

# IOWA ADMINISTRATIVE BULLETIN

*Published Biweekly*

VOLUME XLII  
November 20, 2019

NUMBER 11  
Pages 1119 to 1269

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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]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

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

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### CITATION of Administrative Rules

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

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

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)
441 IAC 79.1(1)“a”(1)“1”	(Numbered paragraph)

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 2019

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
13	Friday, November 29, 2019	December 18, 2019
14	Wednesday, December 11, 2019	January 1, 2020
15	Thursday, December 26, 2019	January 15, 2020

**PLEASE NOTE:**

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

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

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, December 10, 2019, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the December 4, 2019, Iowa Administrative Bulletin.

### ADMINISTRATIVE SERVICES DEPARTMENT[11]

Volunteer leave of absence for executive branch employees, 63.17 to 63.21 Notice **ARC 4777C** ..... 11/20/19  
 Procurements from targeted small businesses, 117.5(2), 117.15, 118.5 Notice **ARC 4735C** ..... 11/6/19

### DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Prohibited grounds for discipline—default or delinquency on student loan debt or service  
 obligation, 6.9(2)"i," 11.11, 14.4, 20.13, 29.15(6), 30.5; rescind ch 34 Filed **ARC 4747C** ..... 11/6/19  
 Dental assistant registration examination—elimination of remediation requirement, 20.2,  
 20.5(2), 20.11 to 20.17, 22.5 Notice **ARC 4741C** ..... 11/6/19  
 Teledentistry, 27.12, 27.13 Filed **ARC 4748C** ..... 11/6/19  
 Military service and veteran reciprocity for licensing, amendments to ch 52 Filed **ARC 4749C** ..... 11/6/19

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Targeted jobs withholding tax credit program—rescission of sunset date for entering into a  
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 Rural housing needs assessment grant program, ch 220 Notice **ARC 4774C** ..... 11/20/19  
 Rural innovation grant program, ch 221 Notice **ARC 4775C** ..... 11/20/19

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

Membership of joint 911 service boards, 10.3(1)"a" Notice **ARC 4769C** ..... 11/20/19

### HUMAN SERVICES DEPARTMENT[441]

Public assistance program evaluation, amendments to ch 13 Filed **ARC 4750C** ..... 11/6/19  
 Disability services management—children's behavioral health services, amendments to ch  
 25 Notice **ARC 4762C** ..... 11/20/19  
 Statewide monthly standard deduction for personal care services at a residential care facility,  
 75.1(35)"g"(2) Notice **ARC 4738C** ..... 11/6/19  
 Medical assistance—drug policies, prior authorization for medication-assisted treatment,  
 prescription refills, amendments to chs 78, 79 Notice **ARC 4763C** ..... 11/20/19  
 Case management services, 78.27(6)"a," 78.37(17)"a," 78.43(1)"a," 83.22(2)"a," ch 90  
Notice **ARC 4739C** ..... 11/6/19  
 Medical assistance—forms, 79.3(2)"d," 79.8(1)"c," 80.2(2)"b," 81.6(16)"g"(9) Filed **ARC 4751C** ..... 11/6/19  
 Nursing facilities—calculation of depreciation, leasing arrangements, Iowa Medicaid  
 Enterprise, 81.6, 81.10, 81.13 Notice **ARC 4740C** ..... 11/6/19  
 Healthy and well kids in Iowa (HAWK-I) program, amendments to ch 86 Filed **ARC 4779C** ..... 11/20/19  
 Elimination of application fee for child support recovery services, 95.2(4), 95.18(3)  
Notice **ARC 4764C** ..... 11/20/19  
 Child care centers—preinspection visits, regulatory fees, 109.2, 109.3 Filed **ARC 4752C** ..... 11/6/19  
 Child abuse mandatory reporter training for child care providers, 109.7, 110.9, 110.10(1),  
 120.10 Filed **ARC 4753C** ..... 11/6/19

### INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Agency procedure and organization, adopt chs 1, 2, 4; amend chs 3, 10, 36, 39, 41, 55, 58,  
 76 Filed **ARC 4780C** ..... 11/20/19  
 Surplus lines, risk retention groups and purchasing groups, amendments to ch 21 Filed **ARC 4781C** ..... 11/20/19

### IOWA PUBLIC INFORMATION BOARD[497]

Board actions; exempt sessions, 2.2(4), 8.3 Filed **ARC 4754C** ..... 11/6/19

### NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Child abuse and dependent adult abuse mandatory reporter training; wallet cards;  
 Internet-based test of English as a foreign language, 3.1, 3.6(2)"c," 3.7 Notice **ARC 4743C** ..... 11/6/19  
 Prohibited grounds for discipline—default or delinquency on student loan debt or service  
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 Continuing education; child abuse and dependent adult abuse mandatory reporter training,  
 5.2 Notice **ARC 4744C** ..... 11/6/19

Nonpayment of student loan debt, amendments to ch 17 Filed **ARC 4756C** ..... 11/6/19  
 Reciprocity—expedited licensure for spouse of active duty member of military forces,  
 amendments to ch 18 Filed **ARC 4757C** ..... 11/6/19

### **PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Marital and family therapists and mental health counselors—licensure, amendments to ch 31  
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 Marital and family therapists and mental health counselors—continuing education,  
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 Chiropractic physicians—child abuse and dependent adult abuse mandatory reporter training,  
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 Physician assistants—electronic transmission of prescriptions, 327.6(4) Notice **ARC 4768C** ..... 11/20/19

### **PUBLIC HEALTH DEPARTMENT[641]**

Iowa care for yourself program, amendments to ch 8 Notice **ARC 4766C** ..... 11/20/19  
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 Student loan default/noncompliance with agreement for payment of obligation, rescind ch  
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### **SCHOOL BUDGET REVIEW COMMITTEE[289]**

EDUCATION DEPARTMENT[281]“umbrella”

School district requests for modified supplemental amount; hearing procedures, 1.4(1), 4.6,  
 6.1, 6.3 Filed **ARC 4782C** ..... 11/20/19

### **STATE PUBLIC DEFENDER[493]**

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Claims for indigent defense and other professional services, amendments to chs 7, 12, 13  
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Towable recreational vehicles; certifications of trust; special farm truck weights, amendments  
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 OWI and implied consent, amendments to ch 620 Filed **ARC 4760C** ..... 11/6/19  
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### **UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]“umbrella”

Electric lines, ch 11 Notice **ARC 4776C** ..... 11/20/19

### **VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**

Injured veterans grant program—eligibility, 11.3 Notice **ARC 4767C** ..... 11/20/19  
 Veterans trust fund, 14.4(12) Filed **ARC 4761C** ..... 11/6/19

## 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.

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**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Volunteer leave of absence for executive branch employees, 63.17 to 63.21 IAB 11/20/19 <b>ARC 4777C</b>	Procurement Conference Room, A Level Hoover State Office Bldg. Des Moines, Iowa	December 10, 2019 9 to 10 a.m.
Procurements from targeted small businesses, 117.5(2), 117.15, 118.5 IAB 11/6/19 <b>ARC 4735C</b>	Procurement Conference Room, A Level Hoover State Office Bldg. Des Moines, Iowa	November 26, 2019 10 to 11 a.m.

**NURSING BOARD[655]**

Child abuse and dependent adult abuse mandatory reporter training; wallet cards; Internet-based test of English as a foreign language, 3.1, 3.6(2)"c," 3.7 IAB 11/6/19 <b>ARC 4743C</b>	Board Office, Suite B 400 S.W. 8th St. Des Moines, Iowa	December 6, 2019 9 to 10 a.m.
Continuing education; child abuse and dependent adult abuse mandatory reporter training, 5.2(4)"a," 5.2(5)"a," 5.2(10) IAB 11/6/19 <b>ARC 4744C</b>	Board Office, Suite B 400 S.W. 8th St. Des Moines, Iowa	December 6, 2019 9 to 10 a.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Marital and family therapists and mental health counselors—licensure, amendments to ch 31 IAB 11/6/19 <b>ARC 4745C</b>	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	November 26, 2019 8:30 to 9 a.m.
Marital and family therapists and mental health counselors—continuing education; mandatory reporter training, 32.1, 32.2, 32.3 IAB 11/6/19 <b>ARC 4746C</b>	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	November 26, 2019 8:30 to 9 a.m.
Chiropractic physicians—child abuse and dependent adult abuse mandatory reporter training, 41.8(4) IAB 11/6/19 <b>ARC 4742C</b>	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	November 26, 2019 8 to 8:30 a.m.
Physician assistants—electronic transmission of prescriptions, 327.6(4) IAB 11/20/19 <b>ARC 4768C</b>	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	December 10, 2019 7:30 to 8 a.m.



**TRANSPORTATION DEPARTMENT[761]**

Towable recreational vehicles;  
certifications of trust;  
special farm truck weights,  
amendments to chs 400, 425  
IAB 11/20/19 **ARC 4770C**

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Blvd.  
Ankeny, Iowa

December 12, 2019  
9 a.m.  
(If requested)

Special registration  
plates—blackout plates,  
electronic submission of  
applications, amendments to ch  
401  
IAB 11/6/19 **ARC 4736C**

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Blvd.  
Ankeny, Iowa

December 3, 2019  
10 a.m.  
(If requested)

Driver education, 634.1, 634.2,  
634.4, 634.6 to 634.8, 634.11  
IAB 11/20/19 **ARC 4771C**

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Blvd.  
Ankeny, Iowa

December 12, 2019  
10 a.m.  
(If requested)

**UTILITIES DIVISION[199]**

Electric lines, ch 11  
IAB 11/20/19 **ARC 4776C**

Board Hearing Room  
1375 E. Court Ave.  
Des Moines, Iowa

January 14, 2020  
1 to 3 p.m.

The following list will be updated as changes occur.

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

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

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

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ARC 4777C

**ADMINISTRATIVE SERVICES DEPARTMENT[11]****Notice of Intended Action****Proposing rule making related to volunteer leave of absence  
and providing an opportunity for public comment**

The Administrative Services Department hereby proposes to amend Chapter 63, "Leave," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 8A.413(21).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 8A.413(21).

*Purpose and Summary*

The purpose of this proposed rule making is to create a volunteer leave of absence for State Executive Branch employees. Employees may be granted up to eight hours of volunteer leave with pay to participate in volunteer activities with nonprofit organizations and governmental agencies.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

The Department will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department's rules concerning waivers.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Tami Wiencek  
Department of Administrative Services  
Hoover State Office Building  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Phone: 515.725.2017  
Fax: 515.281.6140  
Email: [tami.wiencek@iowa.gov](mailto:tami.wiencek@iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

December 10, 2019  
9 to 10 a.m.

Procurement Conference Room, A Level  
Hoover State Office Building  
1305 East Walnut Street  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Renumber rules **11—63.17(8A)** to **11—63.20(8A,70A)** as **11—63.18(8A)** to **11—63.21(8A,70A)**.

ITEM 2. Adopt the following new rule 11—63.17(8A):

**11—63.17(8A) Volunteer leave.** Probationary and permanent employees may, at the discretion of the appointing authority, be granted up to eight hours of volunteer leave with pay per fiscal year consistent with the requirements of this rule and the policies of the department and the appointing authority.

**63.17(1)** Volunteer leave shall only be used to participate in volunteer activities with a governmental entity or a nonprofit organization which is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code.

**63.17(2)** Volunteer leave shall not be used as vacation or sick leave.

**63.17(3)** Volunteer leave shall not be granted in excess of eight hours per fiscal year. If an employee is absent for volunteer activities for more than eight hours per fiscal year, the appointing authority may require or permit the additional leave to be charged to accrued vacation leave, compensatory leave, or leave without pay.

**63.17(4)** An employee who is transferred, promoted, or demoted from one state agency to another shall not be granted more than eight hours of volunteer leave per fiscal year.

**63.17(5)** If an employee does not use all the volunteer leave authorized by this rule within a fiscal year, the employee shall not accrue or be paid for such leave. All available volunteer leave shall be canceled on the date of separation, and no employee shall be paid for volunteer leave unused at the time of separation.

**63.17(6)** Volunteer leave shall be subject to the approval and discretion of the appointing authority. In considering whether to grant volunteer leave and while establishing its policies regarding volunteer leave, the appointing authority shall ensure that the agency maintains efficient and effective operations.

**63.17(7)** An appointing authority may require written verification from the employee or from the nonprofit organization or governmental entity with which the employee was engaged in volunteer activities during a period of volunteer leave.

This rule is intended to implement Iowa Code section 8A.413(21).

ITEM 3. Amend renumbered paragraph **63.20(2)“a”** as follows:

a. Have a catastrophic illness as defined by subrule ~~63.19(1)~~ 63.20(1); and

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 4. Amend renumbered subrule 63.20(3) as follows:

**63.20(3)** *Program eligibility for immediate family member illness.* In order to receive donated leave for a catastrophic illness of an immediate family member, the immediate family member must have a catastrophic illness as defined in subrule ~~63.19(4)~~ 63.20(1). The employee must:

*a. to c.* No change.

**ARC 4774C**

## **ECONOMIC DEVELOPMENT AUTHORITY[261]**

### **Notice of Intended Action**

#### **Proposing rule making related to rural housing needs assessment grant program and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to adopt new Chapter 220, “Rural Housing Needs Assessment Grant Program,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 608.

#### *Purpose and Summary*

Pursuant to 2019 Iowa Acts, Senate File 608, the Authority is directed to establish a Rural Housing Needs Assessment Grant Program to support the interpretation and implementation of hard data and housing-related information specific to the communities applying for financial assistance under this program. This grant program is intended to support the use of publicly available information and support community efforts to interpret hard data with supplemental information and to help communities implement changes to development codes, local ordinances, and housing incentives according to the community’s needs. These proposed rules provide for the administration of the program.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa beyond the funding allocated by 2019 Iowa Acts, Senate File 608.

#### *Jobs Impact*

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

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

#### *Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Jennifer Klein  
Economic Development Authority  
200 East Grand Avenue  
Des Moines, Iowa 50309  
Phone: 515.348.6144  
Email: [jennifer.klein@iowaeda.com](mailto:jennifer.klein@iowaeda.com)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** 261—Chapter 220:

CHAPTER 220  
RURAL HOUSING NEEDS ASSESSMENT GRANT PROGRAM

**261—220.1(88GA,SF608) Purpose.** Pursuant to 2019 Iowa Acts, Senate File 608, the authority is directed to establish a rural housing needs assessment grant program to support the interpretation and implementation of hard data and housing-related information specific to the communities applying for financial assistance under this program. This grant program is intended to support the use of publicly available information and support community efforts to interpret hard data with supplemental information and to help communities implement changes to development codes, local ordinances, and housing incentives according to the community’s needs.

**261—220.2(88GA,SF608) Definitions.** For purposes of this chapter, unless the context otherwise requires:

“*Agreement*” means a contract for financial assistance under the program describing the terms on which financial assistance is to be provided.

“*Applicant*” means an Iowa city applying for financial assistance under the program. The terms “applicant” and “community” may be used interchangeably in this chapter.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Director*” means the director of the authority.

“*Financial assistance*” means a grant made by the authority to an applicant approved for funding under the program.

“*Program*” means the procedures, agreement, terms, and assistance established and provided pursuant to this chapter.

**261—220.3(88GA,SF608) Program description.**

**220.3(1) Amount, form, and timing of assistance.** This program provides financial assistance to applicants to support the interpretation and implementation of hard data and housing-related information specific to the communities applying for a grant under this program. The amount of assistance awarded

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

will be determined by the authority and will be based on the total amount of funds available to the authority for the program and the costs specified in the application. Each award shall not be less than \$1,000.

**220.3(2) Application.**

*a. Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority or by visiting the authority's website: Iowa Economic Development Authority, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, (515)328-3000, [iowaeconomicdevelopment.com](http://iowaeconomicdevelopment.com).

*b. Application period.* Each fiscal year during which funding is available, applications for financial assistance will only be accepted during the established application period, or periods, as identified by the authority on its website.

*c. Complete application required.* An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided to the authority.

**220.3(3) Approval of assistance.** Authority staff will review applications for financial assistance under the program, and a grant committee will score and recommend applications to the director in accordance with subrule 220.4(2). A project that does not receive funding may reapply.

**220.3(4) Agreement required.** The authority shall enter into an agreement with each applicant for the receipt of a grant under this chapter. The agreement must state the terms on which financial assistance is to be provided. The authority may negotiate the terms of the agreement. The applicant shall execute the agreement before funds are disbursed under the program.

**220.3(5) Form of financial assistance.** The authority will provide financial assistance in the form of a grant to the applicant. The amount of the grant and any other terms shall be included in the agreement required pursuant to this chapter.

**220.3(6) Use of funds.**

*a.* An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

*b.* For purposes of this subrule, "costs directly related" does not include any expenses specified as ineligible in the agreement required pursuant to this chapter.

**261—220.4(88GA,SF608) Program eligibility, application scoring, and funding decisions.**

**220.4(1) Program eligibility.** An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

- a.* The applicant must be an Iowa city.
- b.* The applicant must have a population of 10,000 or fewer and shall not be contiguous to a city with a population of 40,000 or greater.
- c.* An eligible applicant will be allowed to submit only one application per application period.
- d.* The applicant must demonstrate the capacity for administering a grant.
- e.* The applicant must demonstrate the feasibility of the project's proposed scope and timeline with the funds requested.
- f.* The applicant must identify and describe other sources of funding for the proposed assessment and related activities.
- g.* The applicant must identify any partner organizations that will be utilized in interpreting and implementing the data collected through the assessment.
- h.* The applicant must provide a cash match of at least 50 cents for every dollar awarded as a grant under this program.

**220.4(2) Application scoring criteria.** All completed applications will be reviewed and scored. Each application will be scored using criteria set forth by the authority.

**220.4(3) Funding decisions.** Funding decisions will be made using the following process:



## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

*a.* Staff review. Each application will be reviewed by staff for eligibility and completeness. Complete applications meeting all eligibility requirements will be sent to a grant committee.

*b.* Grant committee review and recommendation. Following staff review, a grant committee will review and score applications using the criteria set forth by the authority pursuant to subrule 220.4(2) and will make funding recommendations. The committee may utilize an outside technical panel if the committee determines additional expertise is necessary to review and score the application. The application and score will be referred to the director with a recommendation as to whether to fund the project and, if funding is recommended, a recommendation as to the amount of the grant.

*c.* Director's decision. The director will make the final funding decision on each application, taking into consideration the amount of available funding and the grant committee's recommendation. The director may approve, deny, or defer funding for any application.

*d.* Notification. Each applicant will be notified in writing of the funding decision within 15 days of the director's decision.

**261—220.5(88GA,SF608) Agreement required.**

**220.5(1)** Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish the terms on which the financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

**220.5(2)** The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

**220.5(3)** The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

These rules are intended to implement 2019 Iowa Acts, Senate File 608.

**ARC 4775C****ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action****Proposing rule making related to rural innovation grant program  
and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to adopt new Chapter 221, "Rural Innovation Grant Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 15.106A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 608.

*Purpose and Summary*

Pursuant to 2019 Iowa Acts, Senate File 608, the Authority is directed to establish a Rural Innovation Grant Program to support creative, nontraditional ideas that focus on current issues and challenges faced by rural communities associated with the themes of community investment, growth, and connection. These proposed rules provide for the administration of the program.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa beyond the funds allocated by 2019 Iowa Acts, Senate File 608.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Authority no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Jennifer Klein  
Economic Development Authority  
200 East Grand Avenue  
Des Moines, Iowa 50309  
Phone: 515.348.6144  
Email: [jennifer.klein@iowaeda.com](mailto:jennifer.klein@iowaeda.com)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** 261—Chapter 221:

CHAPTER 221  
RURAL INNOVATION GRANT PROGRAM

**261—221.1(88GA,SF608) Purpose.** Pursuant to 2019 Iowa Acts, Senate File 608, the authority is directed to establish a rural innovation grant program to support creative, nontraditional ideas that focus on current issues and challenges faced by rural communities associated with the themes of community investment, growth, and connection.

**261—221.2(88GA,SF608) Definitions.** For purposes of this chapter, unless the context otherwise requires:

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

“*Agreement*” means a contract for financial assistance under the program describing the terms on which financial assistance is to be provided.

“*Applicant*” means an Iowa business, college, university, city, county, council of governments organization established by Iowa Code chapter 28H, K-12 educational institution, or private nonprofit agency or foundation applying for financial assistance under the program. A business will be considered an Iowa business if the business is incorporated in the state of Iowa or authorized to do business in the state of Iowa.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Director*” means the director of the authority.

“*Financial assistance*” means a grant made by the authority to an applicant approved for funding under the program.

“*Program*” means the procedures, agreement, terms, and assistance established and provided pursuant to this chapter.

“*Project*” means a program or activity undertaken in and for the benefit of a community in Iowa with a population of 20,000 or fewer and not contiguous to a city with a population of 40,000 or greater.

**261—221.3(88GA,SF608) Program description.**

**221.3(1) *Amount, form, and timing of assistance.*** The program provides financial assistance to applicants to support creative, nontraditional ideas that focus on current challenges facing rural communities. The amount of assistance awarded will be determined by the authority based on the total amount of funds available to the authority for the program and based on the project details. Each award shall not be less than \$1,000.

**221.3(2) *Application.***

*a. Forms.* All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the authority. Information about the program, the application, and application instructions may be obtained by contacting the authority or by visiting the authority’s website: Iowa Economic Development Authority, Community Development Division, 200 East Grand Avenue, Des Moines, Iowa 50309, (515)328-3000, [iowaeconomicdevelopment.com](http://iowaeconomicdevelopment.com).

*b. Application period.* Each fiscal year during which funding is available, applications for financial assistance will only be accepted during the established application period, or periods, as identified by the authority on its website.

*c. Frequency of application.* An eligible applicant may only be named as the primary entity on one application per application period. However, an applicant who has applied as the primary entity for an application may also be named as a partner on additional applications submitted.

*d. Complete application required.* An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

**221.3(3) *Approval of assistance.*** Authority staff will review applications for financial assistance under the program, and a grant committee will score and recommend applications to the director in accordance with subrule 221.4(2). A project that does not receive funding may reapply.

**221.3(4) *Agreement required.*** The authority shall enter into an agreement with each applicant for the receipt of a grant under this chapter. The agreement must state the terms on which the financial assistance is to be provided. The authority may negotiate the terms of the agreement. The applicant shall execute the agreement before funds are disbursed under the program.

**221.3(5) *Form of financial assistance.*** The authority will provide financial assistance in the form of a grant to the applicant. The amount of the grant and any other terms shall be included in the agreement required pursuant to this chapter.

**221.3(6) *Use of funds.***

*a.* An applicant shall use funds only for reimbursement of the costs directly related to the project. The authority may require documentation or other information establishing the actual costs incurred for a project. Failure to use the funds for reimbursement of the costs directly related to a project shall be grounds for default under the agreement required pursuant to this chapter.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

b. For purposes of this subrule, “costs directly related” does not include ineligible expenses such as international travel, domestic travel outside the state of Iowa, insurance, training or professional development courses, and any other expenses specified as ineligible in the agreement required pursuant to this chapter.

**261—221.4(88GA,SF608) Program eligibility, application scoring, and funding decisions.**

**221.4(1) Program eligibility.** An applicant must meet the following eligibility criteria to qualify for financial assistance under this program:

- a. The applicant must meet the definition of “applicant” in rule 261—221.2(88GA,SF608).
- b. If the applicant is not a local government entity, the applicant must demonstrate support from the local government entity as evidenced by a letter of support.
- c. The applicant must serve a city that has a population of 20,000 or fewer and that is not contiguous to a city with a population of 40,000 or greater.
- d. The applicant must demonstrate the capacity for administering a grant.
- e. The applicant must provide a cash match of at least 50 cents for every dollar awarded as a grant under this program.
- f. The applicant must demonstrate that the project does not consist of ongoing expenses for existing projects or programs.

**221.4(2) Application scoring criteria.** All completed applications will be reviewed and scored. Each application will be scored using criteria set forth by the authority, which may include the following:

- a. Alignment with program purpose. The application should demonstrate that the project aligns with the program purpose by developing a nontraditional, concrete solution to increase rural community vibrancy.
- b. Solution-oriented. The application should demonstrate that the project will address rural challenges through exceptional and creative solutions.
- c. Replicability. The application should demonstrate a clear opportunity for successful replication in rural communities across the state.
- d. Roles defined. The application should identify and describe the roles of all partners involved in the project.
- e. Project goals and timeline. The application should demonstrate clearly defined, measurable goals and a timeline for execution of the project.
- f. Project budget and financing. The application should include a complete budget that provides clear justification for all costs. The application should also demonstrate secured financing and that the cash match requirement has been met.

**221.4(3) Funding decisions.** Funding decisions will be made using the following process:

- a. Staff review. Each application will be reviewed by staff for eligibility and completeness. Complete applications meeting all eligibility requirements will be sent to a grant committee.
- b. Grant committee review and recommendation. Following staff review, a grant committee will review and score applications using the criteria set forth by the authority pursuant to subrule 221.4(2) and will make funding recommendations. The committee may utilize an outside technical panel if the committee determines additional expertise is necessary to review and score the application. The application and score will be referred to the director with a recommendation as to whether to fund the project and, if funding is recommended, a recommendation as to the amount of the grant.
- c. Director’s decision. The director will make the final funding decision on each application, taking into consideration the amount of available funding and the grant committee’s recommendation. The director may approve, deny, or defer funding for any application.
- d. Notification. Each applicant will be notified in writing of the funding decision within 15 days of the director’s decision.

**261—221.5(88GA,SF608) Agreement required.**

**221.5(1)** Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority for the provision of such financial assistance. The agreement will establish

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

the terms on which financial assistance is to be provided and may include any other terms reasonably necessary for the efficient administration of the program.

**221.5(2)** The authority and the applicant may amend the agreement at any time upon the mutual agreement of both the authority and the applicant.

**221.5(3)** The agreement may require an applicant that has been approved for financial assistance under the program to submit information reasonably required by the authority to make reports to the authority's board, the governor's office, or the general assembly.

These rules are intended to implement 2019 Iowa Acts, Senate File 608.

**ARC 4769C**

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

**Notice of Intended Action**

**Proposing rule making related to joint 911 service boards  
and providing an opportunity for public comment**

The Homeland Security and Emergency Management Department hereby proposes to amend Chapter 10, "911 Telephone Systems," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 34A.22.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, House File 516.

*Purpose and Summary*

The proposed amendments add the sheriff of each county and the chief of police of each city operating a public safety answering point (PSAP) as voting members of their respective county's joint 911 service board.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa, since the rule making deals only with membership of joint 911 service boards.

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

## HOMELAND SECURITY AND EMERGENCYMANAGEMENT DEPARTMENT[605](cont'd)

Blake DeRouchey  
 Department of Homeland Security and Emergency Management  
 7900 Hickman Road, Suite 500  
 Windsor Heights, Iowa 50265  
 Email: [blake.derouchey@iowa.gov](mailto:blake.derouchey@iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend paragraph **10.3(1)“a”** as follows:

*a.* Each political subdivision of the state, having a public safety agency serving territory within the county 911 service area, and each local emergency management agency as defined in Iowa Code section 29C.2 operating within the 911 service area is entitled to one voting membership. The sheriff of each county, or the sheriff’s designee, is entitled to voting membership on the county’s joint 911 service board. The chief of police of each city operating a public safety answering point, or the chief of police’s designee, is entitled to voting membership on the joint 911 service board of the county where the city is located. For the purposes of this paragraph, a township that operates a volunteer fire department providing fire protection services to the township, or a city that provides fire protection services through the operation of a volunteer fire department not financed through the operation of city government, shall be considered a political subdivision of the state having a public safety agency serving territory within the county.

ITEM 2. Amend **605—Chapter 10**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 34A ~~as amended by 2017 Iowa Acts, Senate File 500.~~

**ARC 4762C**

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

**Proposing rule making related to children’s behavioral health services  
 and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 25, “Disability Services Management,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 331.

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

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, chapter 61.

*Purpose and Summary*

These proposed amendments to Chapter 25 provide the framework for a children's behavioral health system requiring certain children's behavioral health core services for children with a serious emotional disturbance. The amendments provide guidance to mental health and disability services (MHDS) regions in developing the new children's behavioral health core services and include new definitions, provider standards, access standards, and implementation dates. The amendments also make changes in MHDS regional governance structure and reporting requirements and establish eligibility standards for children's behavioral health services.

*Fiscal Impact*

These changes are expected to increase costs for both the Medicaid program and MHDS regions. There will be additional Medicaid costs to fund increased access to Medicaid-funded services, such as crisis services. Many MHDS regions fund some services for children, such as crisis services, but they do not fund all of the core services nor does every region fund children's services or have access to crisis services for children.

*Jobs Impact*

These amendments are not likely to have any significant impact on private-sector jobs and employment opportunities in Iowa. To the extent there is any impact, it would be the creation of a demand for more mental health professionals and direct support staff.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **441—Chapter 25**, preamble, as follows:

This chapter provides for definitions of regional core services; access standards; implementation dates; practice standards; reporting of regional expenditures; development and submission of regional management plans; data collection; applications for funding as they relate to regional service systems for ~~individuals~~ adults with mental illness, intellectual disabilities, developmental disabilities, or brain injury; ~~and submission of data for Medicaid offset calculations~~ and children with a serious emotional disturbance.

ITEM 2. Adopt the following **new** definitions of “Behavioral health inpatient treatment,” “Behavioral health outpatient therapy,” “Child,” “Children’s behavioral health services,” “Children’s behavioral health system,” “Early identification,” “Early intervention,” “Education services,” “Mental health inpatient treatment,” “Prevention,” “Serious emotional disturbance” and “State board” in rule **441—25.1(331)**:

“*Behavioral health inpatient treatment*” or “*mental health inpatient treatment*” means inpatient psychiatric services to treat an acute psychiatric condition provided in a licensed hospital with a psychiatric unit or a licensed freestanding psychiatric hospital.

