sister's property included in Brother B's estate:

$$\underline{\$275,000/\$1,075,000 = 25.58\%}$$

$$\underline{\$103,875 \times 25.58\% = \$26,571.23}$$

Maximum credit cannot be more than the tax paid in the prior estate, \$21,375. The tax due in this estate is \$82,500.

EXAMPLE 2: Limitation—amount of credit cannot exceed the tax generated in the current estate on the property which was inherited from the prior estate.

First decedent, Sister, has two siblings. Her property passes to two brothers (A and B). Her property includes:

<u>Real estate</u>	<u>\$400,000</u>
<u>Cash, etc.</u>	<u>\$250,000</u>
<u>Expenses</u>	<u>\$150,000</u>

Each brother inherits \$250,000. The tax due from each brother is \$21,375.

Brother B dies one year and two months after Sister. He leaves everything to Brother A.

Brother B's property includes:

<u>½ interest in Sister's real estate (current value)</u>	<u>\$225,000</u>
<u>Full interest in his own real estate</u>	<u>\$500,000</u>
<u>½ interest in Sister's cash, etc.</u>	<u>\$ 50,000</u>
<u>Full interest in his own cash, etc.</u>	<u>\$500,000</u>
<u>Expenses</u>	<u>\$200,000</u>

Brother A inherits \$1,075,000 with a current tax due of \$103,875. Reduce the amount of the current tax due, \$103,875, by the tax paid in the prior estate, \$21,375. The result is \$82,500.

\$1,075,000 less prior estate properties worth \$275,000 equals \$800,000. Tax would equal \$76,375.

The greater of the two computations (\$82,500 v. \$76,375) is the tax due in the estate. \$82,500 would be due.

EXAMPLE 3: Two-year requirement. Same facts as above, except that Brother B dies two years and two months after the date of death of Sister. Tax is \$103,875 with no reduction since it is over the two-year limitation.

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EXAMPLE 4: Multiple beneficiary issues. Same facts as above, except that beneficiaries of Brother B have changed. If there are multiple beneficiaries in the second estate, only the beneficiaries that are brother, sister, son-in-law, or daughter-in-law relationships to the prior decedent can utilize the credit. The credit is then determined by the property value passing in this estate that can be identified as being inherited by this decedent from a prior estate.

Brother B dies one year and two months after his Sister. He leaves his real estate to Brother A and the residual assets to his two nieces.

Brother B's share of prior decedent's (Sister's) estate equals \$725,000. Tax equals \$68,875. Reduce the current tax due, \$68,875, by the tax paid in the prior estate, \$21,375. The result is \$47,500.

Niece 1's share equals \$175,000. Tax equals \$22,250.

Niece 2's share equals \$175,000. Tax equals \$22,250.

Total tax for Brother B's estate with no reductions equals \$113,375.

Total tax with Brother B's reduced tax is \$92,000.

Computation without the prior decedent's (Sister's) property that passes to a qualified heir:

Brother B's share would be \$500,000. Tax equals \$46,375.

Niece 1's share remains the same since she is not a qualified heir. Tax equals \$22,250.

Niece 2's share remains the same since she is not a qualified heir. Tax equals \$22,250.

Total tax for this computation is \$90,875.

The greater of the two computations is \$92,000. \$92,000 would be due.

ITEM 27. Adopt the following **new** subrule 86.14(11):

86.14(11) Prorated cash bequests. If the distribution of an estate includes pecuniary legacies with an estate with property located in and outside Iowa, or the estate includes specific bequests from a fund containing property located in and outside Iowa, then the Iowa inheritance tax liability for those legacies or bequests will be based on the pro rata portion of the property of the estate located in Iowa. For further details see *Estate of Dennis M. Billingsley*, Iowa District Court of Emmet County, Case No. 13394 (July 15, 1982).

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ARC 1138C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 421.17, the Department of Revenue hereby amends Chapter 41, "Determination of Taxable Income," Chapter 42, "Adjustments to Computed Tax and Tax Credits," Chapter 46, "Withholding," Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Iowa Administrative Code.

These amendments are adopted as a result of 2013 Iowa Acts, House Files 599 and 620, and 2013 Iowa Acts, Senate Files 433, 436 and 452, relating to historic preservation and cultural and entertainment district, agricultural assets transfer, custom farming contract, from farm to food donation, targeted jobs and endow Iowa tax credits.

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Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0998C** on September 4, 2013. No comments were received from the public. These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, no adverse impact on jobs has been found. The tax credits may positively impact job and economic growth for businesses and individuals in the state of Iowa.

These amendments are intended to implement Iowa Code sections 422.11M and 422.33 as amended by 2013 Iowa Acts, House File 599; Iowa Code section 15E.305 as amended by 2013 Iowa Acts, House File 620; Iowa Code section 403.19A as amended by 2013 Iowa Acts, Senate File 433; Iowa Code sections 404A.1 and 404A.3 as amended by 2013 Iowa Acts, Senate File 436; and 2013 Iowa Acts, Senate File 452, division XVIII.

These amendments will become effective December 4, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 41.5(17):

41.5(17) Charitable contributions relating to the from farm to food donation tax credit. For tax years beginning on or after January 1, 2014, a taxpayer who claims a from farm to food donation tax credit in accordance with rule 701—42.51(422,85GA,SF452) cannot claim an itemized deduction for charitable contributions under Section 170 of the Internal Revenue Code for the amount of the contribution for which the tax credit is claimed for Iowa tax purposes.

ITEM 2. Amend subrule **42.19(3)**, first unnumbered paragraph, as follows:

In the case of commercial property, qualified rehabilitation costs must equal at least \$50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of ~~residential~~ property or barns other than commercial property, the qualified rehabilitation costs must equal at least \$25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project are qualified rehabilitation costs.

ITEM 3. Amend rule **701—42.19(404A,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 404A as amended by ~~2011 Iowa Acts, Senate Files 517 and 521~~ 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.11D ~~as amended by 2012 Iowa Acts, House File 2465, section 31.~~

ITEM 4. Amend rule **701—42.24(15E,422)**, first unnumbered paragraph, as follows:

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 ~~and subsequent calendar years~~ is \$3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For the 2012 calendar year ~~and subsequent calendar years~~, the total amount of endow Iowa tax credits is ~~\$4,642,945~~ \$6 million; the maximum amount of tax credit authorized to a single taxpayer

REVENUE DEPARTMENT[701](cont'd)

is ~~\$232,147.25~~ \$300,000 (~~\$4,642,945~~ \$6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

ITEM 5. Amend rule ~~701—42.24(15E,422)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 15E.305 as amended by ~~2011 Iowa Acts, Senate File 302~~ 2013 Iowa Acts, House File 620, and section 422.11H.

ITEM 6. Amend rule 701—42.36(175,422) as follows:

701—42.36(175,422) Agricultural assets transfer tax credit and custom farming contract tax credit.

42.36(1) Agricultural assets transfer tax credit. ~~Effective for~~ For tax years beginning on or after January 1, 2007, but before January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax. ~~The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements.~~ Effective for tax years beginning on or after January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa individual income tax equal to 7 percent of the rental income received by the owner for cash rental agreements and 17 percent of the rental income received by the owner for commodity share agreements.

Also effective for tax years beginning on or after January 1, 2013, if the beginning farmer is a veteran, the credit is equal to 8 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 18 percent of the rental income received by the owner for commodity share agreements for the first year that the credit is allowed. However, the taxpayer may only claim 7 percent of the rental income for cash rental agreements and 17 percent of the rental income for commodity share agreements in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. The tax credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2009, but before July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$6 million, ~~and the credit certificates will be issued on a first-come, first-served basis.~~ For fiscal years beginning on or after July 1, 2013, the amount of the tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$8 million and the amount of the credit issued to an individual taxpayer cannot exceed \$50,000.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for the termination, the

REVENUE DEPARTMENT[701](cont'd)

authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

42.36(2) Custom farming contract tax credit. Effective for tax years beginning on or after January 1, 2013, a landowner that hires a beginning farmer to custom farm agricultural land in this state may claim a custom farming contract tax credit for Iowa individual income tax. The credit is equal to 7 percent of the value of the contract. If the beginning farmer is a veteran, the credit is equal to 8 percent of the value of the contract for the first year. However, the taxpayer may only claim 7 percent of the value of the contract in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the custom farming contract tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, the taxpayer must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the taxpayer and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the taxpayer which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the custom farming contract tax credit program cannot exceed \$4 million, and the credit certificates will be issued on a first-come, first-served basis. The amount of the credit issued to an individual taxpayer cannot exceed \$50,000.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If the party entering into the custom farming contract with the beginning farmer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The custom farming contract may be terminated by either the taxpayer or the beginning farmer. If the agricultural development authority determines that the taxpayer is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the taxpayer is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the taxpayer will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 175.37 as amended by 2009 Iowa Acts, Senate File 483 2013 Iowa Acts, House File 599, sections 8 to 17; 2013 Iowa Acts, House File 599, sections 7, 18 and 19; and Iowa Code section 422.11M as amended by 2013 Iowa Acts, House File 599, section 20.

ITEM 7. Adopt the following **new** rule 701—42.51(422,85GA,SF452):

701—42.51(422,85GA,SF452) From farm to food donation tax credit. Effective for tax years beginning on or after January 1, 2014, a taxpayer that donates a food commodity that the taxpayer produces may claim a tax credit for Iowa individual income tax. The credit is equal to 15 percent of the value of the commodities donated during the tax year for which the credit is claimed or \$5,000, whichever is less. The value of the commodities shall be determined in the same manner as a charitable contribution of food for federal tax purposes under Section 170(e)(3)(C) of the Internal Revenue Code.

REVENUE DEPARTMENT[701](cont'd)

To qualify for the tax credit, the taxpayer (1) must produce the donated food commodity; (2) must transfer title to the donated food commodity to an Iowa food bank or Iowa emergency feeding organization recognized by the department; and (3) shall not receive remuneration for the transfer. The donated food commodity cannot be damaged or out-of-condition and declared to be unfit for human consumption by a federal, state, or local health official. A food commodity that meets the requirements for donated foods pursuant to the federal Emergency Food Assistance Program satisfies this requirement.

To be recognized by the department, a food bank or emergency feeding organization must either be a recognized affiliate of one of the eight partner food banks with the Iowa Food Bank Association or must register with the department. To register with the department, the organization must meet the definition of “emergency feeding organization,” “food bank,” or “food pantry” as defined by the department of human services in 441—66.1(234). The department of revenue will make registration forms available on the department’s Web site. The department will maintain a list of recognized organizations on the department’s Web site.

Food banks and emergency feeding organizations that receive eligible donations shall be required to issue receipts in a format prescribed by the department for all donations received and must annually submit to the department a receipt log of all the receipts issued during the tax year. The receipt log must be submitted in the form of a spreadsheet with column specifications as provided by the department. Receipt logs showing the donations for the previous calendar year must be delivered electronically or mailed to the department postmarked by January 15 of each year. If a receipt for a taxpayer’s claim is not provided by the organization, the taxpayer’s claim will be denied.