“*Behavioral health outpatient therapy*” means the same as “outpatient services” described in Iowa Code section 230A.106(2)“a.”

“*Child*” or “*children*” means a person or persons under 18 years of age.

“*Children’s behavioral health services*” means behavioral health services for children who have a diagnosis of serious emotional disturbance.

“*Children’s behavioral health system*” or “*children’s system*” means the behavioral health system for children implemented pursuant to Iowa Code chapter 225C.

“*Early identification*” means the process of detecting developmental delays or untreated conditions that may indicate the need for further evaluation.

“*Early intervention*” means services designed to address the social, emotional, and developmental needs of children at their earliest stages to decrease long-term effects and provide support in meeting developmental milestones.

“*Education services*” means activities that increase awareness and understanding of the causes and nature of conditions or factors which affect an individual’s development and functioning.

“*Mental health inpatient treatment*” or “*behavioral health inpatient treatment*” means inpatient psychiatric services to treat an acute psychiatric condition that are provided in a licensed hospital with a psychiatric unit or a licensed freestanding psychiatric hospital.

“*Prevention*” means efforts to increase awareness and understanding of the causes and nature of conditions or situations which affect an individual’s functioning in society. Prevention activities are designed to convey information about the cause of conditions, situations, or problems that interfere with an individual’s functioning or ways in which that information can be used to prevent their occurrence or reduce their effect and may include, but are not limited to, training events, webinars, presentations, and public meetings.

“*Serious emotional disturbance*” means the same as defined in Iowa Code section 225C.2.

“*State board*” means the children’s behavioral health system state board created in Iowa Code section 225C.51.



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

ITEM 3. Amend subrule 25.2(1) as follows:

**25.2(1)** The region shall ensure that core service domains are available in regions as determined in Iowa Code ~~section~~ sections 331.397 and 331.397A.

ITEM 4. Amend subrule 25.2(3) as follows:

**25.2(3)** The region shall ensure that the following services are available for adults in the region:

*a.* to *aa.* No change.

Regions may fund or provide other services in addition to the required core services consistent with requirements set forth in subrules ~~25.2(4) and 25.2(5)~~ and 25.2(6).

ITEM 5. Renumber subrules **25.2(4)** and **25.2(5)** as **25.2(5)** and **25.2(6)**.

ITEM 6. Adopt the following **new** subrule 25.2(4):

**25.2(4)** The region shall ensure that the following services are available for children in the region:

- a.* Assessment and evaluation relating to eligibility for services.
- b.* Behavioral health inpatient treatment.
- c.* Behavioral health outpatient therapy.
- d.* Crisis stabilization community-based services.
- e.* Crisis stabilization residential services.
- f.* Early identification.
- g.* Early intervention.
- h.* Education services.
- i.* Medication prescribing and management.
- j.* Mobile response.
- k.* Prevention.

ITEM 7. Adopt the following **new** subrule 25.3(3):

**25.3(3)** Regions shall implement the following children's behavioral health core services on or before July 1, 2020, and meet applicable access standards on or before July 1, 2021:

- a.* Assessment and evaluation relating to eligibility for services.
- b.* Behavioral health outpatient therapy.
- c.* Education services.
- d.* Medication prescribing and management.
- e.* Prevention.

ITEM 8. Adopt the following **new** subrule 25.3(4):

**25.3(4)** Regions shall implement the following children's behavioral health core services on or before July 1, 2021, and meet applicable access standards on or before July 1, 2021:

- a.* Behavioral health inpatient treatment.
- b.* Crisis stabilization community-based services.
- c.* Crisis stabilization residential services.
- d.* Early identification.
- e.* Early intervention.
- f.* Mobile response.

ITEM 9. Amend subrule 25.4(1) as follows:

**25.4(1)** A sufficient provider network which shall include:

- a.* A community mental health center or federally qualified health center that provides psychiatric and outpatient mental health services to individuals in the region.
- b.* A hospital with an inpatient psychiatric unit or state mental health institute located in or within reasonably close proximity that has the capacity to provide inpatient services ~~to the applicant.~~

ITEM 10. Amend subrule 25.4(2) as follows:

**25.4(2)** Crisis services shall be available 24 hours per day, 7 days per week, 365 days per year for individuals experiencing mental health and disability-related emergencies. A region may make arrangements with one or more other regions to meet the required access standards.

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

*a.* to *d.* No change.

*e.* *Twenty-three-hour observation and holding.* An individual adult who has been determined to need 23-hour observation and holding shall receive 23-hour observation and holding within 120 minutes of referral. The service shall be located within 120 miles from the residence of the individual.

ITEM 11. Amend subrule 25.4(4) as follows:

**25.4(4)** Subacute facility-based mental health services. An individual adult shall receive subacute facility-based mental health services within 24 hours of referral. The service shall be located within 120 miles of the residence of the individual.

ITEM 12. Amend subrule 25.4(5) as follows:

**25.4(5)** Support for community living for adults. The first appointment shall occur within four weeks of the individual's request of support for community living.

ITEM 13. Amend subrule 25.4(6) as follows:

**25.4(6)** Support for employment for adults. The initial referral shall take place within 60 days of the individual's request of support for employment.

ITEM 14. Amend subrule 25.4(7) as follows:

**25.4(7)** Recovery services for adults. An individual receiving recovery services shall not have to travel more than 30 miles if residing in an urban area or 45 miles if residing in a rural area to receive services.

ITEM 15. Amend subrule 25.4(8) as follows:

**25.4(8)** Service coordination.

*a.* An individual adult receiving service coordination shall not have to travel more than 30 miles if residing in an urban area or 45 miles if residing in a rural area to receive services.

*b.* An individual adult shall receive service coordination within ten days of the initial request for such service or being discharged from an inpatient facility.

ITEM 16. Amend subrule 25.4(9), introductory paragraph, as follows:

**25.4(9)** The region shall make the following intensive mental health services available for adults. A region may make arrangements with one or more other regions to meet the required access standards.

ITEM 17. Adopt the following new subrule 25.4(11):

**25.4(11)** The region shall make the following efforts and activities related to children's behavioral health available to the residents of the region:

*a.* *Prevention.* Prevention activities shall be carried out at least four times a year.

*b.* *Education services.* Education activities shall be carried out at least four times a year.

ITEM 18. Adopt the following new subrule 25.4(12):

**25.4(12)** The region shall ensure that the following behavioral health services are available to children in the region:

*a.* *Early identification.* A child shall receive early identification services within four weeks of the time the request for such services is made.

*b.* *Early intervention.* A child shall receive early intervention services within four weeks of the time the request for such services is made.

ITEM 19. Amend rule 441—25.6(331), introductory paragraph, as follows:

**441—25.6(331) Intensive mental health services.** The purpose of intensive mental health services is to provide a continuum of services and supports to individuals adults with complex mental health and multi-occurring conditions who need a high level of intensive and specialized support to attain stability in health, housing, and employment and to work toward recovery.

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

ITEM 20. Amend subrule 25.6(1) as follows:

**25.6(1) *Access centers.*** The purpose of an access center is to serve ~~individuals~~ adults experiencing a mental health or substance use crisis who are not in need of an inpatient psychiatric level of care and who do not have alternative, safe, effective services immediately available.

*a. and b.* No change.

*c. Eligibility for access center services.* To be eligible to receive access center services, an individual shall meet all of the following criteria:

(1) The individual is an adult in need of screening, assessment, services or treatment related to a mental health or substance use crisis.

(2) to (4) No change.

*d.* No change.

ITEM 21. Amend subrule 25.6(2), introductory paragraph, as follows:

**25.6(2) *Assertive community treatment (ACT) services.*** The purpose of assertive community treatment is to serve ~~individuals~~ adults with the most severe and persistent mental illness conditions and functional impairments. ACT services provide a set of comprehensive, integrated, intensive outpatient services delivered by a multidisciplinary team under the supervision of a psychiatrist, an advanced registered nurse practitioner, or a physician assistant under the supervision of a psychiatrist. An ACT program shall designate ~~an individual~~ a staff member to be responsible for administration of the program and with the authority to sign documents and receive payments on behalf of the program.

ITEM 22. Amend subrule 25.6(4) as follows:

**25.6(4) *23-hour observation and holding.*** The purpose of 23-hour observation and holding is to provide up to 23 hours of care for adults in a safe and secure, medically staffed treatment environment. Twenty-three-hour observation and holding shall be provided as described in rule 441—24.37(225C).

ITEM 23. Amend subrule 25.6(7), introductory paragraph, as follows:

**25.6(7) *Subacute mental health services.*** The purpose of subacute mental health services is to provide a comprehensive set of wraparound services to ~~individuals~~ adults who have had or are at imminent risk of having acute or crisis mental health symptoms.

ITEM 24. Amend subrule 25.6(8), introductory paragraph, as follows:

**25.6(8) *Intensive residential services.*** The purpose of intensive residential services is to serve ~~individuals~~ adults with the most intensive severe and persistent mental illness conditions who have functional impairments and may also have multi-occurring conditions. Intensive residential services provide intensive 24-hour supervision, behavioral health services, and other supportive services in a community-based residential setting.

ITEM 25. Amend **441—Chapter 25**, implementation sentence, Division I, as follows:

These rules are intended to implement Iowa Code chapter 331 ~~and 2018 Iowa Acts, House File 2456.~~

ITEM 26. Amend **441—Chapter 25**, Division II, preamble, as follows:

These rules define the standards for a regional service system. The mental health and disability services and children's behavioral health services provided by counties operating as a region shall be delivered in accordance with a regional service system management plan approved by the region's governing board and implemented by the regional administrator (Iowa Code section 331.393). Iowa counties are encouraged to enter into a regional system when the regional approach is likely to increase the availability of services to residents of the state who need the services. It is the intent of the Iowa general assembly that the adult residents of this state should have access to needed mental health and disability services and that Iowa children should have access to needed behavioral health services regardless of the location of their residence.

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

ITEM 27. Rescind the definitions of “Applicant” and “Coordinator of mental health and disability services” in rule **441—25.11(331)**.

ITEM 28. Adopt the following **new** definitions of “Coordinator of children’s behavioral health services,” “Coordinator of mental health and disability services,” “Countable household income,” “Federal poverty level,” and “Modified adjusted gross income” in rule **441—25.11(331)**:

“*Coordinator of children’s behavioral health services*” means a member of the regional administrative entity staff who meets the requirements described in Iowa Code section 331.390(3) “b” and is responsible for coordinating behavioral health services for children.

“*Coordinator of mental health and disability services*” means a member of the regional administrative entity staff who meets the requirements described in Iowa Code section 331.390(3) “b” and is responsible for coordinating mental health and disability services for adults.

“*Countable household income*” means earned and unearned income of the family of a child according to the modified adjusted gross income methodology.

“*Federal poverty level*” means the most recently revised annual poverty income guidelines published in the Federal Register by the United States Department of Health and Human Services.

“*Modified adjusted gross income*” means the methodology prescribed in 42 U.S.C. Section 1396a(e)(14) and 42 CFR 435.603.

ITEM 29. Amend subrule 25.12(1) as follows:

**25.12(1) Governing board.** The governing board shall comply with the provisions of Iowa Code section 331.390, Iowa Code chapter 69 and other applicable laws relating to boards and commissions, including but not limited to the following requirements:

a. The governing board shall ~~comply with the membership requirements as outlined in Iowa Code section 331.390 and follow the requirements in Iowa Code chapter 69 and other applicable laws relating to boards and commissions.~~ include the following voting members:

(1) At least one board of supervisors member from each county comprising the region or their designees.

(2) One adult person who utilizes mental health and disability services or is an actively involved relative of an adult who utilizes such services, designated by the regional adult mental health and disability services advisory committee.

(3) Members designated by the regional children’s behavioral health services advisory committee as follows:

1. One member representing the education system in the region.

2. One member who is a parent of a child who utilizes children’s behavioral health services or is an actively involved relative of a child who utilizes such services.

b. The governing board shall include the following nonvoting members in an ex officio capacity:

(1) One member representing an adult service provider in the region, designated by the regional adult mental health and disability services advisory committee.

(2) One member representing a children’s behavioral health service provider in the region, designated by the regional children’s behavioral health services advisory committee.

~~b. c.~~ A The governing board shall create a regional adult mental health and disability services advisory committee shall be created and, which shall designate members to the governing board as defined in Iowa Code section 331.390(2).

d. The governing board shall create a regional children’s behavioral health services advisory committee, which shall designate members to the governing board as defined in Iowa Code section 331.390(2).

~~e. e.~~ The governing board shall appoint and evaluate the performance of the chief executive officer of the regional administrative entity who will serve as the single point of accountability for the region.

ITEM 30. Amend subrule 25.12(2) as follows:

**25.12(2) Regional administrator.** The formation of the regional administrator shall be as defined in Iowa Code sections 331.388 and 331.390.

a. to d. No change.

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

*e.* The regional administrative entity staff shall include one or more coordinators of mental health and disability services.

*f.* The regional administrative entity staff shall include one or more coordinators of children's behavioral health services.

ITEM 31. Amend subrule 25.13(1), introductory paragraph, as follows:

**25.13(1) Funding.** ~~Non-Medicare~~ Funding for non-Medicare mental health and disability services funding and children's behavioral health services is under the control of the governing board and shall:

ITEM 32. Amend paragraph **25.14(1)"i"** as follows:

*i.* Provision for formation and assigned responsibilities for one or more regional advisory committees for adult mental health and disability services consisting of:

- (1) Individuals who utilize services or the actively involved relatives of such individuals.
- (2) Service providers of adult mental health and disability services.
- (3) Governing board members.
- (4) Other interests identified in the agreement.

ITEM 33. Adopt the following **new** paragraph **25.14(1)"j"**:

*j.* Provision for formation and assigned responsibilities for one or more regional advisory committees for children's behavioral health services consisting of:

- (1) A parent of a child who utilizes services or an actively involved relative of such child.
- (2) A member of the education system.
- (3) An early childhood advocate.
- (4) A child welfare advocate.
- (5) A children's behavioral health service provider.
- (6) A member of the juvenile court.
- (7) A pediatrician.
- (8) A child care provider.
- (9) A local law enforcement representative.
- (10) A regional governing board member.

ITEM 34. Amend paragraph **25.14(2)"c"** as follows:

*c.* A general list of the functions and responsibilities of the regional administrative entity's chief executive officer and other staff including but not limited to coordinators of mental health and disability services and coordinators of children's behavioral health services.

ITEM 35. Rescind subrule 25.15(2) and adopt the following **new** subrule in lieu thereof:

**25.15(2) Eligibility for children's behavioral health services.** An individual must comply with all of the following requirements to be eligible for children's behavioral health services under the regional service system:

- a.* The individual is a child under 18 years of age.
- b.* The child's custodial parent is a resident of the state of Iowa, and the child is physically present in the state.
- c.* The child's family meets the financial eligibility requirements in rule 441—25.16(331).
- d.* The child has been diagnosed with a serious emotional disturbance. A serious emotional disturbance diagnosis is not required to access comprehensive facility and community-based crisis services according to Iowa Code section 331.397A(4) "b."

ITEM 36. Amend rule 441—25.16(331), introductory paragraph, as follows:

**441—25.16(331) Financial eligibility requirements.** The regional service system management plan shall identify basic financial eligibility standards for mental health and disability services as defined in Iowa Code ~~section~~ sections 331.395 and 331.396A.

ITEM 37. Rescind subrule 25.16(1) and adopt the following **new** subrule in lieu thereof:

**25.16(1) Income requirements.**

- a.* Income requirements for adult mental health and disability services shall be as follows:

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

- (1) The person must have an income equal to or less than 150 percent of the federal poverty level.
- (2) A person who is eligible for federally funded services and other support must apply for such services and support.
  - b.* Income requirements for children's behavioral health services shall be as follows:
    - (1) The child's family has countable household income equal to or less than 500 percent of the federal poverty level. Countable household income and family size shall be determined using the modified adjusted gross income methodology.
    - (2) An eligible child whose family's countable household income is at least 150 percent and not more than 500 percent of the federal poverty level shall be subject to a cost share as described in subrule 25.16(3).
    - (3) Verification of income. Income shall be verified using the best information available.
      1. Pay stubs, tip records and employers' statements are acceptable forms of verification of earned income.
      2. Self-employment income can be verified through business records from the previous year if they are representative of anticipated earnings. If business records from the previous year are not representative of anticipated earnings, an average of the business records from the previous two or three years may be used if that average is representative of anticipated earnings.
      - (4) Changes in income. Financial eligibility shall be reviewed on an annual basis and may be reviewed more often in response to increases or decreases in income.
      - (5) A child who is eligible for federally funded services and other support must apply for such services and support.

ITEM 38. Amend subrule 25.16(2), introductory paragraph, as follows:

**25.16(2) *Resource requirements.*** There are no resource limits for the family of a child seeking children's behavioral health services. An individual adult seeking mental health and disability services must have resources that are equal to or less than \$2,000 in countable value for a single-person household or \$3,000 in countable value for a multiperson household or follow the most recent federal supplemental security income guidelines.

ITEM 39. Rescind subrule 25.16(3) and adopt the following **new** subrule in lieu thereof:

**25.16(3) *Cost-share standards.*** A regional administrative entity must comply with cost-share standards as defined in Iowa Code sections 331.395 and 331.396A.

*a.* Cost sharing is allowed for adults with income above 150 percent of the federal poverty level as defined by the most recently revised poverty guidelines published by the United States Department of Health and Human Services.

Cost-share amounts for regionally funded adult mental health and disability services in this rule are related to core services as defined in Iowa Code section 331.397 and must be identified in the enrollment and eligibility section of the region's policy and procedures approved by the department.

*b.* Cost-share amounts for children's behavioral health services are applicable to core services as defined in Iowa Code section 331.397A. The family of a child receiving regional funding for behavioral health services shall be responsible for a cost-share amount based on the family's household income as follows:

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

Family Income as a % of FPL	Cost Share % Paid by Family
0 to 150%	0%
151 to 200%	10%
201 to 250%	15%
251 to 300%	20%
301 to 350%	35%
351 to 400%	50%
401 to 450%	65%
451 to 500%	80%
Over 500%	100%

ITEM 40. Amend subrule 25.16(4), introductory paragraph, as follows:

**25.16(4)** ~~Copayment~~ Cost-share standards required by any federal, state, regional, or municipal program. Any ~~copayments~~ cost sharing or other client participation required by any federal, state, regional or municipal program in which the individual participates shall be required by the regional administrative entity. Such ~~copayments include~~ cost sharing includes, but ~~are~~ is not limited to:

ITEM 41. Amend subrule 25.18(1) as follows:

**25.18(1)** The annual service and budget plan is due on April 1 prior to the July 1 implementation of the annual plan and shall be approved by the region's governing board prior to submittal to the department. ~~The initial plan is due on April 1, 2014.~~

ITEM 42. Amend subrule 25.18(2) as follows:

**25.18(2)** The annual service and budget plan shall include but not be limited to the following:

~~a. The locations of the Access points. A list of the local access points for mental health and disability services. This shall include~~ and children's behavioral health services, including the name names of the access points including and the physical locations and contact information.

~~b. Targeted Service coordination and targeted case management. The~~ A list of the service coordination and targeted case management agencies for utilized in the region, whether funded by the region, the medical assistance program, or third-party payers, including the physical location and contact information for those agencies, shall be included.

~~c. Crisis planning. A list of accredited crisis services available in the region for crisis prevention, response and resolution, including contact information for the agencies responsible, shall be included.~~

~~d. Intensive mental health services. Identification of the intensive mental health services designated by the region according to rule 441—25.6(331), including the provider name, contact information, and location of each of the following, shall be included:~~

- (1) Access center(s).
- (2) ACT services.
- (3) Intensive residential services.
- (4) Subacute mental health services.

~~e. Children's behavioral health services. Identification of children's behavioral health services as described in subrule 25.2(4), including eligibility requirements or reference to where eligibility requirements can be found in the policies and procedures manual.~~

~~e.f. Scope of services. A description of the scope of services to be provided, a projection of need for the service, and the funding necessary to meet the need shall be included.~~

(1) The scope shall include the regional core services as ~~defined~~ identified in rule 441—25.1(331) ~~441—25.2(331).~~

(2) The scope shall also include services in addition to the required core services.

~~f. g. Budget and financing provisions for the next year. The provisions shall address how county, regional, state and other funding sources will be used to meet the service needs within the region.~~

~~g. h. Financial forecasting measures. The plan shall describe~~ A description of the financial forecasting measures used in the identification of service need and funding necessary for services and a

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

financial statement of actual revenues and actual expenses by chart of account codes, including levies by county.

~~h. i.~~ ~~The provider~~ Provider reimbursement provisions. ~~The plan shall describe~~ A description of the types of provider reimbursement methods that will be used, including fee for service, ~~compensating providers~~ compensation for a “system of care” approach, and for use of nontraditional providers. A region also shall provide information on funding approaches that identify and incorporate all services and sources of funding used by the individuals receiving services, including the medical assistance program.

ITEM 43. Amend rule 441—25.20(331) as follows:

**441—25.20(331) Annual report.** The annual report shall describe the services provided, the cost of those services, the number of individuals served, and the outcomes achieved for the previous fiscal year. The annual report is due on December 1 following a completed fiscal year of implementing the annual service and budget plan. ~~The initial report is due on December 1, 2015.~~ The annual report shall include but not be limited to:

1. Services actually provided.
2. The status of service development.
- ~~2.~~ 3. Actual numbers of ~~individuals~~ children and adults served.
- ~~3.~~ 4. Documentation that each regionally designated access center has met the service standards in subrule 25.6(1).
- ~~4.~~ 5. Documentation that each regionally designated ACT team has been evaluated for program fidelity, including a peer review as required by subrule 25.6(2), and documentation of each team’s most recent fidelity score.
- ~~5.~~ 6. Documentation that each regionally designated subacute service has met the service standards in subrule 25.6(7).
- ~~6.~~ 7. Documentation that each regionally designated intensive residential service home or intensive residential service has met the service standards in subrule 25.6(8).
- ~~7.~~ 8. ~~Moneys expended.~~ Financial statement of actual revenues and actual expenditures by chart of account codes, including levies by county.
- ~~8.~~ 9. Outcomes achieved.

ITEM 44. Amend subrule 25.21(1) as follows:

**25.21(1) Content.** The manual shall include but not be limited to:

- a. No change.
- b. Enrollment. The application and enrollment process that is readily accessible to applicants individuals and their families or authorized representatives shall be included. This procedure shall identify regional access points and where applicants individuals can apply for services and how and when the applications will reach the regional administrative entity’s designated staff for processing.
- c. Eligibility. The process utilized to determine eligibility shall be included in the manual and shall include but not be limited to:
  - (1) to (3) No change.
  - (4) The process for development of a written notice of decision. The time frame for sending a written notice of decision to the individual and guardian (if applicable) and the service providers identified in the notice shall be included. The notice of decision shall:
    1. and 2. No change.
    3. Outline the applicant’s individual’s right to appeal.
    4. No change.
  - d. to f. No change.
  - g. Targeted case management.
    - (1) and (2) No change.
    - (3) Targeted case management and service coordination services. Targeted case management and service coordination services utilized in a regional service system shall include but are not limited to the following as defined in Iowa Code section 331.393(4)“g”:



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

1. Performance and outcome measures relating to the health, safety, school attendance and performance, work performance, and community residency of the individuals receiving the services.

2. and 3. No change.

*h. to r.* No change.

ITEM 45. Rescind **441—Chapter 25, Division IV**, heading and preamble.

ITEM 46. Rescind rules **441—25.51(77GA, HF2545)** to **441—25.55(77GA, HF2545)**.

ITEM 47. Rescind **441—Chapter 25, Division IV**, implementation sentence.

ITEM 48. Rescind **441—Chapter 25, Division V**, heading and preamble.

ITEM 49. Rescind rules **441—25.61(426B)** to **441—25.66(426B)**.

ITEM 50. Rescind **441—Chapter 25, Division V**, implementation sentence.

ITEM 51. Rescind **441—Chapter 25, Division VI**, heading and preamble.

ITEM 52. Rescind rules **441—25.71(78GA, ch1221)** to **441—25.77(78GA, ch1221)**.

ITEM 53. Rescind **441—Chapter 25, Division VI**, implementation sentence.

ITEM 54. Rescind **441—Chapter 25, Division IX**, heading and preamble.

ITEM 55. Rescind rules **441—25.95(426B)** and **441—25.96(426B)**.

ITEM 56. Rescind **441—Chapter 25, Division IX**, implementation sentence.

ITEM 57. Renumber **441—Chapter 25, Division X**, heading and preamble, as **441—Chapter 25, Division IV**, heading and preamble.

ITEM 58. Renumber rules **441—25.101(229)** to **441—25.107(229)** as **441—25.51(229)** to **441—25.57(229)**.

ITEM 59. Amend renumbered paragraph **25.52(2)“b”** as follows:

*b.* A person employed as an advocate on or before July 1, 2015, who does not meet the requirements of subparagraph ~~25.102(2)“a”(1) or (2)~~ 25.52(2)“a”(1) or (2) shall be considered to meet those requirements so long as the person is continuously appointed as an advocate in the employing county.

**ARC 4763C**

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

### **Notice of Intended Action**

#### **Proposing rule making related to medical and remedial services and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 249A.4.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 249A.4.

#### *Purpose and Summary*

This proposed rule making updates and clarifies language to reflect existing prescribed outpatient drug policies for qualified prescribers, reasons for nonpayments of drugs, covered nonprescription

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

drugs, quantity prescribed, drug reimbursement methodology (including dispensing fee limitation) and credits for returned unit dose drugs not consumed. This rule making also adds language regarding initiation of refill requirements with the prohibition of automatic refills without the member's consent and includes legislatively required prior authorization (PA) limitations on medication-assisted treatment (MAT), including opioid overdose treatment, under the pharmacy and medical benefits.

*Fiscal Impact*

Removal of clinical PA for MAT drugs is projected to have the following impacts:

- For the pharmacy benefit: It is estimated removing the PA requirement would result in additional expenditures for this category of drugs. There would be increased prescribing/utilization.
- Pharmacy benefit increased expenditures are estimated at the following: Total dollars before rebates \$80,000 (\$24,000 state share); \$35,000 net of rebates (\$10,500 state share). The state share is based on a blend between the traditional Medicaid and Iowa Health and Wellness Plan populations. This fiscal impact is a combined total for both fee-for-service (FFS) and managed care programs.
- There are no associated programming costs with this change.
- For the medical benefit: There is no fiscal impact as none of these drugs require a PA under the medical benefit.
- Medical contracts: No impact projected to the Medical Contracts General Fund Appropriation.

Enforcement of the dispensing fee allowance on maintenance drugs is projected to have the following impacts:

- Clarifying the quantity prescribed and dispensing fee allowance could result in savings to the Medicaid program in cases where a pharmacy has been reimbursed greater than one dispensing fee per drug per member per month for maintenance drugs.
- The annualized savings is projected to be as follows per program based on the current dispensing fee of \$10.07 and current utilization:
  - FFS \$31,418 total (state and federal) dollars (based on April 2019 data and annualized).
  - Amerigroup \$336,000 (based on April 2019 data and annualized).
  - UnitedHealthcare \$660,965 (based on March 2019 data and annualized).

For both changes, PA removal and limit of one dispensing fee, the managed care organization (MCO) cost impact is part of the capitation rate setting.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

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

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 78.1(18) as follows:

**78.1(18)** Payment and procedure for obtaining eyeglasses, contact lenses, and visual aids, shall be the same as described in 441—78.6(249A). (Cross reference ~~78.28(3)~~ 78.28(4))

ITEM 2. Adopt the following **new** subrule 78.1(25):

**78.1(25)** Prior authorization for medication-assisted treatment shall be governed pursuant to subrule 78.28(2).

ITEM 3. Amend subrules 78.2(1) to 78.2(6) as follows:

**78.2(1) *Qualified prescriber.*** All drugs are covered only if prescribed by a legally qualified practitioner (~~physician, dentist, podiatrist, optometrist, physician assistant, or advanced registered nurse practitioner~~). Pursuant to Public Law 111-148, Section 6401, any practitioner prescribing drugs must be enrolled with the Iowa Medicaid enterprise in order for such prescribed drugs to be eligible for payment.

**78.2(2) and 78.2(3)** No change.

**78.2(4) *Prescription drugs.*** Drugs that may be dispensed only upon a prescription are covered subject to the following limitations.

*a.* Prior authorization is required as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A ~~as amended by 2010 Iowa Acts, Senate File 2088, section 347.~~

(1) to (3) No change.

(4) Prior authorization for medication-assisted treatment shall be governed pursuant to subrule 78.28(2).

*b.* Payment is not made for:

(1) to (7) No change.

(8) Drugs prescribed for fertility purposes, ~~except when prescribed for a medically accepted indication other than infertility, as defined in subparagraph (1).~~

(9) to (12) No change.

(13) Drug products administered in a practitioner’s office, outpatient clinic or infusion center.

**78.2(5) *Nonprescription drugs.***

*a.* The following drugs that may otherwise be dispensed without a prescription are covered subject to the prior authorization requirements stated below and as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A:

Acetaminophen tablets 325 mg, 500 mg

Acetaminophen elixir 160 mg/5 ml

Acetaminophen solution 100 mg/ml

Acetaminophen suppositories 120 mg

Artificial tears ophthalmic solution

Artificial tears ophthalmic ointment

Aspirin tablets 81 mg, chewable

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

Aspirin tablets 81 mg, 325 mg, and 650 mg, ~~81 mg (chewable)~~ oral  
Aspirin tablets, enteric coated 325 mg, 650 mg, 81 mg  
Aspirin tablets, buffered 325 mg  
Bacitracin ointment 500 units/gm  
Benzoyl peroxide 5%, gel, lotion  
Benzoyl peroxide 10%, gel, lotion  
~~Calcium carbonate chewable tablets 500 mg, 750 mg, 1000 mg, 1250 mg~~  
~~Calcium carbonate suspension 1250 mg/5 ml~~  
~~Calcium carbonate tablets 600 mg~~  
~~Calcium carbonate vitamin D tablets 500 mg-200 units~~  
~~Calcium carbonate vitamin D tablets 600 mg-200 units~~  
~~Calcium citrate tablets 950 mg (200 mg elemental calcium)~~  
~~Calcium gluconate tablets 650 mg~~  
~~Calcium lactate tablets 650 mg~~  
Cetirizine hydrochloride liquid 1 mg/ml  
Cetirizine hydrochloride tablets 5 mg  
Cetirizine hydrochloride tablets 10 mg  
Chlorpheniramine maleate tablets 4 mg  
Clotrimazole vaginal cream 1%  
Diphenhydramine hydrochloride capsules 25 mg  
Diphenhydramine hydrochloride elixir, liquid, and syrup 12.5 mg/5 ml  
Epinephrine racemic solution 2.25%  
Ferrous sulfate solution 75 mg/0.6 ml (15 mg/0.6 ml elemental iron)  
Ferrous sulfate tablets 325 mg  
Ferrous sulfate elixir 220 mg/5 ml  
Ferrous sulfate drops 75 mg/0.6 ml  
Ferrous gluconate tablets 325 mg  
Ferrous fumarate tablets 325 mg  
Guafenesin 100 mg/5 ml with dextromethorphan 10 mg/5 ml liquid  
Ibuprofen suspension 100 mg/5 ml  
Ibuprofen tablets 200 mg  
Insulin  
Lactic acid (ammonium lactate) lotion 12%  
Levonorgestrel 1.5 mg  
Loperamide hydrochloride liquid 1 mg/5 ml  
Loperamide hydrochloride liquid 1 mg/7.5 ml  
Loperamide hydrochloride tablets 2 mg  
Loratadine syrup 5 mg/5 ml  
Loratadine tablets 10 mg  
Magnesium hydroxide suspension 400 mg/5 ml  
~~Magnesium oxide capsule 140 mg (85 mg elemental magnesium)~~  
~~Magnesium oxide tablets 400 mg~~  
Meclizine hydrochloride tablets 12.5 mg, 25 mg oral and chewable  
Miconazole nitrate cream 2% topical and vaginal  
Miconazole nitrate vaginal suppositories, 100 mg  
~~Multiple vitamin and mineral~~ Mineral products with prior authorization  
Neomycin-bacitracin-polymyxin ointment  
Niacin (nicotinic acid) tablets 50 mg, 100 mg, 250 mg, 500 mg  
Nicotine gum 2 mg, 4 mg  
Nicotine lozenge 2 mg, 4 mg  
Nicotine patch 7 mg/day, 14 mg/day and 21 mg/day  
Pediatric oral electrolyte solutions

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

Permethrin lotion 1%  
 Polyethylene glycol 3350 powder  
 Pseudoephedrine hydrochloride tablets 30 mg, 60 mg  
 Pseudoephedrine hydrochloride liquid 30 mg/5 ml  
 Pyrethrins-piperonyl butoxide liquid 0.33-4%  
 Pyrethrins-piperonyl butoxide shampoo 0.3-3%  
 Pyrethrins-piperonyl butoxide shampoo 0.33-4%  
 Salicylic acid liquid 17%  
 Senna tablets 187 mg  
 Sennosides-docusate sodium tablets 8.6 mg-50 mg  
 Sennosides syrup 8.8 mg/5 ml  
 Sennosides tablets 8.6 mg  
 Sodium bicarbonate tablets 325 mg  
 Sodium bicarbonate tablets 650 mg  
 Sodium chloride hypertonic ophthalmic ointment 5%  
 Sodium chloride hypertonic ophthalmic solution 5%  
 Tolnaftate 1% cream, solution, powder  
Vitamins, single and multiple with prior authorization

Other nonprescription drugs listed as preferred in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A.

*b.* No change.

**78.2(6)** Quantity prescribed and dispensed.

*a.* Quantity prescribed. When it is not therapeutically contraindicated, the legally qualified practitioner shall prescribe ~~a quantity not less than a one-month supply of covered prescription and nonprescription medication sufficient for up to a 31-day supply.~~ Oral contraceptives Contraceptives may be prescribed in ~~90-day~~ three-month quantities.

*b.* ~~Oral solid forms of covered nonprescription items shall be prescribed and dispensed in a minimum quantity of 100 units per prescription or the currently available consumer package size except when dispensed via a unit dose system.~~

*b.* Prescription refills.

(1) Prescription refills shall be performed and recorded in a manner consistent with existent state and federal laws, rules and regulations.

(2) Automatic refills.

1. Automatic refills are not allowed. A request specific to each medication is required.

2. All prescription refills shall be initiated by a request at the time of each fill by the prescriber, Medicaid member or person acting as an agent of the member, based on continued medical necessity.

ITEM 4. Amend rule 441—78.3(249A), introductory paragraph, as follows:

**441—78.3(249A) Inpatient hospital services.** Payment for inpatient hospital admission is approved when it meets the criteria for inpatient hospital care as determined by the Iowa Medicaid enterprise. All cases are subject to random retrospective review and may be subject to a more intensive retrospective review if abuse is suspected. In addition, transfers, outliers, and readmissions within 31 days are subject to random review. Selected admissions and procedures are subject to a 100 percent review before the services are rendered. Medicaid payment for inpatient hospital admissions and continued stays are approved when the admissions and continued stays are determined to meet the criteria for inpatient hospital care. (Cross reference ~~78.28(5)~~ 78.28(6)) The criteria are available from the IME Medical Services Unit, 100 Army Post Road, Des Moines, Iowa 50315, or in local hospital utilization review offices. No payment will be made for waiver days.

ITEM 5. Amend subrule 78.3(18) as follows:

**78.3(18)** Preprocedure review by the IME medical services unit is required if hospitals are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19).

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

Preprocedure review is also required for other types of major surgical procedures, such as organ transplants. Criteria are available from the IME medical services unit. (Cross reference ~~78.28(5)~~ 78.28(6))

ITEM 6. Amend subrule 78.4(4) as follows:

**78.4(4) Periodontal services.** Payment may be made for the following periodontal services:

- a. No change.
- b. Periodontal scaling and root planing is payable once every 24 months when prior approval has been received. Prior approval shall be granted per quadrant when radiographs demonstrate subgingival calculus or loss of crestal bone and when the periodontal probe chart shows evidence of pocket depths of 4 mm or greater. (Cross reference ~~78.28(2)“a”(1)~~ 78.28(3)“a”(1))
- c. No change.
- d. Tissue grafts. Pedicle soft tissue graft, free soft tissue graft, and subepithelial connective tissue graft are payable services with prior approval. Authorization shall be granted when the amount of tissue loss is causing problems such as continued bone loss, chronic root sensitivity, complete loss of attached tissue, or difficulty maintaining adequate oral hygiene. (Cross reference ~~78.28(2)“a”(2)~~ 78.28(3)“a”(2))
- e. Periodontal maintenance therapy requires prior authorization. Approval shall be granted for members who have completed periodontal scaling and root planing at least three months prior to the initial periodontal maintenance therapy and the periodontal probe chart shows evidence of pocket depths of 4 mm or greater. (Cross reference ~~78.28(2)“a”(3)~~ 78.28(3)“a”(3))
- f. and g. No change.

ITEM 7. Amend subparagraph **78.4(5)“c”(2)** as follows:

(2) Correction of problems resulting from conventional treatment including gross underfilling, perforations, and canal blockages with restorative materials. (Cross reference ~~78.28(2)“e”~~ 78.28(3)“c”)

ITEM 8. Amend subrule 78.4(7) as follows:

**78.4(7) Prosthetic services.** Payment may be made for the following prosthetic services:

- a. and b. No change.
- c. A removable partial denture replacing posterior teeth including six months' postdelivery care when prior approval has been received. Approval shall be granted when the member has fewer than eight posterior teeth in occlusion, excluding third molars, or the member has a full denture in one arch and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one removable partial denture brings eight posterior teeth in occlusion, no additional removable partial denture will be approved. Six months' postdelivery care is included in the reimbursement for the denture. (Cross reference ~~78.28(2)“b”(1)~~ 78.28(3)“b”(1))
- d. A fixed partial denture (including an acid etch fixed partial denture) replacing anterior teeth when prior approval has been received. Approval shall be granted for members who:
  - (1) and (2) No change.High noble or noble metals shall be approved only when the member is allergic to all other restorative materials. (Cross reference ~~78.28(2)“b”(2)~~ 78.28(3)“b”(2))
- e. to n. No change.

ITEM 9. Amend paragraph **78.4(8)“a”** as follows:

a. Minor treatment to control harmful habits when prior approval has been received. Approval shall be granted when it is cost-effective to lessen the severity of a malformation such that extensive treatment is not required. (Cross reference ~~78.28(2)“e”~~ 78.28(3)“c”)

ITEM 10. Amend subrule 78.6(4) as follows:

**78.6(4) Prior authorization.** Prior authorization is required for the following:

- a. to d. No change.
- e. Approval for press-on prisms shall be granted for members whose vision cannot be adequately corrected with other covered prisms.  
(Cross reference ~~78.28(3)~~ 78.28(4))

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

ITEM 11. Amend rule 441—78.7(249A), introductory paragraph, as follows:

**441—78.7(249A) Opticians.** Payment will be approved only for certain services and supplies provided by opticians when prescribed by a physician (MD or DO) or an optometrist. Payment and procedure for obtaining services and supplies shall be the same as described in rule 441—78.6(249A). (Cross reference ~~78.28(3)~~ 78.28(4))

ITEM 12. Amend subrule 78.9(10) as follows:

**78.9(10) Private duty nursing or personal care services for persons aged 20 and under.** Payment for private duty nursing or personal care services for persons aged 20 and under shall be approved if determined to be medically necessary. Payment shall be made on an hourly unit of service.

a. No change.

b. Requirements.

(1) Private duty nursing or personal care services shall be ordered in writing by a physician as evidenced by the physician's signature on the plan of care.

(2) Private duty nursing or personal care services shall be authorized by the department or the department's designated review agent prior to payment.

(3) Prior authorization shall be requested at the time of initial submission of the plan of care or at any time the plan of care is substantially amended and shall be renewed with the department or the department's designated review agent. Initial request for and request for renewal of prior authorization shall be submitted to the department's designated review agent. The provider of the service is responsible for requesting prior authorization and for obtaining renewal of prior authorization.

The request for prior authorization shall include a nursing assessment, the plan of care, and supporting documentation. The request for prior authorization shall include all items previously identified as required treatment plan information and shall further include: any planned surgical interventions and projected time frame; information regarding caregiver's desire to become involved in the member's care, to adhere to program objectives, to work toward treatment plan goals, and to work toward maximum independence; and identify the types and service delivery levels of all other services to the member whether or not the services are reimbursable by Medicaid. Providers shall indicate the expected number of private duty nursing RN hours, private duty nursing LPN hours, or home health aide hours per day, the number of days per week, and the number of weeks or months of service per discipline. If the member is currently hospitalized, the projected date of discharge shall be included.

Prior authorization approvals shall not be granted for treatment plans that exceed 16 hours of home health agency services per day. (Cross reference ~~78.28(9)~~ 78.28(10))

ITEM 13. Amend subparagraph **78.10(3)“b”(10)** as follows:

(10) Vibrotactile aids. Vibrotactile aids are payable only once in a four-year period unless the original aid is broken beyond repair or lost. (Cross reference ~~78.28(4)~~ 78.28(5))

ITEM 14. Amend subparagraphs **78.14(7)“d”(1)** and **(2)** as follows:

(1) Payment for the replacement of a hearing aid less than four years old shall require prior approval except when the member is under 21 years of age. The department shall approve payment when the original hearing aid is lost or broken beyond repair or there is a significant change in the member's hearing that would require a different hearing aid. (Cross reference ~~78.28(4)“a”~~ 78.28(5)“a”)

(2) Payment for a hearing aid costing more than \$650 shall require prior approval. The department shall approve payment for either of the following purposes (Cross reference ~~78.28(4)“b”~~ 78.28(5)“b”):

1. and 2. No change.

ITEM 15. Amend paragraph **78.26(4)“c”** as follows:

c. Preprocedure review by the IME medical services unit is required if ambulatory surgical centers are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Criteria are available from the IME medical services unit. (Cross reference ~~78.28(6)~~ 78.28(7))

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

ITEM 16. Renumber subrules **78.28(2)** to **78.28(11)** as **78.28(3)** to **78.28(12)**.

ITEM 17. Adopt the following **new** subrule 78.28(2):

**78.28(2)** Notwithstanding the provisions of 78.28(1) "a," under both Medicaid fee-for-service and managed care administration, at least one form of each of the following drugs:

- a. Buprenorphine,
- b. Buprenorphine and naloxone combination,
- c. Methadone,
- d. Naltrexone, and
- e. Naloxone for medication-assisted treatment, including an opioid overdose agent, as approved by the United States food and drug administration for treatment of substance use disorder and overdose treatment, will be available without prior authorization. For the purpose of this subrule, "medication-assisted treatment" means the medically monitored use of certain substance use disorder medications in combination with treatment services.

ITEM 18. Amend renumbered paragraphs **78.28(12)"a"** and **"b"** as follows:

a. Except as provided in paragraph ~~78.28(11)"b,"~~ 78.28(12)"b," the following radiology procedures require prior approval:

(1) to (5) No change.

b. Notwithstanding paragraph ~~78.28(11)"a,"~~ 78.28(12)"a," prior authorization is not required when any of the following applies:

(1) and (2) No change.

(3) The member received notice of retroactive Medicaid eligibility after receiving a radiology procedure at a time prior to the member's receipt of such notice (see paragraph ~~78.28(11)"e"~~ 78.28(12)"e"); or

(4) No change.

ITEM 19. Amend paragraphs **79.1(8)"a"** to **"g"** as follows:

a. Except as provided below in paragraphs 79.1(8)"d" through "i," all providers are reimbursed for covered drugs as follows:

(1) Reimbursement for covered generic prescription drugs and for covered nonprescription drugs shall be the lowest of the following, as of the date of dispensing:

1. The average state actual acquisition cost (AAC), determined pursuant to paragraph 79.1(8)"b," plus the professional dispensing fee determined pursuant to paragraph ~~79.1(8)"e."~~ 79.1(8)"c";

2. The federal upper limit (FUL), defined as the upper limit for a multiple source drug established in accordance with the methodology of the Centers for Medicare and Medicaid Services as described in 42 CFR 447.514(a)-(c), plus the professional dispensing fee determined pursuant to paragraph ~~79.1(8)"e."~~ 79.1(8)"c";

3. The total submitted charge-, represented by the lower of the gross amount due (GAD) as defined by the National Council for Prescription Drug Programs (NCPDP) standards definition, or the ingredient cost submitted plus the state defined professional dispensing fee, determined pursuant to paragraph 79.1(8)"c"; or

4. Providers' usual and customary charge to the general public.

(2) Reimbursement for covered brand-name prescription drugs shall be the lowest of the following, as of the date of dispensing:

1. The average state AAC, determined pursuant to paragraph 79.1(8)"b," plus the professional dispensing fee determined pursuant to paragraph ~~79.1(8)"e."~~ 79.1(8)"c";

2. The total submitted charge-, represented by the lower of the GAD as defined by the NCPDP standards definition, or the ingredient cost submitted plus the state defined professional dispensing fee;

or

3. Providers' usual and customary charge to the general public.

b. No change.

c. Professional dispensing fee.



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

(1) For purposes of this subrule, the professional dispensing fee shall be a fee schedule amount determined by the department based on a survey of Iowa Medicaid participating pharmacy providers' costs of dispensing drugs to Medicaid beneficiaries. The survey shall be conducted every two years beginning in state fiscal year 2014-2015.

(2) There is a one-time professional dispensing fee reimbursed per one-month or three-month period per member, per drug, per strength, billed per provider for maintenance drugs as identified by MediSpan and maintenance nonprescription drugs.

*d.* For an oral solid dispensed to a patient in a nursing home in unit dose packaging prepared by the pharmacist, an additional one cent per dose shall be added to reimbursement based on acquisition cost or FUL. Payment may be made only for unit-dose-packaged drugs that are consumed by the patient. Any previous charges for unused unit-dose packages returned to the pharmacy must be credited to the Medicaid program.

*e.* 340B-purchased drugs.

(1) Notwithstanding paragraph 79.1(8)“a” above, reimbursement to a covered entity as defined in 42 U.S.C. 256b(a)(4) for covered outpatient drugs acquired by the entity through the 340B drug pricing program will be the lowest of:

1. The ~~submitted~~ 340B covered entity actual acquisition cost (not to exceed the 340B ceiling price), submitted in the ingredient cost field, plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

2. The average state AAC determined pursuant to paragraph 79.1(8)“b” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

3. For generic prescription drugs and nonprescription drugs only, the FUL pursuant to 79.1(8)“a”(1)“2” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

4. The total submitted charge, represented by the GAD as defined by the NCPDP standards definition; or

5. Providers' usual and customary charge to the general public.

(2) Reimbursement for covered outpatient drugs to a 340B contract pharmacy, under contract with a covered entity described in 42 U.S.C. 256b(a)(4), will be according to paragraph 79.1(8)“a” because covered outpatient drugs purchased through the 340B drug pricing program cannot be billed to Medicaid by a 340B contract pharmacy.

*f.* Federal supply schedule (FSS) drugs. Notwithstanding paragraph 79.1(8)“a” above, reimbursement for drugs acquired by a provider through the FSS program managed by the federal General Services Administration will be the lowest of:

(1) The provider's actual acquisition cost, (not to exceed the FSS price), submitted in the ingredient cost field, plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(2) The average state AAC determined pursuant to paragraph 79.1(8)“b” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(3) For generic prescription drugs and nonprescription drugs only, the FUL pursuant to 79.1(8)“a”(1)“2” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(4) The total submitted charge, represented by the GAD as defined by the NCPDP standards definition; or

(5) Providers' usual and customary charge to the general public.

*g.* Nominal-price drugs. Notwithstanding paragraph 79.1(8)“a” above, reimbursement for drugs acquired by providers at nominal prices and excluded from the calculation of the drug's “best price” pursuant to 42 CFR 447.508 will be the lowest of:

(1) The provider's actual acquisition cost (not to exceed the nominal price paid), submitted in the ingredient cost field, plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(2) The average state AAC determined pursuant to paragraph 79.1(8)“b” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

(3) For generic prescription drugs and nonprescription drugs only, the FUL pursuant to 79.1(8)“a”(1)“2” plus the professional dispensing fee pursuant to paragraph 79.1(8)“c”;

HUMAN SERVICES DEPARTMENT[441](cont'd)

(4) The total submitted charge, represented by the GAD as defined by the NCPDP standards definition; or

(5) Providers' usual and customary charge to the general public.

**ARC 4764C**

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

### **Notice of Intended Action**

#### **Proposing rule making related to eliminating the application fee for child support recovery and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 95, "Collections," Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 217.6.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 252B.4.

#### *Purpose and Summary*

This proposed rule making aligns the Department's rules about child support recovery with recent legislative changes. 2019 Iowa Acts, Senate File 605, amended Iowa Code chapter 252B to eliminate the customer-paid application fee.

#### *Fiscal Impact*

2019 Iowa Acts, Senate File 605, also amended Iowa Code chapter 252B to increase the annual fee for nonassistance child support cases. Because the legislation coupled the loss of the application fee with the increase in the annual fee, there is no fiscal impact in these changes.

#### *Jobs Impact*

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

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Nancy Freudenberg  
Iowa Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

HUMAN SERVICES DEPARTMENT[441](cont'd)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 95.2(4) as follows:

**95.2(4)** *Application for services.*

~~a.~~ A person who is not on public assistance requesting services under this chapter, except for those persons eligible to receive support services under paragraphs 95.2(2)“a,” “b,” and “c,” shall complete and return Form 470-0188, Application for Nonassistance Support Services, for each parent from whom the person is seeking support.

~~(1) a.~~ The application shall be returned to the child support recovery unit serving the county where the person resides. If the person does not live in the state, the application form shall be returned to the county in which the support order is entered or in which the other parent or putative father resides.

~~(2) b.~~ The person requesting services has the option to seek support from one or both of the child’s parents.

~~b.~~ ~~An individual who is required to complete Form 470-0188, Application for Nonassistance Support Services, shall be charged an application fee in the amount set by statute. The unit shall charge one application fee for each parent from whom support is sought. The unit shall charge the fee at the time of initial application and any subsequent application for services. The individual shall pay the application fee to the local child support recovery unit before services are provided.~~

ITEM 2. Amend subrule 95.18(3) as follows:

**95.18(3)** *Reapplication for services.* A person whose services were denied or terminated may reapply for services under this chapter by completing the application process ~~and paying the application fee described in subrule 95.2(4).~~

**ARC 4768C**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

**Proposing rule making related to electronic transmission of prescriptions  
and providing an opportunity for public comment**

The Board of Physician Assistants hereby proposes to amend Chapter 327, “Practice of Physician Assistants,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 147.76.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 124.308 and 155A.27.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*Purpose and Summary*

Pursuant to Iowa Code sections 124.308 and 155A.27, beginning January 1, 2020, every prescription issued for a prescription drug shall be transmitted electronically as an electronic prescription to a pharmacy or a pharmacy's agent unless exempted by statute. A practitioner who violates this mandate is subject to an administrative penalty of \$250 per violation, up to a maximum of \$5,000 per calendar year. The administrative penalty is assessed by the practitioner's respective licensing board. Physician assistants in Iowa are prescribers subject to this electronic prescription mandate, and thus the Board may begin assessing administrative penalties against its licensees for violations of the electronic prescription mandate beginning January 1, 2020. This proposed rule making incorporates the electronic prescription mandate within the Board's existing rules governing prescription requirements.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Susan Reynolds  
Professional Licensure Division  
Iowa Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [susan.reynolds@idph.iowa.gov](mailto:susan.reynolds@idph.iowa.gov)

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 10, 2019  
7:30 to 8 a.m.

Fifth Floor Conference Room 526  
Lucas State Office Building  
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** subrule 327.6(4):

**327.6(4)** Beginning January 1, 2020, every prescription issued for a prescription drug shall be transmitted electronically unless exempted pursuant to Iowa Code section 124.308 or 155A.27. Beginning January 1, 2020, a licensee who fails to comply with the electronic prescription mandate may be subject to a nondisciplinary administrative penalty of \$250 per violation, up to a maximum of \$5,000 per calendar year.

**ARC 4766C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to Iowa care for yourself program  
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 8, "Iowa Care for Yourself (IA CFY) Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 135.11(1).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 135.11(1).

*Purpose and Summary*

The proposed amendments update Chapter 8 to reflect the current practices of the IA CFY Program.

Recognizing the value of screening and early detection of breast and cervical cancer, Congress passed the Breast and Cervical Cancer Mortality Prevention Act of 1990 and in 1993 authorized additional preventative health services to participants in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). The Breast and Cervical Cancer Early Detection Program (BCCEDP) provides screening for breast and cervical cancer.

In addition, the Well-Integrated Screening and Evaluation for Women Across the Nation Program (WISEWOMAN) provides preventative screening for cardiovascular disease risk factors. Cardiovascular-related lifestyle interventions, tailored to each individual's cardiovascular screening results and the individual's readiness to make lifestyle behavior changes, are also offered to participants. These two programs are funded through cooperative agreements with the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC). Iowa first received CDC funding in 1993 for the BCCEDP and began providing early detection services in 1995. Iowa received funding for WISEWOMAN as a research study in 2001 and started providing limited services in 2003. The current framework of services as a standard program was implemented in 2018.

The rules in Chapter 8 allow the services offered through the BCCEDP and WISEWOMAN to be offered in Iowa under one program, the IA CFY Program. The purposes of the IA CFY Program are to provide breast and cervical cancer screening and diagnostic services and cardiovascular risk factor screening and intervention services to low-income, uninsured, underinsured and underserved women,

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

to provide public and professional development, and to support community partnerships enhancing statewide breast and cervical cancer and cardiovascular disease control activities. Chapter 8 covers agencies designated by contracting county boards of health to provide community-based IA CFY Program services and to receive funds from the Department for that purpose. The designated agencies facilitate the essential screening and diagnostic services consistent with CDC and IA CFY Program guidelines.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Jill Myers-Gadelmann  
Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [jill.myers-gadelmann@idph.iowa.gov](mailto:jill.myers-gadelmann@idph.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend **641—Chapter 8** as follows:

CHAPTER 8  
IOWA CARE FOR YOURSELF (IA CFY) PROGRAM

[Prior to 4/4/12, see 641—Chapter 37]

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

**641—8.1(135) Definitions.** For purposes of this chapter, the following definitions apply:

*“Abnormal screen”* means a suspicion of breast or cervical cancer or laboratory values of total cholesterol or blood glucose and average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

1. A suspicion of breast cancer includes clinical breast examination findings of: palpable breast mass, breast dimpling, nipple retraction, bloody nipple discharge, palpable lymph nodes around clavicle or axilla, nipple erythema and scaliness, a mammography result of breast imaging reporting and data systems (BI-RADS) category 4 (suspicious abnormality suggesting need for biopsy) or category 5 (highly suggestive of malignancy) (ICD-9-793.8 10 R92.0, R92.1, R92.2, R92.8), breast biopsy result of ductal cancer in situ (ICD-10 D05.10, D05.11, D05.12), lobular cancer in situ (ICD-9-233.0 10 D05.00, D05.01, D05.02), or breast or lymph node (or other) biopsy result of breast cancer.

2. Suspicion of cervical cancer is a Pap test result of atypical squamous cells cannot exclude high-grade squamous intraepithelial lesions (ASC-H) (ICD-9-795.02 10 R87.611 or R87.622), atypical glandular cells (AGC) (ICD-9-795.00 10 R87.619 or R87.629), low-grade squamous intraepithelial lesions (LSIL) (ICD-9-622.11 or 795.03 10 R87.612 or R87.622), or high-grade squamous intraepithelial lesions (HSIL) (ICD-9-622.12 or 795.04 10 R87.613 or R87.623), leukoplakia of the cervix (ICD-9-622.2 10 N88.0), or cervical biopsy result of cervical intraepithelial neoplasia II (ICD-10 N.87.1) or III (ICD-9-622.10, 622.11, 622.12, 795.03, or 795.04 10 D06.0, D06.1, D06.7 or D06.9), or cancer in situ (ICD-9-233.1 10 D06.0, D06.1, D06.7 or D06.9).

3. Abnormal value means laboratory values of total cholesterol or blood glucose (HbA1c if diagnosed diabetic) and average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

*“ACR”* or *“American College of Radiology”* means one of the Food and Drug Administration-recognized accreditation bodies for minimum quality standards for personnel, equipment, and record keeping in facilities that provide mammography breast imaging.

*“Advanced registered nurse practitioner”* means an individual licensed to practice under 655—Chapter 7.

*“Alert value”* means laboratory values of total cholesterol, or blood glucose and or average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

*“BCCPTA”* or *“Breast and Cervical Cancer Prevention and Treatment Act of 2000”* means a federal law that provides each state with the option of extending Medicaid eligibility to women individuals who were diagnosed with breast or cervical cancer through the National Breast and Cervical Cancer Early Detection Program.

*“BCCT option of Medicaid”* or *“breast and cervical cancer treatment option of Medicaid”* means the optional program of medical aid designed for women individuals who are unable to afford regular medical service and are diagnosed with breast or cervical precancer or cancer through the National Breast and Cervical Cancer Early Detection Program or through funds from Susan G. Komen for the Cure family planning centers, community health centers, or nonprofit organizations. The individuals who receive screening or services meet eligibility requirements established by the Iowa care for yourself program. The BCCT option of Medicaid is financed by federal and state payment sources and is authorized by Title XIX of the Social Security Act.

*“Benign”* means a noncancerous condition that does not spread to other parts of the body.

*“Biopsy”* means the removal of a sample or an entire abnormality for microscopic examination to diagnose a problem. Examples of a sampling would be a core biopsy or incisional biopsy; an example of entire removal would be an excisional biopsy.

*“BI-RADS”* or *“breast imaging reporting and data systems”* means a standardized reporting system for mammography, breast ultrasound and breast magnetic resonance imaging (MRI) reports.

*“Blood glucose”* means a simple sugar found in the blood that is an important energy source in living organisms and is a component of many carbohydrates.

*“Blood pressure”* means the ~~pressure or tension~~ force of the blood ~~within~~ against the systemic arteries, ~~maintained by the contraction of the left ventricle, the resistance of the arterioles and capillaries,~~

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

the elasticity of the arterial walls, as well as the viscosity and volume of the blood; expressed as relative to the ambient atmospheric pressure circulatory system. The systolic blood pressure is the force caused when the heart contracts and pushes out the blood. The diastolic blood pressure is when the heart relaxes and fills with blood.

“BMI” or “body-mass index” means a number calculated from a person’s weight and height an index for relating weight to height. BMI provides a reliable indicator of body fatness for most people and is used to screen for weight categories that may lead to health problems.

“Breast ultrasound” means the use of an imaging technique commonly used to screen for tumors and other breast abnormalities. The breast ultrasound uses high-energy sound waves that are bounced off internal tissues and make echoes to produce a pictorial representation of the internal structure detailed image of the inside of the breast.

“Cancer” means a malignant tumor of potentially unlimited growth of new cells that expand locally by invasion and systemically by metastasis group of diseases involving abnormal cell growth with the potential to invade or spread to other parts of the body.

“Carcinoma in situ” means cell changes in which malignant cells are localized and may press against adjoining tissue but have not penetrated or spread beyond their site of origin a group of abnormal cells found only in the place where they first formed in the body.

“Cardiologist” means a physician licensed to practice under Iowa Code chapter 148 who specializes in the study of the heart and its action and diseases.

“Cardiovascular disease” means a broad term used to describe a range of diseases that affect the heart and, in some cases, blood vessels.