To claim the credit, a taxpayer shall submit to the department the original receipts that were issued by the food bank or emergency feeding organization. The receipt must include quantity information completed by the food bank or emergency feeding organization, taxpayer information, and a donation valuation consistent with Section 170(e)(3)(C) of the Internal Revenue Code completed by the taxpayer. Claims must be postmarked on or before January 15 of the year following the tax year for which the claim is requested. Once the department verifies the amount of the tax credit, a letter will be sent to the taxpayer providing the amount of the tax credit and a tax credit certificate number.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer’s estate or trust upon the death of the taxpayer.

If the producer is a partnership, limited liability company, S corporation, estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual’s pro-rata share of the individual’s earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2013 Iowa Acts, Senate File 452, division XVIII.

ITEM 8. Amend rule 701—46.10(403), introductory paragraph, as follows:

701—46.10(403) Targeted jobs withholding tax credit. For employers that ~~created targeted jobs in an urban renewal area and that~~ enter into a withholding agreement with pilot project cities approved by the ~~Iowa department~~ of economic development authority and create or retain targeted jobs in a pilot project city, a credit equal to 3 percent of the gross wages paid to employees under the withholding agreement can be taken on the Iowa withholding tax return. The employer shall remit the amount of the credit to the pilot project city. The administrative rules for the targeted jobs withholding tax credit program administered by the ~~Iowa department~~ of economic development authority may be found in 261—Chapter 71.

ITEM 9. Amend rule **701—46.10(403)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~Supplement~~ section 403.19A as amended by 2013 Iowa Acts, Senate File 433.

REVENUE DEPARTMENT[701](cont'd)

ITEM 10. Amend subrule **52.18(3)**, first unnumbered paragraph, as follows:

In the case of commercial property, qualified rehabilitation costs must equal at least \$50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of residential property or barns other than commercial property, the qualified rehabilitation costs must equal at least \$25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation costs.

ITEM 11. Amend rule **701—52.18(404A,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 404A as amended by ~~2011 Iowa Acts, Senate Files 517 and 524~~ 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.33.

ITEM 12. Amend rule **701—52.23(15E,422)**, first unnumbered paragraph, as follows:

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 ~~and subsequent calendar years~~ is \$3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For calendar year 2012 ~~and subsequent calendar years~~, the total amount of endow Iowa tax credits is ~~\$4,642,945~~ \$6 million; the maximum amount of tax credit authorized to a single taxpayer is ~~\$232,147.25~~ \$300,000 (~~\$4,642,945~~ \$6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

ITEM 13. Amend rule **701—52.23(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 15E.305 as amended by ~~2011 Iowa Acts, Senate File 302~~ 2013 Iowa Acts, House File 620, and Iowa Code section 422.33.

ITEM 14. Amend rule 701—52.33(175,422) as follows:

701—52.33(175,422) Agricultural assets transfer tax credit and custom farming contract tax credit.

52.33(1) Agricultural assets transfer tax credit. ~~Effective for~~ For tax years beginning on or after January 1, 2007, but before January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax. ~~The credit is equal to 5 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 15 percent of the rental income received by the owner for commodity share agreements.~~ Effective for tax years beginning on or after January 1, 2013, an owner of agricultural assets that rents assets to qualified beginning farmers may claim an agricultural assets transfer tax credit for Iowa corporation income tax equal to 7 percent of the rental income received by the owner for cash rental agreements and 17 percent of the rental income received by the owner for commodity share agreements.

Also effective for tax years beginning on or after January 1, 2013, if the beginning farmer is a veteran, the credit is equal to 8 percent of the rental income received by the owner for cash rental agreements, and the credit is equal to 18 percent of the rental income received by the owner for commodity share agreements for the first year that the credit is allowed. However, the taxpayer may only claim 7 percent

REVENUE DEPARTMENT[701](cont'd)

of the rental income for cash rental agreements and 17 percent of the rental income for commodity share agreements in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the agricultural assets transfer tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, an owner of agricultural assets must enter into a lease or rental agreement with a beginning farmer for a term of at least two years, but not more than five years. Both the owner of agricultural assets and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the owner of agricultural assets which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. The tax credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2009, but before July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$6 million, and the credit certificates will be issued on a first-come, first-served basis. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural development authority for the agricultural assets transfer tax credit program cannot exceed \$8 million and the amount of the credit issued to an individual taxpayer cannot exceed \$50,000.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If an owner of agricultural assets is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The lease or rental agreement may be terminated by either the owner or the beginning farmer. If the agricultural development authority determines that the owner is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the owner is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the owner will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

52.33(2) Custom farming contract tax credit. Effective for tax years beginning on or after January 1, 2013, a landowner that hires a beginning farmer to custom farm agricultural land in this state may claim a custom farming contract tax credit for Iowa individual income tax. The credit is equal to 7 percent of the value of the contract. If the beginning farmer is a veteran, the credit is equal to 8 percent of the value of the contract for the first year. However, the taxpayer may only claim 7 percent of the value of the contract in subsequent years if the agreement is renewed or a new agreement is executed by the same parties. The administrative rules for the custom farming contract tax credit for the Iowa agricultural development authority may be found under 25—Chapter 6.

To qualify for the tax credit, the taxpayer must enter into a lease or rental agreement with a beginning farmer for a term of at least two years but not more than five years. Both the taxpayer and the beginning farmer must meet certain qualifications set forth by the Iowa agricultural development authority, and the beginning farmer must be eligible to receive financial assistance under Iowa Code section 175.12.

The Iowa agricultural development authority will issue a tax credit certificate to the taxpayer which will include the name, address and tax identification number of the owner, the amount of the credit, and the tax period for which the credit may be applied. To claim the tax credit, the owner must attach the tax credit certificate to the tax return for the tax period set forth on the certificate. For fiscal years beginning on or after July 1, 2013, the amount of tax credit certificates issued by the Iowa agricultural

REVENUE DEPARTMENT[701](cont'd)

development authority for the custom farming contract tax credit program cannot exceed \$4 million, and the credit certificates will be issued on a first-come, first-served basis. The amount of the credit issued to an individual taxpayer cannot exceed \$50,000.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit. The credit is not transferable to any other person other than the taxpayer's estate or trust upon the death of the taxpayer.

If the party entering into the custom farming contract with the beginning farmer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

The custom farming contract may be terminated by either the taxpayer or the beginning farmer. If the agricultural development authority determines that the taxpayer is not at fault for the termination, the authority will not issue a tax credit certificate for subsequent years, but any prior tax credit certificates issued will be allowed. If the authority determines that the taxpayer is at fault for the termination, any prior tax credit certificates will be disallowed. The amount of tax credits previously allowed will be recaptured, and the taxpayer will be required to repay the entire amount of tax credits previously claimed on Iowa returns.

This rule is intended to implement Iowa Code section 175.37 as amended by 2009 Iowa Acts, Senate File 483, 2013 Iowa Acts, House File 599, sections 8 to 17; 2013 Iowa Acts, House File 599, sections 7, 18 and 19; and Iowa Code section 422.33 as amended by 2013 Iowa Acts, House File 599, section 21.

ITEM 15. Adopt the following new rule 701—52.45(422,85GA,SF452):

701—52.45(422,85GA,SF452) From farm to food donation tax credit. Effective for tax years beginning on or after January 1, 2014, a taxpayer that donates a food commodity that the taxpayer produces may claim a tax credit for Iowa corporation income tax. The credit is equal to 15 percent of the value of the commodities donated during the tax year for which the credit is claimed or \$5,000, whichever is less. The value of the commodities shall be determined in the same manner as a charitable contribution of food for federal tax purposes under Section 170(e)(3)(C) of the Internal Revenue Code.

To qualify for the tax credit, the taxpayer (1) must produce the donated food commodity; (2) must transfer title to the donated food commodity to an Iowa food bank or Iowa emergency feeding organization recognized by the department; and (3) shall not receive remuneration for the transfer. The donated food commodity cannot be damaged or out-of-condition and declared to be unfit for human consumption by a federal, state, or local health official. A food commodity that meets the requirements for donated foods pursuant to the federal Emergency Food Assistance Program satisfies this requirement.

To be recognized by the department, a food bank or emergency feeding organization must either be a recognized affiliate of one of the eight partner food banks with the Iowa Food Bank Association or must register with the department. To register with the department, the organization must meet the definition of "emergency feeding organization," "food bank," or "food pantry" as defined by the department of human services in 441—66.1(234). The department of revenue will make registration forms available on the department's Web site. The department will maintain a list of recognized organizations on the department's Web site.

Food banks and emergency feeding organizations that receive eligible donations shall be required to issue receipts in a format prescribed by the department for all donations received and must annually submit to the department a receipt log of all the receipts issued during the tax year. The receipt log must be submitted in the form of a spreadsheet with column specifications as provided by the department. Receipt logs showing the donations for the previous calendar year must be delivered electronically or mailed to the department postmarked by January 15 of each year. If a receipt for a taxpayer's claim is not provided by the organization, the taxpayer's claim will be denied.

REVENUE DEPARTMENT[701](cont'd)

To claim the credit, a taxpayer shall submit to the department the original receipts that were issued by the food bank or emergency feeding organization. The receipt must include quantity information completed by the food bank or emergency feeding organization, taxpayer information, and a donation valuation consistent with Section 170(e)(3)(C) of the Internal Revenue Code completed by the taxpayer. Claims must be postmarked on or before January 15 of the year following the tax year for which the claim is requested. Once the department verifies the amount of the tax credit, a letter will be sent to the taxpayer providing the amount of the tax credit and a tax credit certificate number.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is earlier. The tax credit shall not be carried back to a tax year prior to the year in which the owner redeems the credit.

If the producer is a partnership, limited liability company, S corporation, estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2013 Iowa Acts, Senate File 452, division XVIII.

ITEM 16. Amend rule **701—58.13(15E,422)**, first unnumbered paragraph, as follows:

The total amount of endow Iowa tax credits available is \$2 million in the aggregate for the 2003 and 2004 calendar years. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2007 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000 for the 2003-2007 calendar years. The total amount of endow Iowa tax credits annually for the 2008 and 2009 calendar years is \$2 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2010 is \$2.7 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The total amount of endow Iowa tax credits annually for 2011 ~~and subsequent calendar years~~ is \$3.5 million plus a percentage of the tax imposed on the adjusted gross receipts from gambling games in accordance with Iowa Code section 99F.11(3). The maximum amount of tax credit granted to a single taxpayer shall not exceed 5 percent of the total endow Iowa tax credit amount authorized for 2008 and subsequent years. For calendar year 2012 ~~and subsequent calendar years~~, the total amount of endow Iowa tax credits is ~~\$4,642,945~~ \$6 million; the maximum amount of tax credit authorized to a single taxpayer is ~~\$232,147.25~~ \$300,000 (~~\$4,642,945~~ \$6 million multiplied by 5 percent). The endow Iowa tax credit cannot be transferred to any other taxpayer.

ITEM 17. Amend rule **701—58.13(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 15E.305 as amended by ~~2011 Iowa Acts, Senate File 302~~ 2013 Iowa Acts, House File 620, and section 422.60.

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ARC 1157C

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Adopted and Filed

Pursuant to the authority of Iowa Code section 35A.3(2), the Commission of Veterans Affairs hereby amends Chapter 10, "Iowa Veterans Home," Iowa Administrative Code.