“Cardiovascular disease risk factors” means identifiable factors that make some people more susceptible than others to cardiovascular disease. Cardiovascular disease risk factors include:

1. Obesity.
2. Physical inactivity.
3. High blood pressure.
4. High blood cholesterol.
5. Diabetes.
6. Tobacco use.

Risk factors that cannot be changed are age, gender and family history. The more cardiovascular disease risk factors a person has increases the person’s chance of developing cardiovascular disease.

“Case management” means the IA CFY program component that involves establishing, brokering, and sustaining a system of available clinical and essential support services for all ~~women~~ individuals enrolled in the program.

“CBE” or “clinical breast examination” means complete examination of a woman’s an individual’s breast and axilla with palpation by a health care provider, including examination of the breast in both the upright and supine positions trained to recognize many different types of abnormalities and warning signs.

“CDC” means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services, a federal agency that conducts and supports health promotion, prevention and preparedness activities in the U.S., with the goal of improving overall public health.

“Cholesterol” means a waxy, fat-like substance made in the liver and other cells and found in certain foods, such as foods from animals, for example, dairy products, eggs and meat. Types of cholesterol are as follows:

1. Low density lipoprotein or LDL, also called “bad” cholesterol. LDL can cause buildup of plaque on the walls of arteries. The more LDL there is in the blood, the greater the risk of heart cardiovascular disease.
2. High density lipoprotein or HDL, also called “good” cholesterol. HDL helps the body get rid of bad cholesterol in the blood. If levels of HDL are low, risk of heart cardiovascular disease increases.
3. Very low density lipoprotein or VLDL. VLDL is similar to LDL cholesterol in that it contains mostly fat and not much protein.
4. Total cholesterol means the sum of the very low, low and high density lipoproteins.



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

“CLIA” or “Clinical Laboratory Improvement Act Acts of 1988” means the law which established federal regulatory standards that apply to all clinical laboratory testing performed on humans in the U.S. These standards establish minimum quality standards for personnel and quality assurance methods that monitor patient test management and assess quality control, proficiency testing, and personnel handling of laboratory and pathology specimens.

“CLIA-waived tests” means simple laboratory examinations and procedures that are cleared by the federal government for home use, that employ methodologies that are so simple and accurate that erroneous results would be negligible, or that pose no reasonable risk of harm to the patient if the test is performed incorrectly.

“CMS” or “Centers for Medicare and Medicaid Services” is a federal agency within the United States Department of Health and Human Services that administers health care programs, including Medicare, Medicaid, the children’s health insurance program (CHIP) and health insurance exchanges, in partnership with state governments.

“Colposcopy” means a medical procedure that allows close examination of the surface of the cervix with a high-powered microscope.

“Community referral” means the act, action or instance of directing a participant to a community resource to direct individuals elsewhere to obtain needed information, mutual support or community resources through help lines or other methods.

“Community resource” means a source of information, service or expertise that is available within the community, including respite care services, health and mental health services and other social services.

“Cooperative agreement” means a signed contract between the department and another party, for example, a health care provider. This contract facility, which allows the department to pay the health care provider facility for providing services to IA CFY program participants.

“CPT” or “current procedural terminology” is a listing of descriptive terms and identifying codes for uniform language to report medical services and procedures performed by qualified health care professionals and allows clinicians, statisticians, politicians, health insurance programs, health planners and others to speak a common language.

“Creditable coverage” means any insurance that pays for medical bills incurred for the screening, diagnosis, or treatment of breast and cervical cancer. Creditable coverage as described by the Health Insurance Portability and Accountability Act of 1996 includes, but is not limited to, group health plans or health insurance coverage consisting of medical care under any hospital or medical service policy, health maintenance organization, Medicare Part A or B, Medicaid, armed forces insurance, or state health risk pool. A woman An individual who has creditable coverage shall not be eligible for coverage under the breast and cervical cancer treatment option of Medicaid.

“Creditable coverage circumstances” means those instances in which a woman an individual has creditable coverage but is not actually covered for treatment of breast or cervical cancer.

1. When there is a preexisting-condition exclusion or when the annual or lifetime limit on benefits has been exhausted, ~~a woman~~ an individual is not considered to have creditable coverage for this treatment.

2. If ~~the woman~~ an individual has limited coverage, such as a high deductible, limited drug coverage, or a limited number of outpatient visits, ~~she~~ the individual is still considered to have creditable coverage and is not eligible for coverage under the breast and cervical cancer treatment option of Medicaid.

3. If ~~the woman~~ an individual has a policy with a limited scope of coverage, such as only dental, vision, or long-term care, or has a policy that covers only a specific disease or illness, ~~she~~ the individual is not considered to have creditable coverage unless the policy provides coverage for breast and cervical cancer treatment.

4. For the purposes of this program, eligibility for Indian Health Services or tribal health care is not considered creditable coverage (according to P.L. 107-121, the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001).

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

“Cytology” means the scientific study of cells branch of biology that studies the structure and function of a cell.

“Cytopathology” means the scientific study of cells in disease branch of pathology that studies and diagnoses disease on the cellular level.

“Cytotechnologist” means a medical technician trained in the identification of cells and cellular a laboratory professional who studies cells and cellular abnormalities.

“Department” means the Iowa department of public health.

“DHS” or “department of human services” means the Iowa department of human services, a state agency that provides a wide range of services, including health care coverage for low-income uninsured individuals diagnosed with breast or cervical cancer or precancer and requiring treatment.

“Diagnostic mammography” means a radiological examination performed for appropriate clinical indications, such as breast mass(es), other breast signs or symptoms (spontaneous nipple discharge, skin changes), or special cases, such as a history of breast cancer with breast conservation or augmented breasts.

“Family planning clinic” means a Title X family planning program site dedicated to the provision of family planning and related preventive health services to low-income and underserved populations.

“FDA” or “Food and Drug Administration” means the federal governmental body which certifies that a mammography breast imaging facility meets minimum quality standards for personnel, equipment, and record keeping.

“Follow-up” means the IA CFY program component that involves a system for seeking information about or reviewing an abnormal condition, rescreening, or recall for annual visits.

“Glucose” means a simple sugar that is an important carbohydrate in biology. Cells use glucose as a source of energy and a metabolic intermediate.

“Gynecologist” means a physician licensed to practice under Iowa Code chapter 148 who specializes in diseases of the reproductive organs in women.

“HbA1c” or “glycosylated hemoglobin” means a clinical laboratory test for the purposes of monitoring blood glucose control of a participant diagnosed with diabetes diagnosing diabetes or determining control of diabetes over the past two to three months.

“Health care provider” means any physician, pharmacist, advanced registered nurse practitioner, or physician assistant who is licensed authorized to practice by the state of Iowa; who is performing within the scope of the practice as defined by state law; and who provides care to IA CFY program-enrolled women individuals.

“Heart disease” means a broad term used to describe a range of diseases that affect the heart and, in some cases, blood vessels. The term is often used interchangeably with “cardiovascular disease,” which generally refers to conditions that involve narrowed or blocked blood vessels that can lead to a heart attack, chest pain (angina) or stroke.

“Heart disease risk factors” means identifiable factors that make some people more susceptible than others to heart disease. Heart disease risk factors include:

1. Being overweight.
2. Lack of physical activity.
3. High blood pressure.
4. High blood cholesterol.
5. Diabetes.
6. Cigarette smoking.

Risk factors that cannot be changed are age and family history. The more heart disease risk factors a person has increases the person’s chance of developing heart disease.

“IA BCCEDP” or “Iowa breast and cervical cancer early detection program” means a comprehensive breast and cervical cancer screening program established and funded under Title XV of the federal Public Health Service Act and administered by the Iowa department of public health, with the delegated responsibility of implementation and evaluation from the CDC, Division of Cancer Prevention and Control.

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

“*IA CFY program*” or “*Iowa care for yourself program*” means an integrated comprehensive breast and cervical cancer screening program and cardiovascular risk factor screening and intervention program administered by the Iowa department of public health.

“*IA WISEWOMAN*” or “*Iowa well-integrated screening and evaluation for women across the nation*” means a cardiovascular-related risk factor screening and intervention program to provide standard preventive screening services, including blood pressure measurements, cholesterol testing, blood glucose testing, and lifestyle interventions that target poor nutrition, physical inactivity, and tobacco use. The program is authorized by the federal government and administered by the CDC to help reduce deaths and disability from ~~heart~~ cardiovascular disease and stroke.

“*ICD-9 ICD-10*” or “*International Classification of Disease, 9<sup>th</sup> 10<sup>th</sup> edition*” means a standardized classification of diseases, injuries, and reasons of death, by cause and anatomic localization, which is systematically put into a number of up to ~~six~~ seven digits and which allows clinicians, statisticians, politicians, health planners and others to speak a common language, both in the United States and internationally.

“*Infrastructure*” means the basic framework of sufficient staff and adequate support systems to plan, implement, and evaluate the components of the IA CFY program.

“*In need of treatment*” means that a medical or surgical intervention is required because of an abnormal finding of breast or cervical cancer or precancer that was determined as a result of a screening or diagnostic procedure for breast or cervical cancer/precancer ~~under the NBCCEDP~~.

“*Intervention*” means services that promote a ~~heart-healthy~~ cardiovascular-healthy diet and physical activity and that are based on screening results, which include blood pressure, cholesterol, blood glucose, weight, height, personal medical history, family medical history, and health behavior and readiness-to-change assessments.

“*MATF MAB*” or “*medical advisory ~~task force~~ board*” means ~~an advisory board~~ a body that may be utilized by the IA CFY program to offer knowledge and experience as related to the fields of expertise of the members of the ~~task force~~ board. Duties of the MATF MAB may include, but are not limited to, the following:

1. Reviewing and making recommendations for clinical service expansion.
2. Reviewing program-developed clinical protocols.
3. Providing recommendations related to other clinical and participant-related issues.
4. Providing input related to quality assurance issues.
5. Reviewing program screening and diagnostic data.

“*MDEs*” or “*minimum data elements*” means a set of standardized data elements used to collect ~~demographic and clinical information on women whose screening or diagnosis was paid for with IA CFY program funds. MDEs were developed by the CDC, Division of Cancer Prevention and Control, to ensure that consistent and complete information is collected on women whose screening or diagnosis was paid for with IA CFY program funding~~ patient-level screening records on individuals served through the NBCCEDP in order to evaluate whether programs are meeting clinical standards and programmatic priorities.

“*Medicaid*” means a health care program that assists low-income families or individuals in paying for doctor visits, hospital stays, long-term medical care, custodial care costs and more; the program of medical aid designed for those unable to afford regular medical service, is financed by federal and state payment sources; and authorized by Title XIX of the Social Security Act and administered by the Iowa department of human services.

“*Medicare*” means the program of federal payment source for health benefits, especially for the aged, which is authorized by Title XVIII of the Social Security Act.

“*NBCCEDP*” or “*National Breast and Cervical Cancer Early Detection Program*” means a program established with the passage of the Breast and Cervical Cancer Mortality Prevention Act of 1990 (Public Law 101-354). The law authorizes the CDC to establish a program of grants to states, tribes, and territories for ~~the purpose of~~ increasing the early detection of breast and cervical cancer, particularly among low-income, uninsured, and underserved women individuals.

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

“Nonprofit organization” means a group organized for purposes other than generating profit and in which no part of the organization’s income is distributed to its members, directors, or officers, except under limited circumstances.

“Oncologist” means a physician licensed to practice under Iowa Code chapter 148 who is a specialist in treating or studying the physical, chemical, and biologic properties and features of neoplasms, including causation, pathogenesis, and treatment.

“Outreach” means the IA CFY program component that involves recruiting targeted populations or ~~women~~ individuals who never or rarely utilize preventive health services.

“Pap test” means the Papanicolaou screening test that collects cells from the cervix for examination under a microscope. The Pap test can detect abnormal cells or precancerous cells before cancer develops.

“Pathologist” means a physician licensed to practice under Iowa Code chapter 148 who is a specialist in identifying diseases by studying cells and tissues under a microscope.

“Patient navigation” means an IA CFY program component that assists individuals in overcoming health care system barriers and facilitates timely access to quality screening and diagnostics as well as initiation of breast or cervical cancer treatment services.

“Pharmacist” means an individual licensed to practice under Iowa Code chapter 155A.

“Physician” means an individual licensed to practice under Iowa Code chapter 148.

“Physician assistant” means an individual licensed to practice under Iowa Code chapter 148C.

“Precancerous” means a condition ~~that may become, or is likely to become,~~ or lesion involving abnormal cells that are associated with an increased risk of developing into cancer.

“Program and fiscal management” means the IA CFY program component that includes planning, organizing, directing, coordinating, managing, budgeting for, and evaluating program activities.

“Quitline Iowa” means a toll-free, statewide smoking cessation telephone counseling hotline through which trained counselors provide ~~ea~~ assistance in making an individualized tobacco use quit plan and provide ongoing support through optional follow-up calls.

“Radiologist” means a physician licensed to practice under Iowa Code chapter 148 who specializes in ~~creating and interpreting pictures of areas inside the body. The pictures are produced with the branch of medicine that diagnoses injuries and diseases using medical imaging procedures such as X-rays, sound waves, or other types of energy.~~

“Rarely or never been screened” means, as defined for the NBCCEDP, that ~~a woman~~ an individual has not had cervical cancer screening within the last five years or has never been screened for cervical cancer.

“Recruitment” means the IA CFY program component that involves enrolling targeted populations or ~~women~~ individuals for preventive health services.

“Referral” means the IA CFY program component that involves directing ~~women~~ individuals with ~~abnormal~~ abnormal/alert screening results to appropriate resources for follow-up action.

“Screening mammography” means the use of X-ray of the breasts of asymptomatic ~~women~~ individuals in an attempt to detect abnormal lesions of the breast when they are small, nonpalpable, and confined to the breast.

“Service delivery” means providing, either directly or through contractual arrangements, comprehensive breast and cervical cancer screening and ~~heart~~ cardiovascular disease and stroke risk factor screening, diagnosis, and treatment services through tracking of screening intervals, timeliness of diagnosis, and timeliness of treatment of ~~women~~ individuals.

“Surgeon” means a physician licensed to practice under Iowa Code chapter 148 who treats disease, injury, or deformity by physical operation or manipulation.

“Surveillance” means the IA CFY program component that involves the systematic collection, analysis, and interpretation of health data.

~~“Susan G. Komen for the Cure” means an international organization with a network of volunteers working through local affiliates and Komen Race for the Cure® events to eradicate breast cancer as a life-threatening disease by advancing research, education, screening, and treatment.~~

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

~~“TBS” or “the Bethesda system” means a system that was developed to provide uniform diagnostic terminology for reporting cervical or vaginal cytologic findings to facilitate communication between the laboratory and the clinician diagnoses, used for reporting Pap test results.~~

~~“Triglycerides” means a type of fat that is carried in the blood by very low density lipoproteins. Excess calories, alcohol, or sugar in the body are converted into triglycerides and stored in fat cells throughout the body.~~

~~“WISEWOMAN” or “Well-Integrated Screening and Evaluation for Women Across the Nation” means a national program that offers blood pressure, diabetes, and cholesterol risk factor screening, lifestyle intervention, and referral services in an effort to prevent cardiovascular disease.~~

**641—8.2(135) Components of the Iowa care for yourself (IA CFY) program.** The IA CFY program shall include the following key components:

**8.2(1)** Program and fiscal management shall be conducted by ensuring strategic planning, implementation, coordination, integration, and evaluation of all programmatic activities and administrative systems, as well as the development of key communication channels and oversight mechanisms to aid in these processes. Program management shall ensure that infrastructure adequately supports service delivery.

**8.2(2)** Service delivery of specific and appropriate clinical procedures to detect breast and cervical abnormalities and ~~heart~~ cardiovascular disease or stroke risk factors for ~~women~~ individuals enrolled in the IA CFY program shall be directly provided or provided through contractual arrangements.

*a.* The IA CFY program shall cover breast and cervical cancer screening and diagnostic services including, but not limited to, the following when those services are provided by a participating health care provider who has a cooperative agreement with the ~~IA CFY program~~ Iowa department of public health. Payment shall be based on Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.

(1) Physical examinations that include two ~~recorded~~ blood pressures pressure measurements in addition to one or more of the following screening services: CBE, pelvic examination, or Pap test;

(2) Height and weight measurements, when provided in conjunction with one or more of the screening services listed in subparagraph 8.2(2)“a”(1) above;

(3) Mammography (screening and diagnostic);

(4) Breast ultrasound, when used as an adjunct to mammography;

(5) Fine-needle aspiration of breast cysts;

(6) Breast biopsies, excisional and nonexcisional (physician charges only; hospital charges are not covered);

(7) Colposcopy of the cervix, with or without biopsy;

(8) Surgical consultations for diagnosis of breast and cervical cancer;

(9) Pathology charges for breast and cervical biopsies;

(10) Anesthesia for ~~breast biopsies~~ program-approved CPT and ICD-10 codes (health care provider charges only; hospital charges and supplies are not covered).

*b.* Breast and cervical cancer-related services not covered by the IA CFY program include, but are not limited to, the following:

(1) Services not related to breast or cervical cancer screening or diagnosis;

(2) Treatment procedures and services;

(3) Services provided by nonparticipating providers;

(4) Hospital charges for breast biopsies and anesthesia;

(5) Inpatient services.

*c.* The IA CFY program shall cover cardiovascular disease-related services for ~~those select~~ participants enrolled in the ~~IA CFY program~~ for WISEWOMAN services for whom at least one breast or cervical cancer screening service was paid for using federal funds. Cardiovascular disease-related services shall include, but not be limited to, the following when ~~those services are provided by a~~ participating health care provider ~~who~~ that has a cooperative agreement with the ~~IA CFY program~~

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

department provides those services. Payment shall be based on Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.

- (1) Physical examinations that include two ~~recorded~~ blood pressures pressure measurements;
- (2) Height and weight measurements;
- (3) Fasting lipid panel that includes total cholesterol, HDL cholesterol, LDL cholesterol, triglycerides; and
- (4) Diabetes screening:
  1. For a ~~nondiagnosed diabetic~~ an individual who has not been diagnosed with diabetes, fasting blood glucose; and
  2. For a ~~diagnosed diabetic~~ an individual who has been diagnosed with diabetes, glycosylated hemoglobin (HbA1c).
- d. Cardiovascular disease-related services not covered by the IA CFY program include, but are not limited to, the following:
  - (1) A follow-up diagnostic visit to a health care provider if one or more screening values are in the CDC-defined abnormal value range;
  - (2) Repeat laboratory testing;
  - (3) Any additional testing;
  - (4) Medication; and
  - (5) Treatment.
- e. IA CFY program cardiovascular intervention shall be conducted as a component of the program for all ~~women~~ individuals who are eligible and enrolled to receive ~~IA-CFY program~~ WISEWOMAN services.
- f. A health care provider ~~who~~ that has a cooperative agreement with the IA CFY program shall be subject to the following:
  - (1) The health care provider agrees that reimbursement of procedures and services provided shall not exceed the amount ~~that would be~~ paid under Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.
  - (2) A mammography health care provider shall ensure that the provider's facility has current FDA certification and ACR or state of Iowa accreditation and is a Medicare and Medicaid-approved facility utilizing BI-RADS and following ACR guidelines for mammography report content.
  - (3) A board-certified radiologist must be immediately available to determine selection of views and readings when a diagnostic mammogram is performed.
  - (4) The health care provider shall submit obtained cytology and pathology specimens to a CLIA-certified laboratory for processing. The laboratory shall provide cytological reading and analysis of cervical and vaginal Pap tests by certified/registered cytotechnologists. Cytology (Pap) ~~tests~~ test results shall be reported using current TBS terminology. The laboratory shall provide board-certified pathologists or experienced certified cytotechnologists to rescreen all analyses and readings of cervical and breast biopsies.
  - (5) The health care provider shall practice according to the current standards of medical care for breast and cervical cancer early detection, diagnosis, and treatment.
  - (6) Service delivery may be provided in a variety of settings. Service delivery, however, must, ~~however~~, include:
    1. Providing screening services for specific geographic areas;
    2. Providing a point of contact for scheduling appointments;
    3. Providing age and income eligibility screening;
    4. Providing breast and cervical cancer screening and ~~heart~~ cardiovascular disease and stroke screening to eligible ~~women~~ individuals;
    5. Providing referral and follow-up for ~~women~~ individuals who have alert-value cardiovascular disease screening results;
    6. Providing the required reporting system for screening and follow-up activities;
    7. Providing population-based education, outreach, and recruitment activities;

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

8. Providing IA CFY program cardiovascular intervention as a component of the program for all ~~women~~ individuals eligible for and enrolled to receive IA CFY WISEWOMAN program services; and

9. Submitting data within 60 days of service date to establish screening documentation.

(7) The health care provider shall ensure compliance with this chapter and other terms and conditions included in the cooperative agreement.

**8.2(3)** Referral, tracking, and follow-up utilizing a data system to monitor each enrolled ~~woman's~~ individual's receipt of screening/rescreening, diagnostic, and treatment procedures shall be conducted by the IA CFY program and contracted county board of health designated agency staff.

a. The enrolled ~~woman~~ individual shall be notified by contracted county board of health designated agency staff of the results of the service, whether the results are normal, benign, or abnormal.

b. The data system shall provide tracking of appropriate and timely clinical services following an abnormal test result or diagnosis of cancer.

c. If the enrolled ~~woman~~ individual has an abnormal Pap test or breast screening or an alert-value ~~heart~~ cardiovascular disease risk factor, the health care provider shall provide ~~to the woman individual~~ with a comprehensive referral directing her to appropriate ~~additional~~ diagnostic or treatment services.

d. The comprehensive referral shall be written. Follow-up shall be conducted to determine whether services were timely, completed, or met.

**8.2(4)** The IA CFY program and contracted county board of health designated agency staff shall provide case management and shall assist participants whose cancer or precancerous breast or cervical condition was diagnosed through the program in obtaining needed treatment services.

**8.2(5)** IA CFY program staff shall use quality assurance and improvement techniques including use of established standards, systems, policies and procedures to monitor, assess and identify practical methods for improvement of the program and its components.

a. Quality assurance tools shall include utilizing FDA and ACR minimum standards for mammography facilities and CLIA minimum standards for cytopathology and pathology laboratories.

b. Quality assurance measures shall contribute to the identification of corrective actions to be taken to remedy problems found as a result of investigating quality of care.

**8.2(6)** Professional development shall be provided by the IA CFY program and contracted county board of health designated agency staff through a variety of channels and activities that enable professionals to perform their jobs competently, identify needs and resources, and contribute to ensuring that health care delivery systems provide positive clinical outcomes.

**8.2(7)** Using a variety of methods and strategies to reach priority populations, the IA CFY program and contracted county board of health designated agency staff shall provide population-based public education and recruitment that involve the systematic design and delivery of clear and consistent messages about breast and cervical cancer and the benefits of early detection. Outreach activities should focus on ~~women~~ individuals who have never or rarely been screened and should work toward the removal of barriers to care (i.e., the need for child care, respite care, interpreter services and transportation) through collaborative activities with other community organizations.

**8.2(8)** The IA CFY program may develop coalitions and partnerships to bring together groups and individuals that establish a reciprocal agreement for sharing resources and responsibilities to achieve the common goal of reducing breast and cervical cancer mortality and ~~heart~~ cardiovascular disease and stroke mortality.

**8.2(9)** The IA CFY program shall conduct surveillance utilizing continuous, proactive, timely and systematic collection, analysis, interpretation and dissemination of breast and cervical cancer screening and ~~heart~~ cardiovascular disease and stroke risk factor behaviors and incidence, prevalence, survival, and mortality rates. Epidemiological studies shall be conducted utilizing MDEs and other data sources to establish trends of disease, diagnosis, treatment, and research needs. Program planning, implementation, and evaluation shall be based on the epidemiological evidence.

**8.2(10)** Evaluation of the program shall be conducted through systematic documentation of the operations and outcomes of the program, compared to a set of explicit or implicit standards or objectives.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

**641—8.3(135) Participant eligibility criteria.** An applicant for the IA CFY program must satisfy the criteria outlined in this rule. If an applicant does not meet these criteria, the applicant shall be provided information by contracted county board of health designated agency staff regarding ~~IowaCare~~ Iowa health and wellness, health insurance marketplace, free care, or sliding-fee clinics available in the area in which the applicant lives.

**8.3(1) Age.** An applicant for the IA CFY program must satisfy ~~only~~ one of these criteria to participate in the IA CFY program.

a. ~~Women~~ If the applicant is 50 through 64 years of age, the program's priority population, shall the applicant may receive annual breast and cervical (if appropriate) cancer screening.

b. ~~Women~~ If the applicant is 40 through 64 years of age shall, the applicant may receive cardiovascular risk factor screening in addition to breast and cervical cancer screening services.

c. ~~Women~~ If the applicant is 40 through 49 years of age shall, the applicant may receive annual breast and cervical (if appropriate) cancer screening.

d. ~~Women~~ If the applicant is under 40 years of age, if and symptomatic for breast cancer, shall the applicant may receive breast and cervical cancer screening services based upon funding availability. EXCEPTION: This categorized group is not eligible for cardiovascular services under this program.

e. ~~Women~~ If the applicant is 65 years of age and older shall and the applicant does not have Medicare Part B coverage, the applicant may be eligible to receive annual breast and cervical (if appropriate) cancer screening if they do not have Medicare Part B coverage. EXCEPTION: This categorized group is not eligible for cardiovascular services under this program.

**8.3(2) Income.**

a. IA CFY program income guidelines are based upon 250 percent of the federal poverty level, which is set annually by CMS. New IA CFY program income guidelines will be adjusted following any change in CMS guidelines.

b. Self-declaration of income may be accepted.

c. Eligibility shall be based on net income for the household.

d. Assets shall not affect income status and shall not be counted when eligibility under the IA CFY program is determined.

**8.3(3) Insurance.**

a. The IA CFY program shall determine ~~a woman~~ an individual to be uninsured if the ~~woman~~ individual does not have health insurance coverage.

b. The IA CFY program shall determine ~~a woman~~ an individual to be underinsured if the ~~woman~~ individual has health insurance with unreasonably high copayments, deductibles, or coinsurance or the insurance does not cover IA CFY program-covered services.

c. ~~Women~~ Individuals who have creditable coverage, Medicaid, or Medicare Part B are ~~not~~ eligible if declaring a barrier to services. EXCEPTIONS: ~~IowaCare, Medicaid with spenddown, Iowa family planning network.~~

**8.3(4) Residency.**

a. ~~A woman~~ An individual must be a resident of Iowa or of a state that shall enroll ~~a woman~~ an individual in the BCCT option of Medicaid if the ~~woman~~ individual is screened or diagnosed by the IA CFY program.

b. ~~A woman~~ An individual who is a resident of a state that does not accept ~~women~~ individuals into the BCCT option of Medicaid and who chooses to continue to receive services in the IA CFY program must be informed that ~~she~~ the individual may not be able to have ~~her~~ the individual's treatment paid for by the BCCT option of Medicaid if ~~she~~ the individual does not receive services in ~~her~~ the individual's state of residence.

c. Proof and length of residency in Iowa are not required. EXCEPTION: An individual is not eligible for cardiovascular services if the individual is not a resident of Iowa.

**8.3(5) Ineligible.** The IA CFY program does not provide coverage for:

a. Men.

~~b. Women with Medicare Part B coverage.~~

~~c. b. Women~~ Individuals 39 years of age and younger unless they have symptoms of breast cancer.



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

**641—8.4(135) Participant application procedures for IA CFY program services.**

**8.4(1) Enrollment.** After ~~a woman~~ an individual is determined eligible for services:

*a.* The ~~woman~~ individual must complete, sign, and return a consent and release form to the IA CFY program. The date on the signed form shall be the participant's enrollment date.

*b.* Upon enrollment, the participant must select an IA CFY program health care ~~provider and facility~~.

*c.* The individual is eligible for services for 12 months from the enrollment date, subject to restrictions in program coverage as provided in rule 641—8.5(135).

*e. d.* If a participant is unable to access a particular health care provider due to unavailability of appointments or if a participant requests to change to another health care provider, designated agency staff shall assist the participant in choosing another IA CFY program health care provider who is available ~~in the participant's area~~.

**8.4(2) Reenrollment.**

*a.* A participant's continued eligibility for program coverage shall be determined annually.

*b.* No more than 45 days prior to the end of the 12-month coverage period, the IA CFY program shall contact the participant to see if ~~she~~ the participant wishes to reenroll in the program.

*c.* If a participant wishes to reenroll, ~~she~~ the participant must complete, sign and return a consent and release form before receiving any further services.

**8.4(3) Termination of enrollment.** The IA CFY program shall terminate a participant's enrollment if the participant:

*a.* Requests termination from the program;

*b.* No longer meets the criteria set forth in rule 641—8.3(135);

*c.* Does not return a signed IA CFY program consent and release form; or

*d.* Refuses to receive screening and diagnostic services through an IA CFY program health care provider.

**641—8.5(135) Priority for program expenditures.**

**8.5(1)** In the event the IA CFY program director determines ~~that~~ there are inadequate funds to meet ~~participants'~~ program needs, either attributable to a reduction in federal funding from the CDC or to a projected enrollment of ~~women~~ individuals in excess of anticipated enrollment, the program director may restrict new applicants' participation in the IA CFY program as follows:

*a.* First priority shall be given to ~~women~~ individuals 50 through 64 years of age.

*b.* Second priority shall be given to ~~women 40 through 49~~ individuals under 50 years of age who are symptomatic.

*c.* Third priority shall be given to ~~women~~ individuals 40 through 49 years of age who are asymptomatic.

*d.* Fourth priority shall be given to ~~women~~ individuals 65 years of age and older who do not have Medicare Part B coverage.

**8.5(2)** In the event that the financial demand abates, the program director shall withdraw the financial shortfall determination, at which time ~~women~~ individuals shall be eligible for program services in accordance with rule 641—8.3(135).

**641—8.6(135) Right to appeal.** If an individual disagrees with or is dissatisfied with program eligibility, the covered-service determination, or the decision of the program, the individual has the right to appeal the decision or action.