These amendments reflect changes to comply with the enactment of 2013 Iowa Acts, House File 544, and to reflect the operational changes the Iowa Veterans Home has undertaken since the last revision of Chapter 10.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0924C** on August 7, 2013. Comments received from the public regarded the definition of Gold Star Parent and other minor questions asked for clarification. These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, there will be no impact on jobs.

These amendments are intended to implement Iowa Code chapter 35D.

These amendments will become effective December 4, 2013.

The following amendments are adopted.

ITEM 1. Rescind the definitions of “Director of admissions” and “Director of resident and family services” in rule **801—10.1(35D)**.

ITEM 2. Amend the following definitions in rule **801—10.1(35D)**:

“~~Adjutant~~ Chief operating officer” means the chief executive assistant of the commandant who functions as the chief operations officer.

“~~Gold Star parent~~” means a parent ~~whose child died while serving in the armed forces of the United States~~ of a deceased member of the United States armed forces who died while serving on active duty during a time of military conflict or who died as a result of such service.

“~~Interdisciplinary resident care committee~~” or “~~IRCC~~” means the member, a social worker, a registered nurse, a dietitian, a medical provider, a recreation specialist ~~and other staff, as appropriate, and a mental health provider, as required,~~ who are involved in reviewing a member’s assessment data and developing a collaborative care plan for the individual member.

“~~Member~~” means a ~~patient or~~ resident of IVH.

“~~PASARR PASRR~~” means preadmission screening and ~~annual~~ resident review.

“~~Spouse~~” means a person ~~of the opposite sex~~ who is the legal or common-law wife or husband of a veteran.

“~~Surviving spouse~~” means a person ~~of the opposite sex~~ who is the legal or common-law widow or widower of a veteran.

“~~Therapeutic activity~~” means an activity that is considered as treatment. A therapist shall determine that a particular activity is beneficial to the well-being of a ~~resident member~~ and shall include this determination in the ~~resident’s member’s~~ plan of care.

“~~Veteran~~” means a person who served in the active military and who was discharged or released therefrom under honorable conditions ~~other than dishonorable~~. Honorable and general discharges qualify a person as a veteran. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility).

In addition, veteran includes a person who served in the merchant marine or as a civil service crew member between December 7, 1941, and August 15, 1945.

ITEM 3. Adopt the following **new** definition of “Admissions coordinator” in rule **801—10.1(35D)**:

“~~Admissions coordinator~~” means the individual responsible for the coordination of the admissions process.

ITEM 4. Amend subrule 10.2(1) as follows:

10.2(1) Veterans shall be eligible for admittance to IVH in accordance with the following conditions:

a. ~~The individual does not have sufficient means for the individual’s support, or the individual is disabled by reason of disease, wounds, injury or old age or otherwise and is in need of one of the multilevels of care and meets the qualifications for nursing or residential level of care available at IVH, and is unable to defray the expenses of the necessary care, except as described at paragraph “e.”~~

b. The individual cannot be competitively employed on the day of admission or throughout the individual’s residency.

c. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

d. An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

~~*e.* Individuals who have sufficient means for their own care but who are otherwise eligible to become members of IVH may, if there is room for individuals described in paragraph “a” above, be admitted and allowed to remain at IVH upon payment of the cost of the individual’s care in accordance with rules 801—10.14(35D) to 801—10.23(35D).~~

f. e. The individual must be eligible for care and treatment at a DVA medical center (excluding financial eligibility).

~~*f.*~~ Individuals admitted to the domiciliary level of care must meet DVA criteria stated in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, M-1, Part 1, Chapter 3.11(h) (1), (2), and (3), and have prior DVA approval if the individual’s income level exceeds the established cap.

g. Homelessness does not disqualify persons otherwise eligible for admission to IVH.

ITEM 5. Amend subrule 10.2(3) as follows:

10.2(3) A Gold Star parent shall be eligible for admittance in accordance with the following conditions:

a. The parent’s child died while serving on active duty in the armed forces of the United States during a time of military conflict or died as a result of such service.

~~*b.* The individual does not have sufficient means for the individual’s support, or the individual is disabled by reason of disease, wounds, injury or old age or otherwise and is in need of one of the multilevels of care and meets the qualifications for nursing or residential level of care available at IVH, and is unable to defray the expenses of the necessary care, except as described at paragraph “e.”~~

c. The individual cannot be competitively employed on the day of admission or throughout the individual’s residency.

d. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

~~*e.* An individual who has sufficient means for the individual’s own care but who is otherwise eligible to become a member of IVH may, if there is room for individuals described in paragraph “b” above, be admitted and allowed to remain at IVH upon payment of the cost of the individual’s care in accordance with rules 801—10.14(35D) to 801—10.23(35D).~~

f. e. An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

~~*f.*~~ Gold Star parents, spouses and surviving spouses admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

ITEM 6. Amend subrule 10.3(2) as follows:

10.3(2) Application shall be made on the “Veteran Application for Admission to the Iowa Veterans Home,” Form 475-0409, the “Spouse’s Application for Admission to the Iowa Veterans Home,” Form 475-0410, or the “Gold Star Parent Application for Admission to the Iowa Veterans Home,” Form ~~475-0411~~ 475-2044. Separate applications shall be required for an eligible veteran and the spouse of the veteran when both veteran and spouse are applying for admission. The applications may be obtained at:

a. The county commission of veterans affairs’ office.

b. DVA medical centers located in or serving veterans in the state of Iowa.

c. IVH.

d. Web site: www.iowaveteranshome.org.

ITEM 7. Amend paragraphs **10.3(4)“d”** and **“e”** as follows:

d. If the applicant is a Gold Star parent, an original or certified copy of the ~~veteran’s~~ child’s birth certificate and certification of the child’s death while serving on active duty in the armed forces of the United States during a time of military conflict.

e. An original or a certified copy of applicant’s birth certificate ~~if not in receipt of Social Security~~.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

ITEM 8. Amend subrule 10.3(6) as follows:

10.3(6) Eligibility determinations are subject to approval by the commandant or designee.

ITEM 9. Amend rule 801—10.4(35D) as follows:

801—10.4(35D) Application processing.

10.4(1) Applications received by the admissions office shall be reviewed for completeness. The county commission of veterans affairs shall be required to submit additional information if needed.

10.4(2) The admissions committee shall assign the level ~~and category~~ of care required by the applicant. If a special care unit or treatment is required, this shall be designated.

10.4(3) Regardless of whether or not the applicant can be immediately admitted, the applicant shall be notified by the ~~director of admissions or designee~~ admissions coordinator of the applicant's designated level ~~and category~~ of care. An applicant who does not wish to be admitted to the designated level ~~and category~~ of care may submit evidence to show that another level ~~or category~~ of care may be more appropriate. However, once the admissions committee makes a final determination, the applicant who does not wish to be admitted under the designated level ~~or category~~ of care may withdraw the application ~~in writing~~ or have the application denied.

10.4(4) When space is not immediately available in the level ~~and category~~ of care assigned or on the appropriate special care unit, the applicant's name shall be placed on the appropriate waiting list for that level ~~and category~~ of care or special care unit in the order of the date the application was received.

10.4(5) When space is available at time of application, or when space becomes available in accordance with the designated waiting list, the applicant shall be scheduled for admittance to IVH as follows:

a. An applicant whose physical examination or personal functional assessment, or both if applicable, was completed more than three months prior to the scheduled date of admittance may be required to obtain another physical examination by a medical provider or complete a current personal functional assessment, or both if applicable. This information shall be reviewed to determine that the applicant is capable of functioning at the previously determined level of care ~~and category~~.

b. An applicant who requires a different level ~~and category~~ of care than previously determined shall be admitted to the level of care required if a bed is available or shall have the applicant's name placed on the waiting list for the appropriate level ~~and category~~ of care in accordance with the date the original application was received.

c. If there is a question regarding the level ~~and category~~ of care for which the applicant qualifies, the applicant shall be scheduled for a preadmission ~~examination~~ visit with appropriate staff in order to make a determination of appropriate level ~~and category~~ of care. If there is a question of whether or not the applicant ~~can be appropriately treated within the scope of existing~~ qualifies for nursing or residential level of care programs, or facility license or both, the applicant shall be scheduled for a preadmission screening site visit by appropriate staff.

d. ~~Following the~~ Prior to an applicant's admission to a nursing care unit, the ~~PASARR~~ PASRR is completed.

ITEM 10. Amend rule 801—10.6(35D) as follows:

801—10.6(35D) Admission to IVH.

10.6(1) The applicant shall be notified by the ~~director of admissions or designee~~ admissions coordinator to appear for admission to IVH.

10.6(2) Upon arrival at IVH, the applicant or legal representative shall report to the admissions office for an admission interview.

10.6(3) During the interview, ~~the director of admissions or designee shall review~~ the following items will be reviewed with the applicant or legal representative:

a. The applicant's resources.

b. The member support, billing process and banking services.

c. The "Contractual Agreement," Form ~~475-0694~~ 475-1833.

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10.6(4) In order to meet the requirements of subrule 10.6(3), the applicant or legal representative shall complete and sign the following forms as applicable:

- a. Permission for Treatment, Form 475-0814.
- b. Financial Affidavit, Form 475-0839.

10.6(5) An applicant becomes a member at that point in time when the applicant or legal representative signs and dates the “Contractual Agreement,” Form ~~475-0694~~ 475-1833, or otherwise authorizes, in writing, acceptance of the terms of admittance specified in the Contractual Agreement.

10.6(6) Each member shall be placed on a unit providing the appropriate level ~~and category~~ of care based on individual needs.

a. A member requiring a change in placement based on individual care needs shall be transferred to a unit which provides the appropriate level ~~and category~~ of care within the scope of its licensure.

b. Members shall have priority over new admissions for placement on a unit when a vacant bed becomes available.

10.6(7) Care at IVH shall be provided in accordance with Iowa Code chapter 135C; 481—Chapter 57, Residential Care Facilities; 481—Chapter 58, Nursing Facilities; and DVA State Veterans Homes, Veterans Health Administration, M-5, Part 8, Chapter 2, Procedure for Obtaining Recognition of a State Veterans Home and Applicable Standards, 2-06, 2.07, Standards for Nursing Care, and 2-09, 2.08, Standards for Domiciliary Care, November 4, 1992.

ITEM 11. Amend subrule 10.11(2) as follows:

10.11(2) A member has the right to share a room with the member’s spouse when both ~~member and spouse~~ members consent to the arrangement ~~and both require the same level of care~~.

ITEM 12. Rescind paragraph **10.12(1)“e.”**

ITEM 13. Reletter paragraphs **10.12(1)“f”** to **“r”** as **10.12(1)“e”** to **“q.”**

ITEM 14. Amend subparagraphs **10.19(2)“a”(9)** and **(16)** as follows:

(9) The first \$150 received by a member in a month for participation in the incentive therapy or other programs as described at in rule 801—10.30(35D), for members in the domiciliary level of care. For members in the nursing level of care, the first \$75 shall be exempted.