**8.6(1)** The appeal shall be in writing and shall be submitted, within ten working days of the decision or action, to the designated agency personnel with whom the individual has been working.

**8.6(2)** The designated agency staff shall contact a state IA CFY program staff person and shall provide the information regarding the appeal to the staff person.

**8.6(3)** State IA CFY program staff shall confer with the bureau chief supervising the IA CFY program and provide a decision to the designated agency staff within five business days. A decision made by state IA CFY program staff shall be delivered by telephone, if possible, to the individual

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

making the appeal and shall be followed by a written notification of the decision. The decision of state IA CFY program staff shall be considered a final agency decision in accordance with Iowa Code chapter 17A.

**641—8.7(135) Verification for the breast or cervical cancer treatment (BCCT) option of Medicaid.** The Iowa department of public health and the Iowa department of human services have coordinated to develop procedures for women individuals to access Medicaid coverage for treatment of breast or cervical cancer or precancerous conditions.

**8.7(1)** Before referring ~~a woman~~ an individual to ~~her~~ the individual's county of residence's local office of the department of human services, a contracted county board of health designated agency staff member shall document the following regarding the woman individual:

*a.* The ~~woman is currently~~ individual was enrolled in the IA CFY program. ~~To be considered enrolled in the program, the woman must meet program age guidelines, have when diagnosed; has had at least one of the basic screening services (Pap test, screening mammogram, or CBE or MRI) or diagnostic procedures paid for by the IA CFY program or with Susan G. Komen for the Cure funds; from family planning centers, community health centers, or nonprofit organizations; and must be in need of treatment for breast or cervical cancer or precancerous conditions; or~~

*b.* The ~~woman individual~~ individual was enrolled in NBCCEDP and has moved to Iowa. ~~To be considered enrolled in NBCCEDP, the woman individual must meet the Iowa program age guidelines; have had at least one of the basic screening services (Pap test, screening mammogram, or CBE or MRI) or a diagnostic procedure paid for by the NBCCEDP or with Susan G. Komen for the Cure funds; from family planning centers, community health centers, or nonprofit organizations; and be in need of treatment for breast or cervical cancer or precancerous conditions; and~~

*c.* The ~~woman individual~~ individual has creditable coverage circumstances or has no creditable coverage for breast or cervical cancer treatment.

**8.7(2)** The BCCT option of Medicaid is administered by the Iowa department of human services under ~~441 Iowa Administrative Code Chapter 75~~ 441—Chapter 75, “Conditions of Eligibility.”

These rules are intended to implement Iowa Code sections 135.11(1) and 135.39 and 42 U.S.C. Section 300k, as amended.

**ARC 4773C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to lead-based paint and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 70, “Lead-Based Paint Activities,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 135.105A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 135.105A.

*Purpose and Summary*

The proposed amendments consist of several changes grouped into the following categories: dust-lead hazard adjustment, deletion of and addition to definitions, deletion of rules that the program no longer deems necessary, and clarification of training requirements.

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

The United States Environmental Protection Agency (EPA) recently adjusted the dust-lead hazard threshold for floors and window sills. The changes in this area were driven by recent evidence and science in the field and will be effective in January 2020. Iowa is an authorized state for lead-based paint activities and must be in compliance with EPA regulations.

The other changes are related to definitions, training provider requirements/course, and outdated program rules and language. These changes are needed to reflect current practices and requirements.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Kane Young  
Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [kane.young@idph.iowa.gov](mailto:kane.young@idph.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **641—70.2(135)**, definitions of “Chewable surface,” “Clearance level” and “Dust-lead hazard,” as follows:

“*Chewable surface*” means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. Surfaces can be considered chewable even if there is no evidence of teeth marks.

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

“*Clearance level*” means the value at which the amount of lead in dust on a surface following completion of interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, rehabilitation, or renovation is a dust-lead hazard and fails clearance testing. The clearance level for a single-surface dust sample from a floor is greater than or equal to ~~40~~ 10 micrograms per square foot. The clearance level for a single-surface dust sample from an interior windowsill is greater than or equal to ~~250~~ 100 micrograms per square foot. The clearance level for a single-surface dust sample from a window trough is greater than or equal to 400 micrograms per square foot.

“*Dust-lead hazard*” means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead greater than or equal to ~~40~~ 10 micrograms per square foot on floors, ~~250~~ 100 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility when the weighted arithmetic mean lead loading for all single-surface or composite samples of floors and interior windowsills is greater than or equal to ~~40~~ 10 micrograms per square foot on floors, ~~250~~ 100 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on ~~widow~~ window troughs based on wipe samples. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled common area in the same common area group on the property.

ITEM 2. Adopt the following new definition of “Public housing agency” in rule ~~641—70.2(135)~~:

“*Public housing agency*” or “*PHA*” means a state, county, municipality, or other governmental entity or public body which is authorized to engage in or assist in the development or operation of low-income housing. A PHA must be approved by the U.S. Department of Housing and Urban Development (HUD).

ITEM 3. Rescind the definitions of “Certified elevated blood lead (EBL) inspection agency” and “Elevated blood lead (EBL) inspection agency” in rule ~~641—70.2(135)~~.

ITEM 4. Amend rule ~~641—70.3(135)~~ as follows:

**~~641—70.3(135) Lead professional certification.~~** A person or a firm shall not conduct lead abatement, renovation, clearance testing after lead abatement, lead-free inspections, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after renovation, or interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35 unless the person or firm has been certified by the department in the appropriate discipline. However, persons who perform these activities within residential dwellings that they own are not required to be certified, unless the residential dwelling is occupied by a person other than the owner or a member of the owner’s immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspector/risk assessors employed by or under contract with ~~a certified elevated blood lead (EBL) inspection agency~~ the department, a local board of health, or a public housing agency. In addition, persons who perform renovation under the supervision of a certified lead-safe renovator, certified lead abatement contractor, or certified lead abatement worker and who have completed on-the-job training are not required to be certified. However, on-the-job training does not meet the training requirement for work conducted pursuant to 24 CFR Part 35. Lead professionals and firms shall not state that they have been certified by the state of Iowa unless they have met the requirements of ~~641—70.5(135)~~ and been issued a current certificate by the department. ~~Elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department.~~

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

ITEM 5. Amend paragraphs **70.4(1)“p”** and **“q”** as follows:

*p.* The training program shall notify the department ~~in writing~~ within 30 days of changing the address specified on its training program approval application or transferring the records from that address.

*q.* A training program shall notify the department ~~in writing~~ at least 7 days in advance of offering an approved course. The notification shall include the date(s), time(s), and location(s) where the approved course will be held. A training program shall notify the department at least 24 hours in advance of canceling an approved course.

ITEM 6. Adopt the following new subrule 70.4(5):

**70.4(5)** To be approved for the training of elevated blood lead (EBL) inspector/risk assessors, a course must be at least eight training hours with a minimum of two hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):

- a.* Role and responsibility of an elevated blood lead (EBL) inspector/risk assessor.
- b.* Background information on childhood lead poisoning prevention programs in Iowa.
- c.* EBL lead inspection protocol described in this chapter and the EBL inspection protocol recommended by HUD.
- d.* Environmental and medical case management of lead-poisoned children.
- e.* Health effects of lead poisoning including an in-depth review of the scientific studies demonstrating the health effects of lead poisoning.
- f.* Chelation therapy including at what levels it is recommended and when it might not be needed.
- g.* Risk of childhood lead exposure from adult occupations or hobbies.
- h.* Case scenarios.\*
- i.* The course shall conclude with a course test. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.
- j.* The instructor shall provide an introduction of the online certification system used by the department. The instructor shall advise each student on the procedures needed to apply to the department for certification and provide information to each student on the procedures needed for taking the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.
- k.* All of the course materials must be provided to each student. The materials may be provided electronically unless an individual student requests that the materials be provided on paper.

ITEM 7. Amend paragraph **70.5(1)“d”** as follows:

*d.* If wishing to become a certified elevated blood lead (EBL) inspector/risk assessor, documentation of successful completion of ~~8 hours of training from the department’s childhood lead poisoning prevention program. This training shall cover the roles and responsibilities of an elevated blood lead (EBL) inspector/risk assessor and the environmental and medical case management of elevated blood lead (EBL) children~~ an eight-hour elevated blood lead (EBL) inspector/risk assessor course.

ITEM 8. Rescind and reserve subrule **70.5(5)**.

ITEM 9. Amend subrule 70.6(3), introductory paragraph, as follows:

**70.6(3)** A certified elevated blood lead (EBL) inspector/risk assessor must conduct elevated blood lead (EBL) inspections according to the following standards. Elevated blood lead (EBL) inspections shall be conducted only by a certified elevated blood lead (EBL) inspector/risk assessor. This protocol may be used for children who do not meet the definition of an EBL child as defined in this chapter as long as the inspection is authorized by the department, a local board of health, or a public housing agency.

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

ITEM 10. Amend subrule 70.6(7) as follows:

**70.6(7)** A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician must conduct visual risk assessments according to the following standards. Provided that all of the following standards are met, a certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician may remotely conduct a visual risk assessment using technology that allows for adequate visual evaluation of the painted surfaces. Visual risk assessments shall be conducted only by a certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead-based paint hazards and to assess the extent and causes of the paint deterioration. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall assess each component in each room, including each exterior side. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall identify the following conditions as potential lead-based paint hazards:

- (1) All interior and exterior surfaces with deteriorated paint.
- (2) Horizontal hard surfaces, including but not limited to floors and windowsills, that are not smooth or cleanable.
- (3) Dust-generating conditions, including but not limited to conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint.
- (4) Bare soil in the play area and dripline of the home.

c. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall prepare a written report for each residential dwelling or child-occupied facility where a visual risk assessment is conducted. No later than three weeks after completing the visual risk assessment, the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall send a copy of the report to the property owner and to the person requesting the visual risk assessment, if different. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall maintain a copy of the report for no less than three years. The report shall include, at least:

- (1) Date of each visual risk assessment;
- (2) Address of building;
- (3) Date of construction;
- (4) Apartment numbers (if applicable);
- (5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;
- (6) Name, signature, and certification number of each certified sampling technician, certified lead inspector/risk assessor, or certified elevated blood lead (EBL) inspector/risk assessor conducting the visual risk assessment;
- (7) Name and certification number of the certified firm(s) conducting the visual risk assessment;
- (8) A statement that all painted or finished components must be assumed to contain lead-based paint;
- (9) Specific locations of painted or finished components identified as likely to contain lead-based paint and likely to be lead-based paint hazards;
- (10) Specific locations of bare soil in the play area and the dripline of a home;
- (11) If a remote visual risk assessment is conducted, a description of the methodologies used;
- ~~(11)~~ (12) Information for the owner and occupants on how to reduce lead hazards in the residential dwelling or child-occupied facility;

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

~~(12)~~ (13) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745;

~~(13)~~ (14) Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69<sub>2</sub>, and information regarding Iowa's regulations for renovation found in 641—Chapter 70; and

(14) (15) The ~~report shall contain the~~ following statement:

"The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a sampling technician, lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

ITEM 11. Rescind and reserve subrule **70.6(12)**.

ITEM 12. Amend subrule 70.10(1) as follows:

**70.10(1)** When the department finds that the applicant, certified lead professional, ~~certified elevated blood lead (EBL) inspection agency~~, or certified firm has committed any of the following acts, the department may deny an application for certification, may suspend or revoke a certification, may prohibit specific work practices, may require a project conducted by persons or firms that are not certified or a project where prohibited work practices are being used to be halted, may require the cleanup of lead hazards created by the use of prohibited work practices, may impose a civil penalty, may place on probation, may require additional education, may require reexamination of the state certification examination, may issue a warning, may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38, or may impose other sanctions allowed by law as may be appropriate.

a. Failure or refusal to comply with any requirements of this chapter.

b. Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by rules 641—70.3(135) to 641—70.7(135).

c. to ab. No change.

ac. Unethical conduct. This includes, but is not limited to, the following:

(1) Verbally or physically abusing a client or coworker.

(2) Improper sexual conduct with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.

(3) Engaging in a professional conflict of interest.

(4) Mental or physical inability reasonably related to and adversely affecting the ability of the firm or individual to practice in a safe and competent manner.

(5) Being adjudged mentally incompetent by a court of competent jurisdiction.

(6) Habitual intoxication or addiction to drugs.

1. The inability of a lead professional to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

2. The excessive use of drugs which may impair a lead professional's ability to practice with reasonable skill or safety.

3. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

(7) Registration on a state sex offender registry.

ITEM 13. Renumber subrule **70.10(3)** as **70.10(2)**.

ITEM 14. Adopt the following new subrule 70.10(3):

**70.10(3) Reinstatement.**

a. Any individual, training program, or firm that has been revoked, denied, or suspended may apply to the department in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the certification is permanently revoked.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

b. If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur, or if the certification was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

**ARC 4772C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to medical cannabidiol program  
and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 154, “Medical Cannabidiol Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 124E.11.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 124E.

*Purpose and Summary*

The proposed amendments implement needed updates to the rules to provide oversight of the program. These amendments are in response to issues that have become apparent since the program was initiated or are responsive to comments from medical cannabidiol manufacturers. Updates include:

- Revisions to the definitions of “batch” and “batch number”;
- Removal of a prohibition on advertising by health care practitioners;
- Revisions to allow a manufacturer to designate a single employee for the transport of medical cannabidiol to dispensaries;
- Revisions to allow a manufacturer to use product samples returned from a laboratory for research and development or to conduct stability studies;
- Revisions to the processes for product recalls to allow for a more thorough investigation prior to recall; and
- Revisions to simplify a manufacturer’s data disclosures in relation to crop inputs and plant batches.

The Department met with licensed manufacturers to discuss these amendments and to reach a common understanding as to what these amendments entail.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver and variance provisions contained in 641—Chapter 178.



PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Owen Parker  
Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [owen.parker@idph.iowa.gov](mailto:owen.parker@idph.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **641—154.1(124E)**, definitions of “Batch” and “Batch number,” as follows:

~~“Batch” means a set of cannabis plants that are grown, harvested, and processed together, such that they are exposed to substantially similar conditions throughout cultivation and processing specifically identified quantity of dried flower and other cannabis plant matter that is uniform in strain or cultivar, harvested at the same time, and cultivated using the same pesticides and other crop inputs.~~

~~“Batch number” means a unique numeric or alphanumeric identifier assigned to a batch of cannabis plants by a manufacturer when the batch is first planted harvested. The batch number shall contain the manufacturer’s number and a sequence to allow for inventory and traceability.~~

ITEM 2. Amend subrule 154.2(4) as follows:

**154.2(4)** Health care practitioner prohibitions.

*a.* A health care practitioner shall not accept, solicit, or offer any form of remuneration from or to any individual, including but not limited to a patient, a primary caregiver, or an employee, investor, or owner of a medical cannabidiol manufacturer or dispensary, to certify a patient’s condition, other than accepting a fee for a patient consultation to determine if the patient should be issued a certification of a qualifying debilitating medical condition.

*b.* A health care practitioner shall not accept, solicit, or offer any form of remuneration from or to any individual, including but not limited to a patient, a primary caregiver, or an employee, investor, or owner of a medical cannabidiol manufacturer or dispensary, to certify an individual as a primary caregiver for a patient with respect to the use of medical cannabidiol, other than accepting a fee for a consultation to determine if the individual is a necessary caretaker taking responsibility for managing the well-being of the patient with respect to the use of medical cannabidiol.

~~*c.* A health care practitioner shall not advertise certifying a qualifying debilitating medical condition as one of the health care practitioner’s services.~~

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

~~d. c.~~ A health care practitioner shall not certify a qualifying debilitating medical condition for a patient who is the health care practitioner or a family or household member of the health care practitioner.

~~e. d.~~ A health care practitioner shall not be designated to act as a primary caregiver for a patient for whom the health care practitioner has certified a qualifying debilitating medical condition.

~~f. e.~~ A health care practitioner shall not receive or provide medical cannabidiol product samples.

ITEM 3. Amend subrule 154.16(7) as follows:

**154.16(7) Recall of medical cannabidiol products.** ~~The department may require a manufacturer to recall medical cannabidiol from dispensaries when there is potential for serious health consequences from use of the products as determined by the department. Situations that may require a recall include but are not limited to:~~ Medical cannabidiol products may be recalled in the following ways:

~~a. After consultation with the department's medical director, it is determined that the distribution, sale, or use of the medical cannabidiol creates or poses an immediate and serious threat to human life or health; and~~

~~b. Other procedures available to the department to prevent or remedy a situation would result in an unreasonable delay that may place the health of patients at risk.~~

a. By manufacturer. Recalls may be undertaken voluntarily and at any time by a licensed manufacturer.

b. By department. If the department determines, based on an evaluation of the health hazard presented, that there is a reasonable probability that use of, or exposure to, a violative medical cannabidiol product will cause a serious adverse health consequence or death, the department may require a manufacturer to recall such violative medical cannabidiol products from dispensaries. An evaluation of the health hazard presented by medical cannabidiol being considered for recall shall be conducted by an ad hoc committee of scientists appointed by the director of the department and shall take into account, but need not be limited to, each of the following factors:

(1) Whether any disease or injuries have already occurred from the use of the medical cannabidiol.

(2) Whether any existing conditions could contribute to a clinical situation that could expose humans to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.

(3) Assessment of hazard to various segments of the population, e.g., children, who are expected to be exposed to the product being considered, with particular attention paid to the hazard to those individuals who may be at greatest risk.

(4) Assessment of the degree of seriousness of the health hazard to which the populations at risk would be exposed.

(5) Assessment of the likelihood of occurrence of the hazard.

(6) Assessment of the consequences (immediate or long-range) of occurrence of the hazard.

(7) The findings of the department during a directed inspection of the licensed manufacturing facility.

ITEM 4. Amend subrule 154.22(4) as follows:

**154.22(4) Vehicle requirements for transport.**

a. A manufacturer shall ensure that all medical cannabidiol transported on public roadways is:

(1) Packaged in tamper-evident, bulk containers;

(2) Transported so it is not visible or recognizable from outside the vehicle; and

(3) Transported in a vehicle that does not bear any markings to indicate that the vehicle contains medical cannabidiol or bears the name or logo of the manufacturer.

b. When the motor vehicle contains medical cannabidiol, manufacturer employees who are transporting the medical cannabidiol on public roadways shall:

(1) Travel directly to a dispensary or other department-approved locations; and

(2) Document refueling and all other stops in transit, including:

1. The reason for the stop;

2. The duration of the stop; and

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

3. The location of the stop.
- c. If the vehicle must be stopped due to an emergency situation, the employee shall notify 911 and complete an incident report on a form approved by the department.
- d. Under no circumstance shall any person other than a designated manufacturer employee have actual physical control of the motor vehicle that is transporting the medical cannabidiol.
- e. ~~A manufacturer shall staff all motor vehicles with a minimum of two employees when transporting medical cannabidiol between a manufacturing facility and a dispensary. At least one employee shall remain with the motor vehicle at all times that the motor vehicle contains medical cannabidiol.~~ A single employee may transport medical cannabidiol to the laboratory.
- f. ~~Each~~ An employee in a transport motor vehicle shall have telephone or other communication access with the manufacturer's personnel and have the ability to contact law enforcement via telephone or other method at all times that the motor vehicle contains medical cannabidiol.
- g. An employee shall carry the employee's identification card at all times when transporting or delivering medical cannabidiol and, upon request, produce the identification card to the department or to a law enforcement officer acting in the course of official duties.
- h. A manufacturer shall not leave a vehicle that is transporting medical cannabidiol unattended overnight.

ITEM 5. Amend subrule 154.23(1) as follows:

**154.23(1)** *Return of medical cannabidiol from dispensaries and laboratory.* ~~A manufacturer shall collect at no charge medical cannabidiol waste from dispensaries and from the laboratory that has tested samples submitted by the manufacturer. A manufacturer shall:~~

a. A manufacturer shall collect at no charge medical cannabidiol waste from dispensaries. A manufacturer shall:

(1) Collect medical cannabidiol waste from each dispensary on a schedule mutually agreed upon by the manufacturer and dispensary;

~~e.~~ (2) Dispose of medical cannabidiol waste as provided in subrule 154.23(2); and

~~d.~~ (3) Maintain a written record of disposal that includes:

(1) 1. The tracking number assigned at the time of the dispensing, if available, or the name of the patient, if the tracking number is unavailable, when the medical cannabidiol was returned to the dispensary from a patient or primary caregiver;

(2) 2. The date the medical cannabidiol waste was collected;

(3) 3. The quantity of medical cannabidiol waste collected; and

(4) 4. The type and lot number of medical cannabidiol waste collected.

b. Collect medical cannabidiol waste from a laboratory on a schedule mutually agreed upon by the manufacturer and laboratory; A manufacturer shall collect at no charge medical cannabidiol and medical cannabidiol waste from the laboratory that has tested samples submitted by the manufacturer. A manufacturer shall:

(1) Collect medical cannabidiol and medical cannabidiol waste from a laboratory on a schedule mutually agreed upon by the manufacturer and laboratory.

(2) Maintain a written record of return that includes:

1. The date the medical cannabidiol and medical cannabidiol waste were collected;

2. The quantity of medical cannabidiol and medical cannabidiol waste collected; and

3. The type and lot number of medical cannabidiol collected.

(3) A manufacturer may use medical cannabidiol returned from a laboratory for research and development or retained samples, but a manufacturer shall not introduce medical cannabidiol returned from a laboratory into lots or products intended for sale.

(4) A manufacturer shall dispose of medical cannabidiol waste returned from a laboratory as provided in subrule 154.23(2).

ITEM 6. Amend subrule 154.25(2) as follows:

**154.25(2)** *Crop inputs and plant batches.*

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

~~a.~~ All crop inputs used by a manufacturer must be approved by the department prior to the first application of the input. A manufacturer shall email a request for approval of a crop input to the department. The subject line of the email shall read, “RESPONSE REQUIRED—Crop input approval request.” The department shall have up to 48 hours to respond with an approval or denial. A manufacturer may proceed with the application if the department does not reply within 48 hours of receiving the request. A crop input will remain approved unless or until the department withdraws the approval because of newly discovered product safety concerns. The department shall give a manufacturer written notification 48 hours before withdrawing an approval of a crop input.

~~b. a.~~ The manufacturer shall use the department’s secure sales and inventory tracking system to maintain an electronic record of all crop inputs. The record shall include the following:

- (1) The date of input application;
- (2) The name of the employee applying the crop input;
- (3) The crop input that was applied;
- (4) The plants that received the application; and
- ~~(5) The amount of crop input that was applied; and~~
- ~~(6) (5)~~ A copy of or electronic link to the safety data sheet for the crop input applied.

~~e. b.~~ At the time of planting harvesting, all plants shall be tracked in a batch process with a unique batch number that shall remain with the batch through final processing into medical cannabidiol.

~~d.~~ A manufacturer shall record any removal of plants from the batch, including the reason for removal, on a record maintained at the manufacturing facility for at least five years.

~~e. c.~~ Each batch or part of a batch of cannabis plants that contributes to a lot of medical cannabidiol shall be recorded in the department’s secure sales and inventory tracking system or other manifest system.

ITEM 7. Amend subrule 154.40(7) as follows:

**154.40(7) Recall of medical cannabidiol products.** ~~The department may require a dispensary to recall medical cannabidiol from the dispensary facility and patients when there is potential for serious health consequences from use of the products as determined by the department. Situations that may require a recall include but are not limited to: If the department determines, based on an evaluation of the health hazard presented, that there is a reasonable probability that use of, or exposure to, a violative medical cannabidiol product will cause a serious adverse health consequence or death, the department may require a dispensary to recall such violative medical cannabidiol products from the dispensary facility and from patients. An evaluation of the health hazard presented by medical cannabidiol being considered for recall shall be conducted by an ad hoc committee of scientists appointed by the director of the department and shall take into account, but need not be limited to, each of the following factors:~~

~~a.~~ After consultation with the department’s medical director, it is determined that the distribution, sale, or use of the medical cannabidiol creates or poses an immediate and serious threat to human life or health, and

~~b.~~ Other procedures available to the department to prevent or remedy a situation would result in an unreasonable delay that may place the health of patients at risk.

a. Whether any disease or injuries have already occurred from the use of the medical cannabidiol.

b. Whether any existing conditions could contribute to a clinical situation that could expose humans to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.

c. Assessment of hazard to various segments of the population, e.g., children, who are expected to be exposed to the product being considered, with particular attention paid to the hazard to those individuals who may be at greatest risk.

d. Assessment of the degree of seriousness of the health hazard to which the populations at risk would be exposed.

e. Assessment of the likelihood of occurrence of the hazard.

f. Assessment of the consequences (immediate or long-range) of occurrence of the hazard.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

g. The findings of the department during a directed inspection of the licensed manufacturing facility.

**ARC 4765C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Proposing rule making related to student loan default  
and providing an opportunity for public comment**

The Public Health Department hereby proposes to rescind Chapter 195, “Student Loan Default/Noncompliance with Agreement for Payment of Obligation,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in 2019 Iowa Acts, Senate File 304.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2019 Iowa Acts, Senate File 304.

*Purpose and Summary*

2019 Iowa Acts, Senate File 304, repeals Iowa Code sections 261.121 through 261.127, eliminating the statutory authority for Chapter 195. Chapter 195 is proposed to be rescinded.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department’s waiver and variance provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Susan Dixon  
Department of Public Health  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [susan.dixon@idph.iowa.gov](mailto:susan.dixon@idph.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

PUBLIC HEALTH DEPARTMENT[641](cont'd)

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind and reserve **641—Chapter 195**.

**ARC 4778C**

**STATE PUBLIC DEFENDER[493]**

**Notice of Intended Action**

**Proposing rule making related to claims submission and review  
and providing an opportunity for public comment**

The State Public Defender hereby proposes to amend Chapter 7, "Definitions," Chapter 12, "Claims for Indigent Defense Services," and Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 13B.4(8).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 13B and 815.

*Purpose and Summary*

The proposed amendments update a number of rules to conform to statutory changes enacted during the 2019 Legislative Session and otherwise add efficiencies to the claims review process for indigent defense services. These amendments clarify that all probation revocation proceedings involving a single client constitute a single case for purposes of the rules and clarify the definition of "date of service" to conform to existing practice. The amendments also update the rates of compensation to conform to the rates enacted during the 2019 Legislative Session and convert the attorney fee case limits to hourly rates rather than dollar limits. The amendments conform the rules to 2019 Iowa Acts, Senate File 590, regarding claims made for services provided to indigent persons and costs incurred by privately retained attorneys representing indigent persons. The proposed amendments also require online submission of miscellaneous claims, effective March 1, 2020. Other technical and corrective changes are made to the rules governing the submission of claims relating to the provision of services to indigent persons, intended to promote efficiency and clarity in the claims review process.

*Fiscal Impact*

This rule making has no substantial fiscal impact to the State of Iowa because the proposed amendments primarily conform to legislative changes enacted in the 2019 Legislative Session. From the efficiencies of other proposed amendments, there will hopefully be some savings, but those savings are not expected to have a substantial fiscal impact.

STATE PUBLIC DEFENDER[493](cont'd)

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Office of the State Public Defender for a waiver of the discretionary provisions, if any, pursuant to 493—Chapter 6.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Office no later than 4:30 p.m. on December 16, 2019. Comments should be directed to:

Kurt Swaim  
Office of the State Public Defender  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [kswaim@spd.state.ia.us](mailto:kswaim@spd.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **493—7.1(13B,815)**, definition of “Case,” as follows:

“Case” means all charges or allegations arising from the same transaction or occurrence or contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding. A probation violation or contempt proceeding is a case separate from the case out of which the violation or contempt arose and separate from a criminal case alleging new criminal charges. Multiple probation revocation proceedings pending at the same time, involving the same client, and arising from the same transaction or occurrence are a single “case.”

ITEM 2. Amend subrule 12.2(3) as follows:

**12.2(3) Timely claims required.** Claims submitted prior to the date of service shall be returned to the claimant unpaid and may be resubmitted to the state public defender after the date of service. Claims that are not submitted within 45 days of the date of service as defined in this subrule may be denied, in whole or in part, as untimely unless the delay in submitting the claim is excused by paragraph 12.2(3) “f.” Attorney fees and expenses that are submitted on a claim denied as untimely under this subrule may be resubmitted on a subsequent claim that is timely submitted with respect to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding is not the “same case” as the underlying proceeding.

## STATE PUBLIC DEFENDER[493](cont'd)

*a. Adult claims.* For adult claims, “date of service” means the date of filing of an order indicating that the case was dismissed or the client was acquitted, the date of the expiration of the time for appeal from a judgment of conviction, the date of filing of an order granting a deferred judgment or prosecution, the date of filing of a final order in a postconviction relief case, the date of mistrial, the date on which a warrant was issued for the client, or the date of filing of a court order authorizing the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, or mistrial. The filing of a notice of appeal is not a date of service; however, if a notice of appeal is filed after a conviction and the attorney moves to withdraw to have appellate counsel appointed, the date of service is the date of filing of the withdrawal order. If a motion for reconsideration is filed, either the date of filing of the motion or the date on which the court rules on that motion is the date of service. In a probation, parole or contempt proceeding, the date of service is the date of filing of the disposition order. In a subsequent review or compliance proceeding under the same appointment, a new date of service is created if the new proceeding requires a court appearance and generates an order. In a probation revocation proceeding that results in the revocation of a deferred judgment, a judgment of conviction is entered and the date of service is the date of the expiration of the time for appeal. For interim adult claims authorized by subrule 12.3(3) or 12.3(4), the date of service is the last day on which the attorney claimed time on the itemization of services.

*b.* No change.

*c. Appellate claims.* For appellate claims, “date of service” means ~~the date on which the case was dismissed,~~ the date of a court order authorizing the attorney’s withdrawal prior to the filing of the proof brief, the date on which the proof brief was filed, or the date on which the procedendo was issued.