(16) Income from ~~participating employment~~ as outlined in the ~~community reentry program (IVH policy #174) or the IVH discharge planning policy (IVH policy #265)~~.

ITEM 15. Amend subrule 10.20(10) as follows:

10.20(10) ~~Through IVH programs, employment~~ Employment is only allowed as identified in the ~~community reentry program (IVH policy #174) or the IVH discharge planning policy (IVH policy #265)~~.

ITEM 16. Amend rule 801—10.30(35D) as follows:

801—10.30(35D) Incentive therapy and nonprofit rehabilitative programs. Members may be offered the opportunity to perform services for IVH through the incentive therapy program as part of their plan of care. Participating members shall be compensated for their involvement in the incentive therapy program according to applicable guidelines established by the U.S. Department of Labor, Wage, and Hour Division, and the commandant or designee. ~~if~~ If members enrolled in nonprofit rehabilitative programs receive an income from such programs, that income shall be treated in the same manner as the incentive therapy program or IVH policy.

This rule is intended to implement Iowa Code section 35D.7(3).

ITEM 17. Amend subrule 10.35(3) as follows:

10.35(3) IVH shall maintain a commercial account with a federally insured bank for the personal deposits of its members. The account shall be known as the IVH membership account. The commandant or designee shall record each member’s personal deposits individually and shall deposit the funds in the membership account where the members’ deposits shall be held in the aggregate. Interest shall accrue on those accounts that are on deposit the last working Friday of each month. IVH may withdraw moneys from the account maintained pursuant to this subrule to establish certificates of deposit for the benefit of all members.

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ITEM 18. Amend paragraph **10.36(1)“a”** as follows:

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign “Discharge/Leave Against Medical Advice,” Form 475-0940.

ITEM 19. Amend paragraphs **10.36(2)“a”** and **“d”** as follows:

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign “Discharge/Leave Against Medical Advice,” Form 475-0940.

d. A member or a legal representative who wishes to exceed the 18 visitation days and retain the member’s bed, but does not have medical provider recommendation for an extension, must make arrangements with the ~~director of admissions~~ financial services division administrator or designee for payment of the rate determined by the department of human services income maintenance worker for all days in excess of the 18 visitation days. If prior arrangements and payment are not made, a member may be discharged in accordance with subrule 10.12(2).

ITEM 20. Amend rule 801—10.40(35D), introductory paragraph, as follows:

801—10.40(35D) Requirements for member conduct. The commandant or designee shall administer and enforce all requirements for member conduct. Subject to these rules and Iowa Code section 135C.23, the commandant or designee may transfer or discharge any member from IVH when the commandant or designee determines that the health, safety or welfare of the members or staff is in immediate danger, and other reasonable alternatives have been exhausted.

ITEM 21. Amend paragraphs **10.40(1)“d,” “f”** and **“i”** as follows:

d. Firearms or weapons of any nature shall be turned in to the ~~adjutant~~ commandant or designee for safekeeping. The ~~adjutant~~ commandant or designee shall decide if an instrument is a weapon. Firearms or weapons in the possession of a member which constitute a hazard to self or others shall be removed and stored in a place provided and controlled by the facility.

f. Continuously disruptive behavior on the part of a member, ~~such as fighting with other members, visitors or staff, assault or theft,~~ is grounds for transfer or discharge.

i. Members shall report to the ~~director of admissions~~ admissions coordinator or designee any changes in assets/income, and pay support by the tenth of each month.

ITEM 22. Amend subrule 10.40(3) as follows:

10.40(3) The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member’s violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. If the IRCC, in conjunction with the medical provider and mental health personnel, deems that the member’s behavior poses a threat of imminent danger, the commandant or designee may issue notice of an immediate involuntary discharge. In such an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

The member’s county commission of veterans affairs and the legal representative shall be informed in writing of the decision to discharge. Written notification shall also be issued to appropriate governmental agencies including the commission, the department of inspections and appeals, and the department on aging’s long-term care ombudsman to ensure that the member’s health, safety or welfare shall not be in danger upon the member’s release.

ITEM 23. Amend rule 801—10.43(35D), introductory paragraph, as follows:

801—10.43(35D) Rule enforcement—power to suspend and discharge members. The commandant or designee shall administer and enforce all rules adopted by the commission, including rules of discipline and, subject to these rules, may immediately suspend the membership of and discharge any member from IVH for infraction of the rules when the commandant or designee determines that the health, safety or

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welfare of the members of IVH is in immediate danger and other reasonable alternatives have been exhausted. The suspension and discharge are temporary pending action by the commission. Judicial review of the action of the commission may be sought in accordance with Iowa Code chapter 17A.

ITEM 24. Amend subrule 10.43(1) as follows:

10.43(1) The commandant or designee shall, with the input and recommendation of the IRCC, involuntarily discharge a member for any of the following reasons:

a. The member has been diagnosed with a substance use disorder but continues to abuse alcohol or an illegal drug in violation of the member's conditional or provisional agreement entered into at the time of admission, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

1. Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

2. By having been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1) "*a*," if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant or designee may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged under paragraph 10.43(1) "*a*" if the member's actions or behavior jeopardizes the life or safety of other members or staff.

b. The member refuses to utilize the resources available to address issues identified in the member's collaborative care plan, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and the member has been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1) "*b*," if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant or designee may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged if the member's actions or behavior jeopardizes the life or safety of other members or staff.

c. ~~The member's medical or life skills needs have been met to the extent possible through the services provided by IVH and the member no longer requires a residential or nursing level of care, as determined by the IRCC.~~

d. The member requires a level of licensed care not provided at IVH.