*d. to f.* No change.

ITEM 3. Amend subrule 12.3(1) as follows:

**12.3(1) Juvenile cases.** An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing that is a date of service held in the case. A court hearing does not include family drug court, family team meetings, staffings or foster care review board hearings.

ITEM 4. Amend rule 493—12.4(13B,815) as follows:

**493—12.4(13B,815) Rate of compensation.**

**12.4(1)** Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

Attorney time:	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other criminal cases	\$50/hour
	All other cases	\$50/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, and before July 1, 2007:

Attorney time:	Class A felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$55/hour
Paralegal time:		\$25/hour



## STATE PUBLIC DEFENDER[493](cont'd)

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007, and before July 1, 2019:

Attorney time:	Class A felonies	\$70/hour
	Class B felonies	\$65/hour
	All other criminal cases	\$60/hour
	All other cases	\$60/hour
Paralegal time:		\$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2019:

<u>Attorney time:</u>	<u>Class A felonies</u>	<u>\$73/hour</u>
	<u>Class B felonies</u>	<u>\$68/hour</u>
	<u>All other criminal cases</u>	<u>\$63/hour</u>
	<u>All other cases</u>	<u>\$63/hour</u>
<u>Paralegal time:</u>		<u>\$25/hour</u>

**12.4(2)** Payable paralegal time is limited in rule 493—7.1(13B,815).

**12.4(1)** *Applicability to juvenile cases.* In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney \$50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30, 1999, but before July 1, 2006, the state public defender will pay the attorney \$55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. In a juvenile case to which the attorney was appointed after June 30, 2006, but before July 1, 2007, the state public defender will pay the attorney \$60 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2007. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

**12.4(2)** *Appointments before July 1, 1999.* In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the rates established pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

**12.4(3)** *Applicability to appellate contracts.* Rescinded IAB 6/25/14, effective 7/30/14.

**12.4(4)** **12.4(3)** *All other cases.* As used in this rule, the term "all other cases" includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings without regard to the level of the underlying charge.

ITEM 5. Amend subrule 12.6(1) as follows:

**12.6(1)** *Adult cases.* The state public defender establishes attorney fee limitations for the number of hours of combined attorney time and paralegal time that may be claimed for the following categories of adult cases:

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Class A felonies	\$18,000 258
Class B felonies	\$3,600 56
Class C felonies	\$1,800 30
Class D felonies	\$1,200 20
Aggravated misdemeanors	\$1,200 20
Serious misdemeanors	\$600 10
Simple misdemeanors	\$300 5
Simple misdemeanor appeals to district court	\$300 5
Contempt/show cause proceedings	\$300 5
Proceedings under Iowa Code chapter 229A	\$10,000 167
Probation/parole violation	\$300 5
Extradition	\$300 5
Postconviction relief—the greater of \$1,000 17 hours or one-half of the fee limitation for the conviction from which relief is sought.	

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney were appointed to represent a client charged with four counts of forgery arising at four separate times, and if the client were charged in four separate trial informations, the fee limitations for each charge would apply separately. If all four charges were contained in one trial information, the fee limitation would be \$1,200 30 hours even if there were more than one separate occurrence. If Similarly, if the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations. As a further example, multiple probation revocation proceedings pending at the same time, involving the same client, and arising from the same transaction or occurrence are still a single "case" for purposes of this rule, and the five-hour fee limitation applies.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public defender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

ITEM 6. Amend subrule 12.6(2) as follows:

**12.6(2) Juvenile cases.** The state public defender establishes attorney fee limitations for the number of hours of attorney time that may be claimed for the following categories of juvenile cases:

## STATE PUBLIC DEFENDER[493](cont'd)

Delinquency (through disposition)	\$ <del>1,200</del> <u>20</u>
Child in need of assistance (CINA) (through disposition)	\$ <del>1,200</del> <u>20</u>
Termination of parental rights (TPR) (through disposition)	\$ <del>1,800</del> <u>30</u>
Juvenile court review and other postdispositional court hearings	\$300 <u>5</u>
Judicial bypass hearings	\$180 <u>3</u>
Juvenile commitment hearings	\$180 <u>3</u>
Juvenile petition on appeal	\$600 <u>10</u>
Motion for further review after petition on appeal	\$300 <u>5</u>

Nothing in this subrule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is \$1,200 20 hours for all four proceedings, not \$1,200 20 hours for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to \$1,200 20 hours for the child in need of assistance case and up to \$1,800 30 hours for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

ITEM 7. Amend rule 493—12.7(13B,815) as follows:

**493—12.7(13B,815) Reimbursement for specific expenses.**

**12.7(1)** The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigators, foreign language interpreters, evaluations, and experts, if the following conditions are met:

*a.* The attorney obtained court approval for a certified shorthand reporter, investigator, foreign language interpreter, evaluation or expert prior to incurring any expenses with regard to each.

*b.* A copy of each of the following documents is attached to the claim:

(1) The application and court order authorizing the expenditure of funds at state expense for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert. If the reimbursement is for expenses incurred by a privately retained counsel representing an indigent person, the procedures and requirements of rule 493—13.7(13B,815) shall apply to the application and issuance of the order and the application and order shall be in compliance with that rule, the other requirements of 493—Chapter 13, and this rule.

(2) If the expenses are for services of investigators, foreign language interpreters, or experts, a court order setting the maximum dollar amount of the claim. If the initial court order authorizing the expenditure sets the maximum amount of the claims, a subsequent order is unnecessary.

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(3) An itemization detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) If the expenses are for foreign language interpreters, the court order and itemization required by subparagraphs 12.7(1)“b”(2) and (3) shall be submitted on the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services form promulgated by the judicial branch.

(5) If the expenses are for a certified shorthand reporter, any additional documentation required in 493—paragraph 13.2(4)“b” when applicable to the services provided.

(6) Documentation that the attorney has already paid the funds to the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert.

*c. to e.* No change.

**12.7(2)** Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order, except the notice to the state public defender expressly required in rule 493—13.7(13B,815) if the reimbursement is for expenses incurred by privately retained counsel representing an indigent person, or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

**12.7(3)** In an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, subrule 12.7(1) shall apply.

**12.7(4)** Claims for expenses that do not meet these conditions are not payable under the attorney’s appointment or rule 493—13.7(13B,815) and will be denied.

ITEM 8. Amend rule 493—12.8(13B,815) as follows:

**493—12.8(13B,815) Reimbursement of other expenses.**

**12.8(1)** The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case to the extent that the expenses are reasonable and necessary:

*a.* Mileage for automobile travel at the rate of 39 cents per mile. Mileage is only payable when the attorney is traveling outside the county where the attorney’s office is located. The number of miles driven each day shall be separately itemized on the itemization of services, specifying the date of the travel, the origination and destination locations, the total number of miles traveled that day and, if it is not otherwise clear from the itemization, the purpose of the travel. If the travel is to perform services for multiple clients on the same trip, the mileage must be split proportionally between each client and the itemization must note the manner in which the mileage is split. The total miles traveled for the case shall also be listed on the claim form. Other forms of transportation costs incurred by the attorney may be reimbursed only with prior approval from the state public defender.

*b. to i.* No change.

None of the expenses specified in this rule shall be reimbursed to a privately retained attorney representing an indigent person unless there is prior approval by the state public defender upon a showing of reasonable necessity.

**12.8(2)** If the reimbursement is for expenses incurred by a privately retained counsel representing an indigent person, the procedures and requirements of rule 493—13.7(13B,815) shall apply to the application and issuance of the order, the application and order allowing reimbursement of these expenses shall be in compliance with that rule in addition to the requirements of this rule, and a copy of the application and order entered pursuant to rule 493—13.7(13B,815) shall be attached to the claim.

~~12.8(2)~~ **12.8(3)** Claims for expenses other than those listed in this rule or at rates in excess of the rates set forth in this rule are not payable under the attorney’s appointment or under rule 493—13.7(13B,815) and will be reduced or denied.

ITEM 9. Amend rule 493—13.2(815) as follows:

**493—13.2(815) Claims for other professional services.** The state public defender shall review and approve claims for necessary and reasonable expenses for investigators, foreign language interpreters,

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expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has a form W-9 on file with the department and the claim conforms to the requirements of this rule. Claims that do not comply with this rule will be returned.

**13.2(1) Claims for investigative services.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

~~a. The investigator submits a signed original and one copy of a claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.~~

~~b. a.~~ Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

~~c. b.~~ One copy of each of the following documents is attached to the claim:

~~(1) The application and order granting authority to hire the investigator.~~

~~(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the necessary investigation and there is an order attached approving payment of the investigative services pursuant to rule 493—13.7(13B,815).~~

~~(3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, the hourly rate, and the manner in which the amount of the claim for services was calculated. Investigator rates shall not exceed \$75 per hour. Itemized receipts for expenses must be attached.~~

~~(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the investigator sets a limit for the claim, this court order is unnecessary.~~

~~c.~~ Reasonable and necessary investigative services include, but are not limited to, locating witnesses, interviewing witnesses, process service, viewing the crime scene, reviewing documents or photographs, meeting with attorneys, meeting with clients, and creating investigative reports. Clerical work or running errands for the attorney or defendant is not considered investigative work.

~~d.~~ Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of completion of services in the most recent date that investigative services were performed for the case. Claims that are not timely shall be denied.

**13.2(2) Claims for foreign language interpreters.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for foreign language interpreters in accordance with the administrative directive of the state court administrator in the matter of court interpreter compensation, effective September 1, 2007 in effect at the time the claim is made, if the following conditions are met:

~~a. The interpreter submits a signed original and one copy of a claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

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~~(7) The claimant's name, address, social security number or federal tax identification number, E-mail address, if any, and telephone number.~~

~~b. a.~~ Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

~~e. b.~~ One copy of each of the following documents is attached to the claim:

(1) The application and order appointing the interpreter. This appointment is presumed to continue until the conclusion of the matter, unless limited by the court or modified by a subsequent order.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application for the appointment of the interpreter, makes one of the following specific findings: and there is an order attached approving payment of the foreign language interpreter pursuant to rule 493—13.7(13B,815).

~~1. The client is indigent, or~~

~~2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.~~

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated. With regard to expenses and services, the following shall apply:

1. Receipts for parking expenses are reimbursed pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.

2. Claims for translating documents will be paid pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.

(4) A court order setting the maximum dollar amount of the claim.

~~d. c.~~ Timely claims required. Claims for services are timely if, within 45 days of completion of services, either the claim is submitted to the state public defender for payment or the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services are filed with the clerk of court in the case. Claims that are not timely submitted shall be denied.

**13.2(3) Claims for expert witnesses.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

~~a. The expert witness submits an original and one copy of a signed claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.~~

~~b. a.~~ Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

~~e. b.~~ One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary expert witness services and there is an order attached approving payment of the expert witness pursuant to rule 493—13.7(13B,815).

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

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(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the expert sets a limit for the claim, this court order is unnecessary.

(5) If the expert charges a “minimum” amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

**13.2(4) Claims for certified shorthand reporters.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters only in accordance with the requirements of this subrule.

*a. Claim form.* ~~The~~ When a written claim form for certified shorthand reporting is required under these rules, the certified shorthand reporter shall submit a signed original and one copy of a miscellaneous claim form containing the following information:

- (1) The case name, case number and county in which the action is pending.
- (2) The name of the attorney for whom the services were provided.
- (3) The date on which the transcript was ordered.
- (4) The date on which the transcript was delivered.
- (5) The total amount of the claim.
- (6) The claimant’s name; address; social security number, federal tax identification number or vendor identification number; ~~e-mail~~ email address, if any; and telephone number.

*b. Required documentation.* One copy of each of the following documents must be attached to the claim:

- (1) The court order granting authority to hire the certified shorthand reporter at state expense.
- (2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed ~~but the court, in granting authority to hire the certified shorthand reporter, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services and there is an order attached approving payment of the certified shorthand reporter pursuant to rule 493—13.7(13B,815).~~

~~(3) Itemization of services. If the transcript is for a deposition, the itemization must include the date of deposition, persons deposed, arrival and departure time at the deposition, number of pages and the cost per page, travel time and listing of any other charges. If the transcript is for an audio or video recording, the itemization must include a description of the recording being transcribed, the length of the recording transcribed, the number of pages and the cost per page, and a listing of any other charges.~~

(4) (3) If expedited transcript rates are claimed under subparagraph 13.2(4) “d”(10), an e-mail email or other written statement from the attorney explaining that expedited delivery is required.

~~(5)~~ (4) If a cancellation fee is claimed under subparagraph 13.2(4) “d”(6), documentation of the date and time that notice of cancellation was given.

~~(6)~~ (5) If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

*c. to e.* No change.

*f. Designation of preferred certified shorthand reporter.* The state public defender may enter into a contract with one or more certified shorthand reporters to provide court reporting services for depositions in one or more counties and may designate such certified shorthand reporters to be the preferred certified shorthand reporters in the respective counties. Such designations shall be provided to the chief judge of the judicial district for the respective counties and shall be summarized on the ~~Web site~~ website of the state public defender, ~~http://spd.iowa.gov~~ spd.iowa.gov. Claims for services provided in a county in which the state public defender has designated a certified shorthand reporter as the preferred certified shorthand reporter shall be denied unless the claims are submitted by the certified shorthand reporter pursuant to the terms of the contract or are submitted by another certified shorthand reporter and include written documentation that the designated certified shorthand reporter was unavailable to handle the deposition.

**13.2(5) Claims for court-ordered evaluations.** The state public defender shall review, approve and forward for payment claims for necessary and reasonable evaluations requested by an appointed

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attorney only if the purpose of the evaluation is to establish a defense, to determine whether an indigent is competent to stand trial, or to evaluate a defendant at sentencing or resentencing who has been charged as an adult for a felony alleged to have been committed while a juvenile, if the offense has a potential mandatory minimum sentence of imprisonment, and not for any other purpose nor in any other circumstance for sentencing or placement. Additionally, a claim for a court-ordered evaluation will be approved only if the following conditions are met:

~~a. The person performing the evaluation submits a signed original and one copy of a claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.~~

~~b. a. Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.~~

~~e. b. One copy of each of the following documents is attached to the claim:~~

~~(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is for a permissible purpose under this subrule.~~

~~(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation and there is an order attached approving payment of the evaluation pursuant to rule 493—13.7(13B,815).~~

~~(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.~~

~~(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, this court order is unnecessary.~~

~~(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.~~

~~13.2(6) The state public defender may reimburse services and expenses not specifically listed in this chapter that are payable pursuant to rules 493—12.7(13B,815) and 493—12.8(13B,815).~~

~~13.2(6) 13.2(7) Submission of claims. Claims for payment for professional services provided to a public defender must be submitted to the local public defender office for which the services were provided.~~

~~a. With the exception of judicial branch certified shorthand reporters, claims submitted on or after March 1, 2020, shall be submitted electronically via the online claims website: [spdclaims.iowa.gov](http://spdclaims.iowa.gov). Effective March 1, 2020, with the exception of judicial branch certified shorthand reporter claims, any reference in these rules to forms or to claims submissions shall refer to the respective claims submission page for miscellaneous claims on the online claims website. The state public defender, at the state public defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims website. Other claims for professional services must be submitted, on a form promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.~~

~~b. Claims for the payment of services to public defenders provided either by judicial branch certified shorthand reporters or by claimants granted an exception to online claim submission, must be submitted to the local public defender office for which the services were provided. Other judicial branch certified shorthand reporter claims, claimants granted an exception to online claim submission,~~



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or claims submitted prior to March 1, 2020, must be submitted on a form, promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

~~13.2(7)~~ **13.2(8)** *Claims from state employees.* Claims submitted by state of Iowa employees must be submitted on a form promulgated by the state public defender and on a state travel voucher form.

~~13.2(9)~~ *Claim form for other professional services.* Rescinded IAB 1/3/07, effective 2/7/07.

ITEM 10. Adopt the following new rule 493—13.7(13B,815):

**493—13.7(13B,815) Payment of costs incurred by privately retained attorney representing indigent person.** No payment of state funds for the costs incurred in the legal representation of an indigent person shall be authorized or paid unless the requirements of this rule are satisfied.

**13.7(1) Application for payment.** An application or motion for the payment of state funds for the costs incurred in the legal representation of an indigent person that is submitted by the privately retained attorney shall be filed with the court in the county in which the case was filed and include all of the following:

- a. A copy of the attorney's fee agreement for the representation, including hourly rate, amount of retainer or other moneys received, and number of hours of work completed by the attorney to date.
- b. A showing that the costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under Iowa Code section 815.10.
- c. An itemized accounting of all compensation paid to the attorney including the amount of any retainer.
- d. The amount of compensation earned by the attorney.
- e. Information on any expected additional costs to be paid or owed by the indigent person to the attorney for the representation.
- f. A signed financial affidavit completed by the indigent person.

**13.7(2) Copy of application to state public defender.** The privately retained attorney shall submit a copy of the application or motion and all attached documents to the state public defender.

**13.7(3) Response of state public defender.** If the state public defender resists the motion in whole or in part, the state public defender shall file a response to the application or motion within ten days of the state public defender's receipt of the application or motion.

**13.7(4) Requirements for authorization and payment.** The court shall not grant the application or motion authorizing all or a portion of the payment to be made from state funds unless the court determines, after reviewing the application, any supporting documents, and any response from the state public defender pursuant to subrule 13.7(3), that all of the following apply:

- a. The represented person is indigent and unable to pay for the costs sought to be paid.
- b. The costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under Iowa Code section 815.10.
- c. The moneys paid or to be paid to the privately retained attorney by or on behalf of the indigent person are insufficient to pay all or a portion of the costs sought to be paid from state funds.

(1) In determining whether the moneys paid or to be paid to the attorney are insufficient for purposes of this paragraph, the court shall add the hours previously worked to the hours expected to be worked to finish the case and multiply that sum by the hourly rate of compensation specified in rule 493—12.4(13B,815) for the type of case in which the costs are requested.

(2) If the product calculated in subparagraph 13.7(4)“c”(1) is greater than the moneys paid or to be paid to the attorney by or on behalf of the indigent person, the moneys shall be considered insufficient to pay all or a portion of the costs sought to be paid from state funds.

(3) If the private attorney is retained on a flat fee agreement and a precise record of hours worked is not available, the attorney shall provide the court a reasonable estimate of the time expended to allow the court to make the calculation pursuant to this paragraph.

**13.7(5) Opportunity to request a hearing and hearing on the application.** The state public defender shall be afforded reasonable notice and opportunity to respond to the motion and participate in any hearing on the application or motion. Either the privately retained attorney for the indigent person or a

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representative from the office of the state public defender may participate in a hearing on the application or motion by telephone.

**13.7(6) *Protection of defense strategy and work product.*** In considering and ruling on the application or motion, the court shall order appropriate procedures to protect against disclosure of defense strategy and defense work product to the prosecution, including but not limited to allowance of information or filings, or portions thereof, to be submitted in camera, ex parte hearings, sealing of any transcript or order to avoid such disclosure, protective orders, or other safeguards to protect defense strategy and work product from disclosure to the prosecution.

**13.7(7) *Order on the application.*** If the court finds the payment of the costs incurred or to be incurred by a privately retained attorney are reasonable and necessary, the order of the court shall specify the maximum amount of costs which the attorney may incur without further court order, and that the actual amount of such costs to be allowed are subject to review by the state public defender for reasonableness.

**13.7(8) *Submission of claim for payment to state public defender.*** Following entry of an order allowing costs to be incurred by a privately retained attorney representing an indigent person, the attorney or the service provider may seek payment or reimbursement for costs. The attorney shall submit a claim in accordance with rules 493—12.7(13B,815) and 493—12.8(13B,815). The service provider shall submit a claim in accordance with 493—Chapter 13.

**13.7(9) *Denial of application for noncompliance.*** If the privately retained attorney or claimant seeking payment or reimbursement for costs pursuant to this rule fails to comply with the requirements of this rule, the state public defender may deny all or a part of the costs requested.

**13.7(10) *Applicability of rule.*** This rule applies to payments to witnesses under Iowa Code section 815.4, evaluators, investigators, and certified shorthand reporters, and to other costs incurred by a privately retained attorney in the legal representation of the indigent person. This rule does not apply to payment of costs on behalf of an indigent person represented on a pro bono basis.

**ARC 4770C**

## **TRANSPORTATION DEPARTMENT[761]**

### **Notice of Intended Action**

#### **Proposing rule making related to towable recreational vehicles, special farm trucks, and certifications of trust and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 400, “Vehicle Registration and Certificate of Title,” and Chapter 425, “Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 307.12.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 321.466 as amended by 2019 Iowa Acts, House File 769, section 4; Iowa Code section 322C.4 as amended by 2019 Iowa Acts, House File 391; Iowa Code chapter 322C as amended by 2019 Iowa Acts, Senate File 435, sections 2 to 8; and Iowa Code section 633A.4604 as amended by 2019 Iowa Acts, Senate File 112.

#### *Purpose and Summary*

The proposed amendments to Chapters 400 and 425 correct the name of the Vehicle and Motor Carrier Services Bureau and conform the rules with 2019 Iowa Acts, House File 391; 2019 Iowa Acts, House File 769, section 4; 2019 Iowa Acts, Senate File 112; and 2019 Iowa Acts, Senate File 435, sections 2 to 8. The specific Iowa Acts referenced amend Iowa Code sections related to certification of trust documents accepted for vehicle transactions, special farm truck weights, towable recreational vehicle dealers and

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

surety bond amounts for towable recreational vehicle dealers. The following paragraphs further explain the amendments.

**Towable recreational vehicles.** This rule making amends rule 761—400.2(321) to provide that for purposes of registration and titling under Chapter 400 and Iowa Code chapter 321, a towable recreational vehicle as defined in Iowa Code section 322C.2 as amended by 2019 Iowa Acts, Senate File 435, section 2, shall be considered a travel trailer or fifth-wheel travel trailer, as those terms are defined in Iowa Code section 321.1, as applicable.

This rule making amends Chapter 425, regarding motor vehicle and travel trailer dealers, to change the reference to a “travel trailer dealer” to instead reference a “towable recreational vehicle dealer” throughout the chapter and to raise the required surety bond amount for a towable recreational vehicle dealer from \$25,000 to \$75,000. These proposed amendments align with 2019 Iowa Acts, Senate File 435, sections 2 to 8, and 2019 Iowa Acts, House File 391.

**Certifications of trust.** This rule making amends subrules 400.4(9) and 400.14(3) relating to vehicle transaction applications by a trust and vehicle ownership by a trust to incorporate provisions related to certification of trust documents under Iowa Code section 633A.4604 as amended by 2019 Iowa Acts, Senate File 112. The legislation provides that a certification of trust must be signed by a currently acting trustee or the attorney of an acting trustee. Prior to the legislation, the certification of trust was required to be signed by all the currently acting trustees. The intent of the legislation is to make it easier for a single trustee to conduct the business of the trust without requiring the signature of all trustees, and that is also the goal of these amendments in implementing the signature requirements when a vehicle is owned by a trust.

**Special farm truck weights.** This rule making amends rule 761—400.47(321) relating to special farm truck weights to incorporate the requirements in Iowa Code section 321.466(4) as amended by 2019 Iowa Acts, House File 769, section 4, providing that the gross weight of a special farm truck operating on a public highway shall not exceed the maximum gross weight allowed under Iowa Code section 321.463(6).

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy Bureau  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

TRANSPORTATION DEPARTMENT[761](cont'd)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

December 12, 2019  
9 a.m.

Department of Transportation  
Motor Vehicle Division  
6310 SE Convenience Boulevard  
Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **761—400.1(321)**, definition of "Manufacturer's certificate of origin," as follows:

*"Manufacturer's certificate of origin"* means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named and that the transfer is the first transfer of the vehicle in ordinary trade and commerce.

1. The terms "manufacturer's statement," "importer's statement or certificate," "MSO" and "MCO" shall be synonymous with the term "manufacturer's certificate of origin."

2. In addition to the requirements of Iowa Code subsection 321.45(1), the certificate shall contain a description of the vehicle which includes the make, model, style and vehicle identification number. The description of a motorized bicycle shall also specify the maximum speed.

3. For 1992 and subsequent model year vehicles, the form used for manufacturers' certificates of origin shall be the universal form adopted in 1990 by the American Association of Motor Vehicle Administrators (AAMVA). This requirement does not apply to trailer-type vehicles. A copy of this universal form may be obtained from the ~~office of~~ vehicle and motor carrier services bureau at the address in subrule 400.6(1).

ITEM 2. Amend rule 761—400.2(321) as follows:

**761—400.2(321) Vehicle registration and certificate of title—general provisions.**

**400.2(1) to 400.2(8)** No change.

**400.2(9) Towable recreational vehicles.** For purposes of registration and titling under Iowa Code chapter 321 and this chapter, a towable recreational vehicle as defined in Iowa Code section 322C.2 shall be considered a travel trailer or fifth-wheel travel trailer, as those terms are defined in Iowa Code section 321.1, as applicable.

This rule is intended to implement Iowa Code sections 321.18 to 321.22, 321.24, ~~and~~ 321.123 and 322C.2(19).

ITEM 3. Amend subrule 400.4(9) as follows:

**400.4(9) Applications in the name of trusts.** An application in the name of a trust shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification

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

of trust as defined in Iowa Code section 633A.4604. The application shall be signed by each trustee unless otherwise specified in the trust agreement ~~or the certification of trust~~. If the applicant presents a certification of trust as defined in Iowa Code section 633A.4604 signed by one currently acting trustee or the attorney of a currently acting trustee, only that currently acting trustee is required to sign the application. However, nothing in this subrule shall prohibit all trustees from jointly signing an application. The Each signature shall be followed by the words “as trustee.” “as trustee” and shall otherwise meet the requirements under Iowa Code section 633A.4604.

ITEM 4. Amend rule 761—400.5(321) as follows:

**761—400.5(321) Where to apply for registration or certificate of title.**

**400.5(1)** No change.

**400.5(2)** Application shall be made to the department’s ~~office of~~ vehicle and motor carrier services bureau for the following:

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

**400.5(3)** Application for a certificate of title for a vehicle subject to apportioned registration under Iowa Code chapter 326 may be made to either the county treasurer or to the department’s ~~office of~~ vehicle and motor carrier services bureau.

**400.5(4)** Application for apportioned registration shall be made to the department’s ~~office of~~ vehicle and motor carrier services bureau. See 761—Chapter 500.

This rule is intended to implement Iowa Code sections 321.18 to 321.23, 321.46(2), and 321.170.

ITEM 5. Amend subrule 400.6(1) as follows:

**400.6(1)** Information and forms for vehicle registration, certificate of title, or other procedures covered under Iowa Code sections 321.18 to 321.173 may be obtained from the county treasurer or by mail from the ~~Office of~~ Vehicle and Motor Carrier Services Bureau, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at Iowa Department of Transportation, 6310 SE Convenience Blvd., Ankeny, Iowa 50021; by telephone at (515)237-3264; or on the department’s website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 6. Amend paragraph **400.13(1)“a”** as follows:

*a.* The applicant shall submit a bond application to the ~~office of~~ vehicle and motor carrier services bureau on a form prescribed by the department. The application shall be accompanied by evidence of ownership of the vehicle.

ITEM 7. Amend subrule 400.14(3) as follows:

**400.14(3) Organizational ownership.**

*a.* No change.

*b.* When a vehicle is owned by a trust, the title shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification of trust as defined in Iowa Code section 633A.4604. The signature of each trustee is required, unless otherwise specified in the trust agreement or the certification of trust as defined in Iowa Code section 633A.4604. The signature shall be followed by the words “as trustee.” In addition, the title shall be accompanied by a copy of all documents creating or otherwise affecting the trust or the certification of trust. If the certification of trust as defined in Iowa Code section 633A.4604 is signed by one currently acting trustee or the attorney of a currently acting trustee, only the signature of that currently acting trustee is required. However, nothing in this rule shall prohibit all trustees from jointly signing any required titling and registration documentation. Each signature shall be followed by the words “as trustee” and shall otherwise meet the requirements under Iowa Code section 633A.4604.

ITEM 8. Amend rule 761—400.47(321) as follows:

**761—400.47(321) Raw farm products.** A vehicle may be operated with a gross weight of 25 percent in excess of the gross weight for which it is registered when transporting a load of raw farm products or soil fertilizers under Iowa Code section 321.466 except that nothing in this rule shall be construed to

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

allow operation of a special truck on the public highways with a gross weight exceeding the maximum gross weight allowed under Iowa Code section 321.463(6). In addition, the following products shall be considered raw farm products. This list shall not be deemed conclusive and shall not exclude other commodities which might be considered raw farm products:

Animals which are dead	Hides
Berries, fresh	Honey, comb or extracted
Blood	Melons
Corn, ear corn including hybrids	Milk, raw
Corn, shelled	Nursery stock
Corn, cobs	Potatoes
Cream, separated	Peat
Eggs, fresh or frozen in shell	Poultry, live
Flax	Saw logs
Flaxseed	Sod
Fodder	Soybeans
Fruit, fresh	Straw, baled or loose
Grain, threshed or unthreshed	Vegetables, fresh
Hair	Wood, cord or stove wood
Hay, baled or loose	Wool

This rule is intended to implement Iowa Code sections 321.466(4) and 321.466(5).

ITEM 9. Amend rule 761—400.50(321,326) as follows:

**761—400.50(321,326) Refund of registration fees.**

**400.50(1) Vehicles registered by county treasurer.**

a. to d. No change.

e. If the claim for refund is for excess credit or no replacement vehicle:

(1) No change.

(2) The claim for refund shall be approved or denied by the ~~office of~~ vehicle and motor carrier services bureau.

f. All other claims for refund shall be forwarded to the ~~office of~~ vehicle and motor carrier services bureau for processing.

**400.50(2) Vehicles registered by department.** Forms and instructions for claiming a refund on apportioned registration fees under Iowa Code section 326.15 may be obtained from the ~~office of~~ vehicle and motor carrier services bureau at the address in subrule 400.6(1). The claim for refund shall be filed at the same address.

This rule is intended to implement Iowa Code sections 25.1, 321.126 to 321.128 and 326.15.

ITEM 10. Amend rule 761—400.56(321) as follows:

**761—400.56(321) Hearings.** The department shall send notice by certified mail to a person whose certificate of title, vehicle registration, license, or permit is to be revoked, suspended, canceled, or denied. The notice shall be mailed to the person's mailing address as shown on departmental records and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the ~~office of~~ vehicle and motor carrier services bureau at the address in subrule 400.6(1). The request for a contested case shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation, or denial.

This rule is intended to implement Iowa Code sections 17A.10 to 17A.19, 321.101 and 321.102.

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

ITEM 11. Amend paragraph **400.60(3)“b”** as follows:

b. Pursuant to Iowa Code sections 321.126 and 321.127, the owner or lessee of a motor vehicle may claim credit for the apportioned registration fees due when changing the vehicle's registration from registration by the county treasurer to apportioned registration. Application for apportioned registration shall be submitted to the department's ~~office of~~ vehicle and motor carrier services bureau; see 761—Chapter 500.

ITEM 12. Amend **761—Chapter 425**, title, as follows:  
**MOTOR VEHICLE AND ~~TRAVEL TRAILER~~ TOWABLE RECREATIONAL VEHICLE DEALERS,  
MANUFACTURERS, DISTRIBUTORS AND WHOLESALERS**

ITEM 13. Amend rule 761—425.1(322) as follows:

**761—425.1(322) Introduction.**

**425.1(1)** This chapter applies to the licensing of motor vehicle and ~~travel trailer~~ towable recreational vehicle dealers, manufacturers, distributors and wholesalers. Also included in this chapter are the criteria for the issuance and use of dealer plates.

**425.1(2)** The ~~office of~~ vehicle and motor carrier services bureau administers this chapter. The mailing address is: ~~Office of~~ Vehicle and Motor Carrier Services Bureau, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

a. Applications required by the chapter shall be submitted to the ~~office of~~ vehicle and motor carrier services bureau.

b. Information about dealer plates and the licensing of motor vehicles and ~~travel trailer~~ towable recreational vehicle dealers, manufacturers, distributors and wholesalers is available from the ~~office of~~ vehicle and motor carrier services bureau or on the department's website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 14. Amend rule 761—425.3(322) as follows:

**761—425.3(322) Definitions.** The following definitions, in addition to those found in Iowa Code sections 322.2 and 322C.2, apply to this chapter of rules:

*“Certificate of title”* means a document issued by the appropriate official which contains a statement of the owner's title, the name and address of the owner, a description of the vehicle, a statement of all security interests, and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms “title certificate,” “title only” and “title” shall be synonymous with the term “certificate of title.”

*“Consumer use”* means use of a motor vehicle or ~~travel trailer~~ towable recreational vehicle for business or pleasure, not for sale at retail, by a person who has obtained a certificate of title and has registered the vehicle under Iowa Code chapter 321.

*“Dealer,”* unless otherwise specified, means a person who is licensed to engage in this state in the business of selling motor vehicles or ~~travel trailers~~ towable recreational vehicles at retail under Iowa Code chapter 322 or 322C.

*“Engage in this state in the business”* or similar wording means doing any of the following acts for the purpose of selling motor vehicles or ~~travel trailers~~ towable recreational vehicles at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, advertise as being engaged in any of those acts, or to act as an agent for the purpose of doing any of those acts. A person selling at retail more than six motor vehicles or six ~~travel trailers~~ towable recreational vehicles during a 12-month period may be presumed to be engaged in the business. See rule 761—425.20(322) for provisions regarding fleet sales and retail auction sales.

*“Manufacturer's certificate of origin”* means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named, and that the transfer is the first transfer of the vehicle in ordinary trade and commerce. The terms “manufacturer's statement,” “importer's statement or certificate,” “MSO” and “MCO” shall be synonymous with the term “manufacturer's certificate of origin.” See rule 761—400.1(321) for more information.

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

“*Principal place of business*” means a building actually occupied where the public and the department may contact the owner or operator during regular business hours. In lieu of a building, a ~~travel-trailer~~ towable recreational vehicle dealer may use a manufactured or mobile home as an office if taxes are current or a ~~travel-trailer~~ towable recreational vehicle as an office if registration fees are current. The principal place of business must be located in this state.

“*Registered dealer*” means a dealer licensed under Iowa Code chapter 322 or 322C who possesses a current dealer certificate under Iowa Code section 321.59.

“*Regular business hours*” means to be consistently open to the public on a weekly basis at hours reported to the ~~office of~~ vehicle and motor carrier services bureau. Except as provided in Iowa Code section 322.36, regular business hours for a motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer shall include a minimum of 32 posted hours between 7 a.m. and 9 p.m., Monday through Friday.

“*Salesperson*” means a person employed by a motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer for the purpose of buying or selling vehicles.

“*Vehicle,*” unless otherwise specified, means a motor vehicle or ~~travel-trailer~~ towable recreational vehicle.

“*Wholesaler*” means a person who sells new vehicles to dealers and not at retail.

This rule is intended to implement Iowa Code chapters 322 and 322C.

ITEM 15. Amend rule 761—425.10(322) as follows:

**761—425.10(322) Application for dealer’s license.**

**425.10(1) Application form.** To apply for a license as a motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer, the applicant shall complete an application on a form prescribed by the department.

**425.10(2) Surety bond.**

a. The applicant shall obtain a surety bond in the following amounts and file the original with the ~~office of~~ vehicle and motor carrier services bureau:

(1) For a motor vehicle dealer’s license, \$75,000. However, an applicant for a motor vehicle dealer’s license is not required to file a bond if the person is licensed as a towable recreational vehicle dealer under the same name and at the same principal place of business.

(2) For a ~~travel-trailer~~ towable recreational vehicle dealer’s license, ~~\$25,000~~ \$75,000. However, an applicant for a ~~travel-trailer~~ towable recreational vehicle dealer’s license is not required to file a bond if the person is licensed as a motor vehicle dealer under the same name and at the same principal place of business.

b. The surety bond shall provide for notice to the ~~office of~~ vehicle and motor carrier services bureau at least 30 days before cancellation.

c. The ~~office of~~ vehicle and motor carrier services bureau shall notify the bonding company of any conviction of the dealer for a violation of laws related to the operations of the dealership.

d. If the bond is canceled, the ~~office of~~ vehicle and motor carrier services bureau shall notify the dealer by first-class mail that the dealer’s license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

e. If an applicant whose dealer’s license was revoked pursuant to paragraph 425.10(2) “d” establishes that the applicant obtained a reinstated or new bond meeting the requirements of this subrule 425.10(2) that was effective on or before the date of cancellation, but due to mistake or inadvertence failed to file the original bond with the ~~office of~~ vehicle and motor carrier services bureau, the applicant may file the original of the reinstated or new bond. Upon filing, the department will rescind the revocation of the dealer’s license.

**425.10(3) Franchise.**

a. An applicant who intends to sell new motor vehicles or ~~travel-trailers~~ towable recreational vehicles shall submit to the ~~office of~~ vehicle and motor carrier services bureau a copy of a signed franchise agreement with the manufacturer or distributor of each make the applicant intends to sell.

b. If a signed franchise agreement is not available at the time of application, the department may accept written evidence of a franchise which includes all of the following:



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

(1) No change.  
 (2) The make of motor vehicle or ~~travel trailer~~ towable recreational vehicle that the applicant is authorized to sell.

(3) and (4) No change.

c. No change.

**425.10(4)** and **425.10(5)** No change.

**425.10(6) Zoning.** The applicant shall provide to the ~~office of~~ vehicle and motor carrier services bureau written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

**425.10(7) Separate licenses required.**

a. No change.

b. A separate license is required for each county in which an applicant for a ~~travel trailer~~ towable recreational vehicle dealer's license maintains a place of business.

**425.10(8)** to **425.10(11)** No change.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

ITEM 16. Amend subrule 425.13(3) as follows:

**425.13(3) Notification to the department.** A motor vehicle dealer shall notify the ~~office of~~ vehicle and motor carrier services bureau in writing no fewer than ten days before moving the dealer's business records to another licensed location.

ITEM 17. Amend rule 761—425.14(322) as follows:

**761—425.14(322) ~~Travel trailer~~ Towable recreational vehicle dealer's place of business.**

**425.14(1) Telephone service and office area.** A ~~travel trailer~~ towable recreational vehicle dealer's principal place of business shall include telephone service and an adequate office area, separate from other facilities, for keeping business records, manufacturers' certificates of origin, certificates of title or other evidence of ownership for all ~~travel trailers~~ towable recreational vehicles offered for sale. Telephone service must be a land line and not cellular phone service. Evidence of ownership may include a copy of an original document if the original document is held by a lienholder.

**425.14(2) Facility for displaying ~~travel trailers~~ towable recreational vehicles.** A ~~travel trailer~~ towable recreational vehicle dealer's principal place of business shall include a space of sufficient size to permit the display of one or more ~~travel trailers~~ towable recreational vehicles. The display facility may be an indoor area or an outdoor area with an all-weather surface. An all-weather surface does not include grass or exposed soil. If an outdoor display facility is maintained, it may be used only to display, recondition or repair ~~travel trailers~~ towable recreational vehicles or to park vehicles.

**425.14(3) Facility for repairing and reconditioning ~~travel trailers~~ towable recreational vehicles.** A ~~travel trailer~~ towable recreational vehicle dealer's principal place of business shall include a facility for reconditioning and repairing ~~travel trailers~~ towable recreational vehicles. The facility:

a. Shall be equipped and of sufficient size to repair and recondition one or more ~~travel trailers~~ towable recreational vehicles of a type sold by the dealer.

b. to d. No change.

**425.14(4) ~~Travel trailer~~ Towable recreational vehicle dealer also licensed as a motor vehicle dealer.** If a ~~travel trailer~~ towable recreational vehicle dealer is also licensed as a motor vehicle dealer under the same name and at the same principal place of business, separate facilities for displaying, repairing and reconditioning ~~travel trailers~~ towable recreational vehicles are not required.

This rule is intended to implement Iowa Code sections 322C.1 to 322C.6.

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ITEM 18. Amend rule 761—425.17(322) as follows:

**761—425.17(322) Extension lot license.** Extension lots of motor vehicle and ~~travel-trailer~~ towable recreational vehicle dealers must be licensed. Application to license an extension lot shall be made on a form prescribed by the department.

**425.17(1)** No change.

**425.17(2)** For a ~~travel-trailer~~ towable recreational vehicle dealer, an extension lot is a ~~travel-trailer~~ towable recreational vehicle lot for the sale of ~~travel-trailers~~ towable recreational vehicles that is located within the same county as, but is not adjacent to, the ~~travel-trailer~~ towable recreational vehicle dealer's principal place of business.

**425.17(3)** and **425.17(4)** No change.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

ITEM 19. Amend rule 761—425.18(322) as follows:

**761—425.18(322) Supplemental statement of changes.** A motor vehicle dealer shall file a written statement with the ~~office of~~ vehicle and motor carrier services bureau at least ten days before any change of name, location, hours, or method or plan of doing business. A license is not valid until the changes listed in the statement have been approved by the ~~office of~~ vehicle and motor carrier services bureau.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

ITEM 20. Amend rule 761—425.24(322) as follows:

**761—425.24(322) Miscellaneous requirements.**

**425.24(1)** No change.

**425.24(2)** A motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer shall not represent or advertise the dealership under any name or style other than the name which appears on the dealer's license.

**425.24(3)** No change.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

ITEM 21. Amend rule 761—425.26(322) as follows:

**761—425.26(322) State fair, fairs, shows and exhibitions.**

**425.26(1) Definitions.** As used in this rule:

“Community” means an area of responsibility as defined in Iowa Code section 322A.1.

“Display” means having new motor vehicles or new ~~travel-trailers~~ towable recreational vehicles available for public viewing at fairs, vehicle shows or vehicle exhibitions. The dealer may also post, display or provide product information through literature or other descriptive media. However, the product information shall not include prices, except for the manufacturer's sticker price. “Display” does not mean offering new vehicles for sale or negotiating sales of new vehicles.

“Fair” means a county fair or a scheduled gathering for a predetermined period of time at a specific location for the exhibition, display or sale of various wares, products, equipment, produce or livestock, but not solely new vehicles, and sponsored by a person other than a single dealer.

“Offer” new vehicles “for sale,” “negotiate sales” of new vehicles, or similar wording, means doing any of the following at the state fair or a fair, vehicle show or vehicle exhibition: posting prices in addition to the manufacturer's sticker price, discussing prices or trade-ins, arranging for payments or financing, and initiating contracts.

“State fair” means the fair as discussed in Iowa Code chapter 173.

“Vehicle exhibition” means a scheduled event conducted at a specific location where various types, makes or models of new vehicles are displayed either at the same time or consecutively in time, and sponsored by a person other than a single dealer.

“Vehicle show” means a scheduled event conducted for a predetermined period of time at a specific location for the purpose of displaying at the same time various types, makes or models of new vehicles,

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

which may be in conjunction with other events or displays, and sponsored by a person other than a single dealer.

**425.26(2)** and **425.26(3)** No change.

**425.26(4)** *Permits for dealers of new ~~travel-trailers~~ towable recreational vehicles.* A fair, vehicle show or vehicle exhibition permit allows a ~~travel-trailer~~ towable recreational vehicle dealer to display and offer new ~~travel-trailers~~ towable recreational vehicles for sale and negotiate sales of new ~~travel-trailers~~ towable recreational vehicles at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

a. No change.

b. The permit is limited to the line makes for which the ~~travel-trailer~~ towable recreational vehicle dealer is licensed in Iowa.

c. A ~~travel-trailer~~ towable recreational vehicle dealer who does not have a permit may display vehicles at fairs, vehicle shows and vehicle exhibitions.

**425.26(5)** *Permit application.* A motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer shall apply for a permit on an application form prescribed by the department. The application shall include the dealer's name, address and license number and the following information about the event: name, location, sponsor(s) and duration, including the opening and closing dates.

**425.26(6)** *Display of permit.* The motor vehicle or ~~travel-trailer~~ towable recreational vehicle dealer shall display the permit in close proximity to the vehicles being exhibited.

This rule is intended to implement Iowa Code sections 322.5(2) and 322C.3(9).

ITEM 22. Amend subrule 425.40(1) as follows:

**425.40(1)** Every motor vehicle and ~~travel-trailer~~ towable recreational vehicle dealer shall:

a. and b. No change.

ITEM 23. Amend rule 761—425.50(322) as follows:

**761—425.50(322) Manufacturers, distributors, and wholesalers.** This rule applies to the licensing of manufacturers, distributors, and wholesalers of new motor vehicles and ~~travel-trailers~~ towable recreational vehicles.

**425.50(1)** No change.

**425.50(2)** *Licensing requirements.*

a. and b. No change.

c. A licensee shall notify the ~~office of~~ vehicle and motor carrier services bureau in writing at least ten days prior to any:

(1) and (2) No change.

(3) Change in the trade name of a ~~travel-trailer~~ towable recreational vehicle manufactured for delivery in this state.

d. A licensee shall notify the ~~office of~~ vehicle and motor carrier services bureau in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

This rule is intended to implement Iowa Code sections 322.27 to 322.30 and 322C.7 to 322C.9.

ITEM 24. Amend subrule 425.62(4) as follows:

**425.62(4)** The department shall send notice by certified mail to a person whose certificate, license or permit is to be revoked, suspended, canceled or denied. The notice shall be mailed to the person's mailing address as shown on departmental records or, if the person is currently licensed, to the principal place of business, and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the ~~office of~~ vehicle and motor carrier services bureau at the address in subrule 425.1(2). The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation or denial.

ITEM 25. Amend subrule 425.70(2) as follows:

**425.70(2)** *Persons who may be issued dealer plates.* Dealer plates as provided in Iowa Code sections 321.57 to 321.63 may be issued to:

TRANSPORTATION DEPARTMENT[761](cont'd)

- a. No change.
- b. Licensed ~~travel trailer~~ towable recreational vehicle dealers.
- c. A person engaged in the business of buying, selling or exchanging trailer-type vehicles subject to registration under Iowa Code chapter 321, other than ~~travel trailers~~ towable recreational vehicles, and who has an established place of business for such purpose in this state.
- d. to h. No change.

**ARC 4771C**

## **TRANSPORTATION DEPARTMENT[761]**

### **Notice of Intended Action**

#### **Proposing rule making related to driver education and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 634, “Driver Education,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.178.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 307.12 and 321.178 as amended by 2019 Iowa Acts, Senate File 319, and Iowa Code section 321.178A.

#### *Purpose and Summary*

This proposed rule making amends Chapter 634 to incorporate amendments that align with existing legal authority and Department practice, eliminate outdated or irrelevant requirements or options, and promote consistency by organizing the requirements for behind-the-wheel driver education instructors according to whether the instructor is a licensed teacher, a licensed teacher with an expired teaching license, a peace officer or a retired peace officer, or is not a licensed teacher.

The most significant proposed amendments modernize the certification process for a behind-the-wheel driver education instructor under the authority of the Department in Iowa Code section 321.178. A person providing parent-taught driver education under the authority in Iowa Code section 321.178A is not considered a behind-the-wheel driver education instructor and is therefore not subject to the same certification requirements that make up the majority of this rule making. A behind-the-wheel driver education instructor is certified by the Department and authorized by the Iowa Board of Educational Examiners to provide the “street or highway driving” portion of a driver education program and can be a licensed teacher or a person who is not a licensed teacher. This is different than a classroom driver education instructor, who can only be a licensed teacher and is regulated exclusively by the Iowa Board of Educational Examiners.

**Certified behind-the-wheel driver education instructor requirements.** There are approximately 700 behind-the-wheel driver education instructors in Iowa certified by the Department and authorized by the Iowa Board of Educational Examiners. The current rules lack specificity regarding the difference in the requirements a person must meet to provide behind-the-wheel instruction depending on if the person is a licensed teacher, a peace officer or retired peace officer, or is not a licensed teacher. Therefore, the goals of this rule making are to spell out the differences where necessary and to apply the same requirements consistently amongst behind-the-wheel instructors while comprehensively modernizing the behind-the-wheel certification process. Improvements include offering instructor refresher course options that are more tailored to the specific audience’s existing skill set and professional experience, and that provide value and are more convenient, including electronic training options. The proposed amendments also reduce burdens by making the instructor refresher course biennial (rather than annual)

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

and offering a new way for an instructor with an expired behind-the-wheel certification to regain certified status without having to retake the entire instructor preparation course.

The new requirement to complete the instructor refresher course biennially begins January 1, 2021, and will apply to all certified behind-the-wheel instructors. The Department currently offers a robust and well-received annual behind-the-wheel instructor refresher course in person and is actively working on developing additional course opportunities, including via webinar or an online training module. Currently, a licensed teacher is not required to participate in any behind-the-wheel refresher course if the teacher has maintained a valid teacher's license, whereas a behind-the-wheel instructor who is not a licensed teacher has always been required to attend the refresher course annually. The instructor refresher course provides an excellent opportunity to review trends and improvements in the area of driver education that are specific to behind-the-wheel instruction, as well as identify updates to the laws governing traffic safety and driver education, and therefore is considered a necessary component of the behind-the-wheel certification process to yield consistency in driver education. However, in recognizing that certain categories of behind-the-wheel instructors are required to maintain a specific skill set as part of their profession, for example, a licensed teacher or a peace officer, the Department plans to develop refresher course content that is specifically tailored, rather than subjecting a licensed teacher or peace officer to course content that does not take into account their existing skill sets and specific needs when it comes to behind-the-wheel driver education instruction.

The proposed amendments incorporate the changes made in 2019 Iowa Acts, Senate File 319, which amends Iowa Code section 321.178 to exempt peace officers and retired peace officers from the requirement to be authorized by the Iowa Board of Educational Examiners to provide behind-the-wheel driver education instruction. A peace officer or retired peace officer must still meet other requirements under the rules to be certified by the Department to provide behind-the-wheel driver education, except a peace officer or retired peace officer will not be required to complete the initial behind-the-wheel instructor classroom and behind-the-wheel driving preparation course under subparagraph 634.6(6)“a”(3).

The proposed amendments also align the Department's reasons for disqualification of a behind-the-wheel instructor with the reasons for which the Iowa Board of Educational Examiners may deny an application for licensure, certification or authorization under rule 282—11.35(272). By aligning the Department's disqualification reasons with the Board's requirements, there will be less chance for inconsistency and unequal treatment for persons providing behind-the-wheel driver education instruction.

**Parent-taught driver education.** A parent providing parent-taught driver education under Iowa Code section 321.178A is not subject to the behind-the-wheel certification requirements as an instructor who teaches at a school-offered or commercial driver education program, so the majority of this rule making does not apply to parent-taught driver education. However, the Department did identify an improvement to the rules governing parent-taught driver education that will provide a teaching parent and the student greater flexibility. The proposed amendments remove the requirement for a student and parent to restart the course if the student and parent start an approved course before they receive Departmental approval to begin the course. Making this change will help avoid situations where a student is required to retake an approved course that the student had already started or completed simply because the student began too soon, and instead allows the focus to remain on whether the course is approved and appropriate and the remaining requirements are properly met.

*Fiscal Impact*

The proposed amendments alter the application and certification process for behind-the-wheel driver education instructors but do not impose any fees and, therefore, do not have a fiscal impact.

*Jobs Impact*

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

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*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Tracy George  
 Department of Transportation  
 DOT Rules Administrator, Strategic Communications and Policy Bureau  
 800 Lincoln Way  
 Ames, Iowa 50010  
 Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

December 12, 2019  
 10 a.m.

Department of Transportation  
 Motor Vehicle Division  
 6310 SE Convenience Boulevard  
 Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—634.1(321) as follows:

**761—634.1(321) Information and location.** Applications, forms and information regarding this chapter are available by mail from the ~~Office of Driver and Identification Services Bureau~~ Services Bureau, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at ~~(515)237-3153~~ (515)244-8725; ~~or~~ by facsimile at ~~(515)237-3074~~ (515)239-1837; or on the department's website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 2. Amend rule 761—634.2(321) as follows:

**761—634.2(321) ~~Definition~~ Definitions.**

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

“Behind-the-wheel instruction” means the street or highway driving instruction component of an approved driver education course.

“Instructor,” for purposes of this chapter, means a person certified to provide behind-the-wheel instruction.

“Laboratory instruction” includes instruction received by a student while the student is in the driver education vehicle or adjacent to it as referred to in paragraphs 634.4(2)“c” and 634.4(2)“d” and may also include range or simulation as referred to in paragraphs 634.4(2)“h” and 634.4(2)“i.”

“Serious injury” means the same as defined in Iowa Code section 702.18.

“Teacher” means the same as defined in Iowa Code section 272.1.

ITEM 3. Amend subrule 634.4(1) as follows:

**634.4(1) Course approval.** Any school district, area education agency, merged area school, other agency or individual person planning to offer a driver education course must receive course approval, which includes approval of all teachers and instructors listed on the application, from the department prior to the beginning of the first class that is offered and annually thereafter. The agency or institution or individual person shall complete a form provided by the department to apply for course approval in a manner determined by the department. Course approval will be issued for a calendar year or remainder of a calendar year. The approval expires on December 31 and must be renewed annually. The approval is valid for one calendar year or a remaining calendar year and expires on December 31. The application for course renewal shall be submitted to the department within 60 days of the expiration date, unless otherwise approved by the department.

ITEM 4. Amend subrule 634.4(2) as follows:

**634.4(2) Course requirements.** Driver education courses provided by approved programs must comply with the following:

a. No change.

b. Each student shall be scheduled to receive classroom and or laboratory instruction each week of the course but in no case shall laboratory instruction conclude later than 30 days after classroom instruction is completed.

c. to j. No change.

k. The driver education teacher or instructor shall verify at the beginning of each course that each student possesses a valid instruction permit or driver’s license. Each student shall be responsible for possessing an instruction permit or driver’s license throughout all laboratory instruction and report any suspension, revocation or cancellation of the instruction permit or driver’s license to the driver education teacher or instructor prior to attending laboratory instruction.

ITEM 5. Amend rule 761—634.6(321) as follows:

**761—634.6(321) Teacher Instructor qualifications, application and certification.**

**634.6(1) Behind-the-wheel instructor qualifications.** ~~To qualify to be a driver education teacher, the teacher provide behind-the-wheel instruction, the person must:~~

~~**634.6(1) a.** Hold a valid driver’s license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.~~

~~**634.6(2) b.** Have a clear driving record for the previous two years. A clear driving record means the individual person has:~~

~~a. (1) Not been identified as a candidate for driver’s license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).~~

~~b. (2) No driver’s license suspensions, revocations, denials, cancellations, disqualifications or bars.~~

~~c. (3) Not committed an offense that would result in driver’s license suspension, revocation, denial, cancellation, disqualification or bar.~~

~~d. (4) No record of an accident for which the individual was convicted of a moving traffic violation a contributive motor vehicle accident that caused the death or serious injury of another person.~~

~~(5) No record of two or more contributive motor vehicle accidents in a two-year period.~~

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

c. Meet the requirements for either a licensed teacher in 282—subrule 13.28(4) or a certified behind-the-wheel instructor in this chapter.

**634.6(2) *Behind-the-wheel instructor's certification requirements.*** Except as otherwise provided in this chapter, the following requirements shall apply to a behind-the-wheel instructor:

a. An applicant for an initial behind-the-wheel instructor's certification or a renewal shall apply to the department in a manner determined by the department.

(1) If the application is for an initial behind-the-wheel instructor's certification, instructor approval is valid for a calendar year or the remainder of a calendar year. The instructor approval expires on December 31 but remains valid for an additional 30 days after the expiration date.

(2) If the application is to renew a behind-the-wheel instructor's certification, a person shall do all of the following:

1. Apply to the department annually. Instructor approval is valid for a calendar year or the remainder of a calendar year. The instructor approval expires on December 31 but remains valid for an additional 30 days after the expiration date. An application for renewal of instructor approval shall be submitted within 60 days of the expiration date, unless otherwise approved by the department.

2. Provide behind-the-wheel instruction for a minimum of 12 clock hours during each calendar year.

b. Beginning January 1, 2021, a person shall complete at least one state-sponsored or state-approved behind-the-wheel instructor refresher course biennially. The state-sponsored or state-approved course may include electronic completion or remote attendance options, as approved by the department. The department may develop a special course for licensed teachers or peace officers who qualify to provide behind-the-wheel instruction under subrule 634.6(3) or 634.6(5), which shall be reserved only for licensed teachers or peace officers who qualify as behind-the-wheel instructors.

c. Upon certification, but prior to providing behind-the-wheel instruction, the person shall be:

(1) Authorized by the Iowa board of educational examiners to provide behind-the-wheel driving instruction.

(2) Employed by a public or licensed commercial or private provider of the approved driver education course.

**634.6(3) *Instructor's certification for licensed teachers.*** A teacher licensed by the Iowa board of educational examiners as provided in 282—subrule 13.28(4) shall be included as an approved instructor on an annual driver education course approval as referenced in subrules 634.4(1) and 634.8(1), and except for the requirements in paragraphs 634.6(2) "a" and 634.6(2) "c," a teacher shall meet the requirements in subrule 634.6(2) to be certified by the department to provide behind-the-wheel instruction.

**634.6(4) *Instructor application and certification for a teacher with an expired teacher's license.*** A teacher who holds an expired initial, standard, exchange, or master educator license with an endorsement for driver education as provided in 282—subrule 13.28(4) shall meet the requirements in subrule 634.6(2) to be certified by the department to provide behind-the-wheel instruction.

**634.6(5) *Instructor application and certification for active peace officers and retired peace officers.***

a. A person who is an active peace officer or a retired peace officer as referenced in Iowa Code section 321.178 shall do all of the following to be certified by the department to provide behind-the-wheel instruction:

(1) Be at least 25 years of age.

(2) Submit Form 431233 certifying the person's status as an active or retired peace officer.

(3) Meet all other requirements of subrule 634.6(2), except peace officers or retired peace officers who otherwise qualify under this subrule are not required to meet the requirement of subparagraph 634.6(2) "c"(1).

b. A retired peace officer is only required to submit Form 431233, required under paragraph 634.6(5) "a," to the department once unless the form is otherwise invalid or not accepted by the department.

**634.6(6) *Instructor application and certification for persons other than licensed teachers, peace officers or retired peace officers.***



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

a. A person who is not licensed by the Iowa board of educational examiners to provide classroom driver education as provided in 282—subrule 13.28(4), who does not hold an expired teacher’s license as referenced in subrule 634.6(4), or who is not a peace officer or a retired peace officer as referenced in Iowa Code section 321.178, shall do all of the following to be certified by the department to provide behind-the-wheel instruction:

(1) Be at least 25 years of age.

(2) Meet the requirements in subrule 634.6(2), except that a person certified under this subrule shall complete the instructor refresher course referenced in paragraph 634.6(2) “b” annually until January 1, 2021, and thereafter shall complete the course biennially.

(3) Have successfully completed the instructor preparation requirements of this subrule, as evidenced by written attestations on a form provided by the department from both the classroom instructor and behind-the-wheel observer. The person seeking a behind-the-wheel certification must apply to the department within 12 months of completion of the instructor preparation course. The department-approved instructor preparation course shall:

1. Consist of 24 clock hours of classroom instruction and 12 clock hours of observed behind-the-wheel instruction.

2. Include, at a minimum, classroom instruction on topics including the psychology of the young driver, behind-the-wheel teaching techniques, and driving route selection. Classroom instruction shall be delivered by staff from a driver education teacher preparation program that is approved by the Iowa board of educational examiners. The duration of a classroom instruction section shall not exceed four hours. Video-conferencing may be used for course delivery.