ITEM 25. Amend paragraph **10.43(3)"c"** as follows:

c. A statement in not less than 12-point type which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as "Commission") within five (5) calendar days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held, and a decision rendered within ten (10) calendar days of the filing of the appeal. Provision may be made for extension of the ten (10) day requirement upon request to the Commission designee. If you lose the hearing, you will not be discharged or transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five (5) days following final decision of such hearing. To request a hearing or receive further information, call the Commission or write to the Commission to the attention of: Chairperson, Commission of Veterans Affairs."

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ITEM 26. Amend subrule 10.43(7) as follows:

10.43(7) Any involuntary discharge by the commandant or designee under this rule shall comply with the rules adopted by the commission and by the department of inspections and appeals pursuant to 2009 Iowa Acts, Senate File 407, section 2.

ITEM 27. Amend rule 801—10.45(35A,35D) as follows:

801—10.45(35A,35D) Applicant appeal process. An applicant who believes that any of the provisions of 801—~~Chapter 10~~ this chapter have not been upheld, or have been upheld unfairly, may file an appeal directly with the commandant or designee containing a statement of the grievance and requested action. The commandant or designee shall investigate and may hold an informal hearing with the applicant and other involved individuals. Subrules 10.46(4) to 10.46(8) apply subsequently. The commandant or designee shall notify the applicant of the decision in writing within ten working days of receipt of the grievance.

ITEM 28. Amend subrules 10.46(1), 10.46(2) and 10.46(3) as follows:

10.46(1) A member shall discuss the problem and action desired with the assigned social worker within five working days of the incident which caused the problem. The social worker shall investigate the situation and attempt to resolve the problem within five working days of the discussion with the member. If the assigned social worker has allegedly caused the grievance, the member may file the grievance directly with the ~~director of resident and family services~~ supervising unit manager.

10.46(2) If unable to resolve the problem, or if the member is dissatisfied with the solution, the social worker shall assist the member with filing a formal grievance and shall submit a report of the facts and recommendations to the ~~director of resident and family services~~ administrator of nursing within five working days of the discussion with the member. The ~~director of resident and family services~~ administrator of nursing shall inform the member of the decision in writing within five working days of receipt of the social worker's report.

10.46(3) If the member is not satisfied with the decision of the ~~director of resident and family services~~ administrator of nursing, or if no decision is given within the time specified in subrule 10.46(2), the member may appeal to the commandant or designee within ten working days of the decision of the ~~director of resident and family services~~ administrator of nursing or, if no decision is given, within ten working days of the time limit specified in subrule 10.46(2). The grievance shall be submitted in writing and contain a statement of the cause of the grievance and requested action. A copy of the decision of the ~~director of resident and family services~~ administrator of nursing shall be attached to the grievance statement, if applicable. The commandant or designee shall investigate the grievance and may hold an informal hearing with the member, ~~director of resident and family services~~ administrator of nursing, and other involved individuals. The commandant or designee shall notify the member and the ~~director of resident and family services~~ administrator of nursing of the decision in writing within ten working days of receipt of the grievance.

ITEM 29. Amend subrule 10.50(4) as follows:

10.50(4) ~~Firearms, drugs, Weapons, illegal substances~~ or alcoholic beverages are not permitted on IVH grounds ~~only with the permission of the commandant or designee~~.

ITEM 30. Amend subrule 10.51(2) as follows:

10.51(2) Each competent member shall be allowed to handle that member's business mail to the degree of responsibility chosen by the member. A member may:

a. Elect to receive all business mail personally and provide the ~~admissions~~ resident finance office with financial documentation, or

b. Designate that the member shall receive personal mail items, but business mail received at IVH from entitlement sources or concerning assets shall be routed to the ~~director of admissions or designee~~ resident finance office.

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ITEM 31. Amend subrule 10.52(2) as follows:

10.52(2) Interviews of members within IVH by the news media or other outside groups are permitted only with the prior ~~written~~ consent of the member to be interviewed or the member's legal representative. At the request of the person or group who wishes to conduct an interview, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

ITEM 32. Amend rule 801—10.53(35D) as follows:

801—10.53(35D) Donations. Donations of money, new clothing, books, games, recreational equipment or other gifts shall be made directly to the commandant or designee. The commandant or designee shall evaluate the donation in terms of the nature of the contribution to the facility program. The commandant or designee shall be responsible for accepting the donation and reporting the gift to the commission. All monetary gifts shall be acknowledged in writing to the donor.

ITEM 33. Amend subrule 10.54(1) as follows:

10.54(1) Photographs and recordings of members within IVH by news media or other outside groups are permitted only with the prior ~~written~~ consent of the member to be photographed or recorded, or the member's legal representative. At the request of the person or group who wishes to make photographs or recordings, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

ITEM 34. Amend subrule 10.55(2) as follows:

10.55(2) ~~Members of outside~~ Outside organizations permitted to use facilities or grounds shall observe the same rules as visitors to the facility.

ITEM 35. Amend rule 801—10.56(35D) as follows:

801—10.56(35D) Nonmember use of cottages. Cottages may be made available to ~~persons on the staff~~ of IVH staff or to other members of the public with the commandant's or designee's approval and at the established rate.

10.56(1) Expenses incurred as a result of damage or need for exceptional cleaning/sanitizing procedures, or both, may result in additional charges ~~to the visitor~~ as determined by IVH.

10.56(2) Posted occupancy capacities shall not be exceeded and may be grounds for denial of use.

10.56(3) Pets are not allowed inside the cottages. ~~Visitors~~ Occupants who bring pets must comply with IVH rules regarding pet health and safety. ~~Visiting pets~~ Pets will be housed in a portable pet kennel outside the cottage and kept on a leash while on the IVH grounds. The kennel shall be provided by the pet owner.

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