3. Include observation of behind-the-wheel instruction provided by a person licensed to teach driver education who is specially trained by a driver education teacher preparation program that is approved by the Iowa board of educational examiners and that is designed to observe, coach, and evaluate behind-the-wheel instructor candidates. The duration of a behind-the-wheel session shall not exceed four hours. A dual-controlled motor vehicle must be used.

b. Reserved.

**634.6(7) Behind-the-wheel certification—reissuance.**

a. A person whose behind-the-wheel certification has expired and is past the renewal period may be reissued a behind-the-wheel certification without having to retake the behind-the-wheel instructor preparation course only if the person meets all of the following criteria:

(1) The person held a valid behind-the-wheel certification within the two years immediately preceding the application.

(2) The person provided a minimum of 12 clock hours of behind-the-wheel instruction within the two years immediately preceding the application.

(3) The person completed at least one state-sponsored or state-approved behind-the-wheel instructor refresher course within the two calendar years immediately preceding the application unless otherwise exempt under this chapter.

(4) The person completed a minimum of 12 clock hours shadowing a teacher licensed by the Iowa board of educational examiners as provided in 282—subrule 13.28(4) through a department-approved driver education program within 90 days immediately preceding the application.

b. Upon certification, but prior to providing behind-the-wheel instruction, the person shall do all of the following:

(1) Be authorized by the Iowa board of educational examiners to provide behind-the-wheel driving instruction unless otherwise exempt under this chapter.

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

(2) Be employed by a public or licensed commercial or private provider of the approved driver education course and work under the supervision of a person licensed by the Iowa board of educational examiners as provided in 282—subrule 13.28(4).

ITEM 6. Amend rule 761—634.7(321) as follows:

**761—634.7(321) Behind-the-wheel instructor's certification Instructor disqualification, investigation and cancellation.** The following applies to departmental certification of a person who is qualified to provide the street or highway driving component of an approved driver education course.

**634.7(1) Qualifications.** To qualify for the behind-the-wheel driving instructor certification, the applicant must:

- a. Be at least 25 years of age.
- b. Hold a valid driver's license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.
- c. Have a clear driving record for the previous two years. A clear driving record means the individual has:
  - (1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).
  - (2) No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.
  - (3) Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.
  - (4) No record of an accident for which the individual was convicted of a moving traffic violation.
- d. Have successfully completed the instructor preparation requirements of this rule, as evidenced by written attestations on a form provided by the department from both the classroom instructor and behind-the-wheel observer.

**634.7(2) 634.7(1) Disqualifications.** An individual A person shall be disqualified for the by the department from certification as a behind-the-wheel driving instructor certification for any of the following reasons: for which the executive director of the Iowa board of educational examiners would deny an application for licensure, certification or authorization as provided in rule 282—11.35(272).

- a. The individual has been convicted of child abuse or sexual abuse of a child.
- b. The individual has been convicted of a felony.
- c. The individual's application is fraudulent.
- d. The individual's teaching license or behind-the-wheel instructor's certification from another state is suspended or revoked.

**634.7(3) 634.7(2) Investigation.** The department may investigate an applicant for a behind-the-wheel instructor's certification or an instructor to determine if the applicant or instructor meets the requirements for certification. The investigation may include but is not limited to an inquiry into the applicant's or instructor's criminal history from the department of public safety.

**634.7(4) Certification.**

a. To obtain a behind-the-wheel instructor's certification, an individual meeting the qualifications shall apply to the department on a form provided by the department. The certification shall be issued for a calendar year or remainder of a calendar year. The certification expires on December 31 but remains valid for an additional 30 days after the expiration date. The certification shall be renewed within 30 days of the expiration date.

- b. To renew a behind-the-wheel instructor's certification, a person meeting the qualifications must:
  - (1) Provide behind-the-wheel instruction for a minimum of 12 clock hours during the previous calendar year.
  - (2) Participate in at least one state-sponsored or state-approved behind-the-wheel instructor refresher course.

**634.7(5) Instructor preparation requirements.** The department shall develop the curriculum in consultation with the Iowa driver education teacher preparation programs approved by the board of educational examiners and in consultation with the American Driver and Traffic Safety Education Association. Instructor preparation shall meet the following requirements:

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

~~a.—Instructor preparation shall consist of 24 clock hours of classroom instruction and 12 clock hours of observed behind-the-wheel instruction.~~

~~b.—At a minimum, classroom instruction shall focus on topics such as the psychology of the young driver, behind-the-wheel teaching techniques, and route selection. Classroom instruction shall be delivered by staff from a driver education teacher preparation program approved by the board of educational examiners. The duration of a classroom session shall not exceed four hours. Video conferencing may be used for course delivery.~~

~~c.—Observation of behind-the-wheel instruction shall be provided by a person licensed to teach driver education who is specially trained by a driver education teacher preparation program approved by the board of educational examiners to observe, coach, and evaluate behind-the-wheel instructor candidates. The duration of a behind-the-wheel session shall not exceed four hours. A dual-control motor vehicle must be used.~~

~~d.—The individual seeking a behind-the-wheel certification must apply to the department within 12 months of the completion of the course.~~

~~634.7(6) 634.7(3) Cancellation.~~ The department shall cancel the behind-the-wheel instructor's certification of an individual who no longer qualifies under paragraph 634.7(1) "e" or who no longer meets the qualifications for a behind-the-wheel instructor's certification this chapter.

~~634.7(7) Approved driver education course.~~ To provide the street or highway driving component of an approved driver education course, an individual holding a behind-the-wheel instructor's certification must be employed by a public or licensed commercial or private provider of the approved driver education course and work under the supervision of a person licensed to teach driver education.

ITEM 7. Amend rule 761—634.8(321) as follows:

**761—634.8(321) Private and commercial driver education schools.** The department licenses private and commercial driver education schools as follows:

~~634.8(1) Instructor and course~~ Course approval. ~~Prior to licensing~~ Before becoming licensed, a driver education school, ~~the department shall approve the school's course, classroom instructors and laboratory instructors must receive course approval, which includes approval of all teachers and instructors listed on the application, from the department prior to the beginning of the first class that is offered and annually thereafter.~~ Street or highway driving ~~Behind-the-wheel~~ instruction must be provided by a person qualified as a classroom driver education instructor or a person certified by the department and authorized by the board of educational examiners who meets the instructor requirements in rule 761—634.6(321). ~~Written evidence~~ Evidence of these ~~the~~ approvals and certifications must be submitted to the department upon application for a license, upon renewal of a license, and upon reinstatement of a license following cancellation.

~~634.8(2) Application and fees.~~ Application for license issuance or renewal shall be made to the department ~~on forms provided in a manner determined by the department.~~ The fee for a license or the renewal of a license is \$25. The fee must be paid by cash, money order or check, unless the department approves payment of the fee by electronic means. A money order or check must be for the exact amount and should be made payable to the Treasurer, State of Iowa, or the Department of Transportation.

~~634.8(3) Issuance and renewal.~~ A license to teach driver education shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 but remains valid for an additional 30 days after the expiration date. ~~The license shall be renewed~~ application for renewal shall be submitted to the department within 30 60 days of the expiration date, unless otherwise approved by the department.

~~634.8(4) Cancellation.~~ A license to teach driver education shall be canceled if the course, teacher, or instructor is no longer approved or the person providing only behind-the-wheel instruction for driver education is no longer certified by the department and authorized by the Iowa board of educational examiners.

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

ITEM 8. Amend rule 761—634.11(321) as follows:

**761—634.11(321) Driver education—teaching parent.** As an alternative to a driver education course offered by a course provider approved under rule 761—634.4(321), a teaching parent may instruct a student in an approved course of driver education.

**634.11(1) Definitions.** As used in this rule:

“*Approved course*” means a driver education curriculum approved by the department that meets the requirements of Iowa Code section 321.178A and is appropriate for teaching-parent-directed driver education and related ~~street or highway driving~~ behind-the-wheel instruction.

“*Clear driving record*” means the ~~individual~~ person currently and during the prior two-year period has not been identified as a candidate for suspension or revocation of a driver’s license under the habitual offender or habitual violator provisions of rule 761—615.9(321) or rule 761—615.13(321); is not subject to a driver’s license suspension, revocation, denial, cancellation, disqualification, or bar; and has no record of a conviction for a moving traffic violation determined to be the cause of a motor vehicle accident.

“*Course vendor*” means a third-party vendor that makes available commercially an approved course.

“*Student*” means a person between the ages of 14 and 21 years who is within the custody and control of the teaching parent and who holds a valid Iowa noncommercial instruction permit.

“*Teaching parent*” means the same as defined in Iowa Code section 321.178A.

**634.11(2) Application to serve as a teaching parent.**

a. A person who wishes to provide driver education as a teaching parent to a student shall submit an application on a form provided by the department to the ~~office of driver~~ and identification services at ~~the address indicated on the form~~ bureau.

b. to d. No change.

**634.11(3) Instruction by a teaching parent.**

a. No change.

b. The teaching parent shall select the course to be used from the list of approved courses posted on the department’s ~~Internet site~~ website and shall purchase the course directly from the applicable course vendor.

c. No person shall provide driver education as a teaching parent ~~until~~ unless approved by the department, and the department shall not recognize driver education that was:

(1) ~~Provided by a person before the person’s approval as a teaching parent.~~

(2) (1) Provided by a person who ~~has not been~~ is not approved as a teaching parent.

(3) (2) Provided to a person who is not a student as defined in subrule 634.11(1).

(4) (3) Offered under a course other than an approved course.

**634.11(4) Course completion—certificate of completion.**

a. Upon the student’s completion of an approved course, the teaching parent shall apply for a certificate of completion on behalf of the student. The teaching parent shall provide evidence showing the student’s completion of an approved course and substantial compliance with the requirements of Iowa Code section 321.178A, by affidavit signed by the teaching parent on a form provided by the department. The teaching parent shall include with the application all documentation, statements, certifications, and logs required by Iowa Code section 321.178A. The application and all required documentation, statements, certifications, and logs shall be submitted to the ~~office of driver~~ and identification services at ~~the address indicated on the form~~ bureau.

b. to d. No change.

**634.11(5) Course approval.**

a. A vendor that wishes to offer a driver education curriculum as an approved course in Iowa shall submit an application on a form provided by the department to the ~~office of driver~~ and identification services at ~~the address indicated on the form~~ bureau, along with a copy of all proposed curriculum materials. A vendor that wishes to offer an electronic curriculum may provide a uniform resource locator (URL) for the proposed electronic materials but must also provide physical copies of the proposed materials.

TRANSPORTATION DEPARTMENT[761](cont'd)

b. and c. No change.

d. If the proposed curriculum is approved, the department shall issue a certificate of approval to the vendor designating the curriculum as an approved course and shall list the approved course on the department's ~~Internet site~~ website. Course approval will be issued for one calendar year or for the remainder of a calendar year. The approval expires on December 31 and must be renewed annually by the submission of an application on a form provided by the department and all required materials as set forth in this subrule at least 60 days prior to the expiration date, unless otherwise approved by the department. ~~Notwithstanding this paragraph, a course approval issued before December 31, 2014, shall not expire until December 31, 2015.~~

**TREASURER OF STATE**

**Notice—Public Funds Interest Rates**

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions Katie Averill, Superintendent of Banking Jeff Plagge, and Auditor of State Rob Sand has established today the following rates of interest for public obligations and special assessments. The usury rate for November is 3.75%.

**INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS**

74A.2 Unpaid Warrants .....	Maximum 6.0%
74A.4 Special Assessments .....	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective November 9, 2019, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

**TIME DEPOSITS**

7-31 days .....	Minimum .05%
32-89 days .....	Minimum .05%
90-179 days .....	Minimum .30%
180-364 days .....	Minimum .45%
One year to 397 days .....	Minimum .55%
More than 397 days .....	Minimum .75%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

## USURY

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

December 1, 2018 — December 31, 2018	5.25%
January 1, 2019 — January 31, 2019	5.00%
February 1, 2019 — February 28, 2019	4.75%
March 1, 2019 — March 31, 2019	4.75%
April 1, 2019 — April 30, 2019	4.75%
May 1, 2019 — May 31, 2019	4.50%
June 1, 2019 — June 30, 2019	4.50%
July 1, 2019 — July 31, 2019	4.50%
August 1, 2019 — August 31, 2019	4.00%
September 1, 2019 — September 30, 2019	4.00%
October 1, 2019 — October 31, 2019	3.75%
November 1, 2019 — November 30, 2019	3.75%
December 1, 2019—December 31, 2019	3.75%

**ARC 4776C**

## UTILITIES DIVISION[199]

### Notice of Intended Action

#### **Proposing rule making related to electric lines and providing an opportunity for public comment**

The Utilities Board (Board) hereby proposes to rescind Chapter 11, “Electric Lines,” Iowa Administrative Code, and to adopt a new Chapter 11 with the same title.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code chapter 478.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 478.

#### *Purpose and Summary*

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). Based upon a review of stakeholder comments and the Board’s review of various dockets, the Board has concluded that the best course for addressing the rules for electric lines is for the Board to rescind the current rules in Chapter 11 and replace them with new rules. The new Chapter 11 proposed in this Notice contains reorganized content, retains necessary provisions, and introduces new provisions to address issues that have arisen in the electric transmission line franchising process.

On October 30, 2019, the Board issued an order commencing rule making. The order is available on the Board’s electronic filing system, [efs.iowa.gov](https://efs.iowa.gov), under Docket No. RMU-2019-0011.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

UTILITIES DIVISION[199](cont'd)

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 199—1.3(17A,474,476).

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Iowa Utilities Board  
Electronic Filing System (EFS) [efs.iowa.gov](https://efs.iowa.gov)  
Phone: 515.725.7337  
Email: [efshelpdesk@iub.iowa.gov](mailto:efshelpdesk@iub.iowa.gov)

*Public Hearing*

An oral presentation at which persons may present their views orally or in writing will be held as follows:

January 14, 2020  
1 to 3 p.m.

Board Hearing Room  
1375 East Court Avenue  
Des Moines, Iowa

Persons who wish to make oral comments at the oral presentation may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the oral presentation and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind 199—Chapter 11 and adopt the following **new** chapter in lieu thereof:

CHAPTER 11  
ELECTRIC LINES

**199—11.1(478) General information.**

**11.1(1) Purpose and authority.** The purpose of this chapter is to implement the requirements in Iowa Code chapter 478 and to establish procedures for electric franchise proceedings before the Iowa utilities board. This chapter shall apply to any person engaged in the construction, operation, and maintenance of electric transmission lines in Iowa.

## UTILITIES DIVISION[199](cont'd)

**11.1(2)** *Iowa electrical safety code.* Overhead and underground electric line minimum safety requirements to be applied in installation, operation, and maintenance are found in 199—Chapter 25, Iowa electrical safety code.

**11.1(3)** *Date of filing.* A petition for franchise, and all other filings, shall be considered filed when accepted for filing by the board pursuant to 199—Chapter 14.

**11.1(4)** *Franchise, when required.* An electric franchise shall be required for the construction, operation, and maintenance of any electric line capable of operating at 69,000 volts (69 kV) or more outside of cities, except that a franchise is not required for electric lines located entirely within the boundaries of property owned by an electric company or an end user.

**199—11.2(478) Definitions.** For the administration and interpretation of this chapter, the following words and terms, when used in these rules, shall have the meanings indicated below:

“*Affected person*” means any person with a recorded legal right or interest in the property, including but not limited to a contract purchaser of record, a tenant occupying the property under a recorded lease, a record lienholder, and a record encumbrancer of the property.

“*Board*” means the utilities board within the utilities division of the department of commerce.

“*Capable of operating*” means the standard voltage rating at which the electric line, wire, or cable can be operated consistent with the level of the insulators and the conductors used in construction of the electric line, wire, or cable based on manufacturer’s specifications, industry practice, and applicable industry standards.

“*Electric company*” means any person that proposes to construct, erect, maintain, or operate an electric line, wire, or cable in Iowa.

“*Person*” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“*Termini*” means the electrically functional end points of an electric line, without which it could not serve a public use. Examples of termini include generating stations, substations, or other electric lines.

“*Transmission line*” means any electric line, wire, or cable capable of operating at 69 kilovolts or more.

**199—11.3(478) Route selection.** The planning for a route that is the subject of a petition for franchise shall begin with routes that are near and parallel to roads, railroad rights-of-way, or division lines of land, according to the government survey, consistent with the provisions of Iowa Code section 478.18(2).

**11.3(1)** *Where deviations allowed.* When a route near and parallel to the features described in this rule has segments where transmission line construction is not practicable and reasonable, deviations may be proposed for those segments, when the proposed deviations are accompanied by a proper evidentiary showing, generally for engineering reasons, that the initial route or routes examined did not meet the practicable and reasonable standard pursuant to Iowa Code section 478.18(2). Although deviations based on landowner preference or minimizing interference with land use may be permissible, the electric company shall demonstrate that route planning began with a route or routes near and parallel to roads, railroad rights-of-way, or division lines of land.

**11.3(2)** *Location of buildings.* No transmission line shall be constructed outside of cities, except by agreement, within 100 feet of any dwelling, house or other building, except where the transmission line crosses or passes along a public highway or is located alongside or parallel with the right-of-way of any railroad company, consistent with the provisions of Iowa Code section 478.20. Construction of a new building within 100 feet of the center line of an existing transmission line shall be construed as “agreement” within the meaning of Iowa Code section 478.20.

**11.3(3)** *Railroad crossings.* The electric company shall file an affidavit and supporting documents showing that the requirements in rule 199—42.3(476) have been met for each railroad crossing over which the transmission line will be constructed.



## UTILITIES DIVISION[199](cont'd)

**199—11.4(478) Informational meetings.** Not less than 30 days or more than two years prior to filing a petition or related petitions requesting a franchise for a new transmission line, with one or more miles of the total proposed route across privately owned real estate, the electric company shall hold an informational meeting in each county in which real property or real property rights will be affected. An informational meeting is required to be held in each county where property rights will be affected regardless of the length of the portion of the proposed transmission line in a county. The length of easements required for conductor and crossarm overhang of private property, even if no supporting structures are located on that property, shall be included in determining whether an informational meeting is required pursuant to Iowa Code section 478.2.

**11.4(1) Facilities.** Electric companies filing a petition for franchise shall be responsible for all negotiations and compensation for a suitable facility to be used for each informational meeting, including but not limited to a building or facility which is in substantial compliance with any applicable requirements of the Americans with Disabilities Act (ADA) Standards for Accessible Design, including both Title III regulations at 28 CFR Part 36, Subpart D, and the 2004 ADA Accessibility Guidelines (ADAAG) at 36 CFR Part 1191, Appendices B and D (as amended through [the effective date of these rules]), where such a building or facility is reasonably available.

**11.4(2) Location.** The informational meeting location shall be reasonably accessible to all persons who may be affected by the granting of a franchise in that county or who have an interest in the proposed transmission line.

**11.4(3) Personnel.** At the informational meeting, qualified personnel representing the electric company shall make a presentation that includes the following information:

- a. Utility service requirements and planning which have resulted in the proposed construction.
- b. When the transmission line will be constructed.
- c. In general terms, the physical construction, appearance and typical location of poles and conductors with respect to property lines.
- d. In general terms, the rights which the electric company shall seek to acquire by easements.
- e. Procedures to be followed in contacting affected persons with whom the electric company may seek specific negotiations in acquiring voluntary easements.
- f. Methods and factors used in arriving at an offered price for voluntary easements including the range of cash amount of each component. An example of an offer sheet shall be included as part of the presentation.
- g. The manner in which voluntary easement, payments are made, including discussion of conditional easements, signing fees, and time of payment.
- h. Other factors or damages which are not included in the easement but for which compensation is made, including features of interest to affected persons but not limited to computation of amounts and manner of payment.
- i. If the undertaking is a joint effort by more than one electric company, all of the electric companies involved in the project shall be represented at the informational meeting by qualified personnel able to speak on the matters required by this subrule.

**11.4(4) Board approval.** An electric company proposing to schedule an informational meeting shall file a request with the board to schedule the informational meeting and shall include a proposed date and time for the informational meeting, an alternate date and time, a description of the proposed project and route, and a map of the proposed route. The electric company shall be notified within ten days from the filing of the request whether the request is approved or alternate dates and times are required. Once a date and time for the informational meeting have been approved, the electric company shall file the location of the informational meeting and a copy of the informational meeting presentation with the board.

**11.4(5) Notice of informational meeting.** Notice of each informational meeting shall be provided by certified mail, return receipt requested, to those persons listed on the tax assessment rolls as responsible for payment of real estate taxes on the property and persons in possession of or residing on the property within the corridor where the proposed transmission line will be located. The notice shall be deposited in the U.S. mail not less than 30 days prior to the date of the meeting.

- a. The notice shall include the following:

## UTILITIES DIVISION[199](cont'd)

- (1) The name of the electric company;
- (2) The electric company's principal place of business;
- (3) The general description and purpose of the proposed project;
- (4) The general nature of the right-of-way desired;
- (5) The possibility that the right-of-way may be acquired by condemnation if approved by the board;
- (6) A map showing the route of the proposed project;
- (7) A description of the process used by the board in making a decision on whether to approve a franchise, including the right to take property by eminent domain;
- (8) A statement that affected persons have a right to be present at the informational meeting and to file objections with the board;
- (9) Designation of the time and place of the meeting;
- (10) The following statement: Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)725-7300 in advance of the scheduled date to request accommodations; and
- (11) A copy of the statement of damages as described in subrule 11.9(5).

*b.* The electric company shall cause the meeting notice, including the map, to be published once in a newspaper of general circulation in each county where the proposed line is to be located. The notice shall be published at least one week and not more than three weeks prior to the date of the meeting. Publication shall be considered notice to landowners and persons in possession of or residing on the property whose addresses are not known.

*c.* The electric company shall file prior to the informational meeting an affidavit that describes the good-faith effort the electric company undertook to locate the addresses of persons listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property within the corridor where the proposed transmission line is to be located and those persons in possession of or residing on the property.

**199—11.5(478) Petition for a new franchise.** A single docket will be assigned to a proposed transmission line even if the transmission line will be located in more than one county. The electric company may request one franchise for the entire transmission line or may request separate franchises in each county where the proposed transmission line is to be located.

**11.5(1) Petition and exhibits.** A petition for a new franchise shall be filed on forms prescribed by the board, shall be notarized, and shall have all required exhibits attached. Exhibits in addition to those required by this rule may be attached when appropriate. The petition shall be attested to by an officer, official, or attorney with authority to represent the electric company. The following exhibits shall be filed with the petition:

*a. Exhibit A.* A legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning point and endpoint of the transmission line, and whether the route is on public, private, or railroad right-of-way. In the case of multicounty projects, the description shall identify all counties involved in the total project and the termini located in other counties. When the route is in or adjacent to the right-of-way of a named road or a railroad, the exhibit shall specifically identify the road or railroad by name.

*b. Exhibit B.* A map showing the route of the transmission line drawn with reasonable accuracy considering the scale. The map may be to any scale appropriate for the level of detail to be shown but may not be smaller than one inch to the mile and shall be legible when printed on paper no larger than 11 by 17 inches. The following minimum information shall be provided:

- (1) The route of the transmission line which is the subject of the petition, including beginning point and endpoint and, when the transmission line is parallel to a road or railroad, which side the line is on. Line sections with double-circuit construction or underbuild shall be designated. The nominal voltage and ownership of other circuits or underbuild shall be indicated. The nominal voltage of other circuits or underbuild shall be the voltage at which the electric line is capable of operating.

## UTILITIES DIVISION[199](cont'd)

- (2) The name of the county, county and section lines, section numbers, and township and range numbers.
- (3) The location and identity of roads, named streams and bodies of water, and any other pertinent natural or man-made features or landmarks influencing the route.
- (4) The names and corporate limits of cities.
- (5) The names and boundaries of any public lands or parks, recreational areas, preserves or wildlife refuges.
- (6) All electric lines, including lines owned by the electric company, within six-tenths of a mile of the route, including the nominal voltage of the lines, whether the lines are overhead or buried, and the names and addresses of the owners. Any electric lines to be removed or relocated shall be designated.
- (7) The location of railroad rights-of-way, including the names and addresses of the owners.
- (8) The location of airports or landing strips within one mile of the route, along with the names and addresses of the owners.
- (9) The location of pipelines used for the transportation of any solid, liquid, or gaseous substance, except water, within six-tenths of a mile of the route, along with the names and addresses of the owners.
- (10) The names and addresses of the owners of telephone, communication, or cable television lines within six-tenths of a mile of the route. The location of these lines need not be shown.
- (11) The names and addresses of the owners of rural water districts organized pursuant to Iowa Code chapter 357A that have facilities within six-tenths of a mile of the route. The location of these facilities need not be shown.
- (12) A map of the entire route if the route is located in more than one county or there is more than one map for a county.
  - c. *Exhibit C.* Technical information and engineering specifications describing typical materials, equipment and assembly methods as specified on forms provided by the board.
  - d. *Exhibit D.* The exhibit shall consist of a written text containing the following:
    - (1) An affidavit with an allegation and supporting information that the transmission line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Additional substantiated allegations as may be required by Iowa Code section 478.3(2) shall also be included.
    - (2) If the route or any portion thereof is not near and parallel to roads or railroad rights-of-way, or along division lines of the lands, according to government surveys, an explanation of why such parallel routing is not practicable or reasonable.
    - (3) A statement regarding the availability of routes on an existing electric line right-of-way and an explanation of why this line was not selected.
    - (4) If the route and manner of construction would result in separate pole lines for two or more electric supply lines occupying the same road right-of-way in a manner not in compliance with subrule 11.11(1), a request that the board authorize separate pole lines and justification for the authorization.
    - (5) Any other information or explanation in support of the petition.
    - (6) If a new franchise must be sought for an existing transmission line, historical information regarding the prior franchise.
    - (7) A copy of any route study that was performed in determining the location of the proposed transmission line.
  - e. *Exhibit E.* This exhibit is required only if the petition requests the right of eminent domain. This exhibit shall be in its final form prior to issuance of the official notice by the board and approval of the eminent domain notice required by Iowa Code section 478.6(2). The exhibit shall consist of a map of the route showing the location of each property for which the right of eminent domain is sought, and for each property:
    - (1) The legal description of the property.
    - (2) The legal description of the desired easement.
    - (3) A specific description of the easement rights being sought.
    - (4) The names and addresses of all affected persons and of all tenants.

## UTILITIES DIVISION[199](cont'd)

(5) A map drawn to an appropriate scale showing the boundaries of the property, the boundaries and dimensions of the proposed easement, the location of all electric lines and supports within the proposed easement, the location of and distance to any building within 100 feet of the proposed transmission line, and any other features pertinent to the location of the transmission line and its supports or to the rights being sought.

(6) An affidavit affirming that the electric company has undertaken a review of land records to identify all affected persons for all parcels over which the transmission line is proposed to be located before easements were signed or eminent domain requested.

*f. Exhibit F.* The showing of notice to all persons identified in subparagraphs 11.5(1) "b"(6) through 11.5(1) "b"(11) and to the Iowa department of transportation. One copy of each letter of notification or one copy of the letter accompanied by a written statement listing all persons that were sent the notice, the date of mailing, and a copy of the map sent with the letters shall accompany the petition when it is filed with the board.

*g. Exhibit G.* The affidavit required by Iowa Code section 478.3(2) "c" on the holding of an informational meeting. Copies of the mailed notice letter and the published notice(s) of each informational meeting shall be attached to the affidavit. This exhibit is required only if an informational meeting was conducted.

*h. Other exhibits.* The board may require filing of additional exhibits if further information on a particular project is deemed necessary.

**11.5(2) Notice of franchise petition.**

*a.* Whenever a petition for a new franchise is filed with the board, the board shall prepare a notice addressed to the citizens of each county through which the transmission line or lines extend. The electric company shall cause this notice to be published in a newspaper of general circulation in each county for two consecutive weeks. Proof of publication shall be filed with the board. This published notice shall constitute sufficient notice to all persons of the proceeding, except owners of record and persons in possession of land to be crossed for which voluntary easements have not been obtained at the time of the first publication of the notice.

*b.* The electric company shall, in addition to publishing notice, serve notice in writing of the filing of the petition on the affected persons and the persons in possession of the lands over which easements have not been obtained. The served notices shall be by ordinary mail, addressed to the last-known address, mailed not later than the first day of publication of the official notice. One copy of each letter of notification, or one copy of the letter accompanied by a written statement listing all persons to which it was mailed and the date of mailing, shall be filed with the board not later than five days after the date of second publication of the official notice. The electric company shall file a statement describing the action taken to ensure that the company has identified the names and addresses of all affected persons and persons in possession of property over which voluntary easements have not been obtained.

*c.* Published notices of petitions for franchise shall include provisions whereby interested persons can examine a map of the route. When the petition is filed, the electric company shall state whether a map is to be published with the notice or whether the notice is to include a telephone number and an address through which persons may request a map from the electric company at no cost. The map required by this paragraph need not be as detailed as the Exhibit B map but shall include at minimum the proposed route, section lines, section and township numbers, roads and railroads, city boundaries, and rivers and named bodies of water. A copy of this map shall be filed with the petition.

**11.5(3) Notice to other persons.** The electric company shall give written notice, by ordinary mail, mailed at the time the petition is filed with the board and accompanied by a map showing the route of the proposed electric transmission line, to the persons identified in subparagraphs 11.5(1) "b"(6) through 11.5(1) "b"(11) and to the Iowa department of transportation. One copy of each letter of notification or one copy of the letter accompanied by a written statement listing all persons that were sent the notice, the date of mailing, and a copy of the map sent with the letters shall accompany the petition when it is filed with the board.

## UTILITIES DIVISION[199](cont'd)

**11.5(4) Eminent domain notice.** If an electric company is requesting the right of eminent domain over property as part of a petition for a new franchise, notice shall be provided pursuant to subrule 11.10(1).

**199—11.6(478) Petition for an amendment to a franchise.** A petition for an amendment of a franchise shall include the same exhibits and information required for a new franchise as described in rule 199—11.5(478).

**11.6(1)** When a petition for amendment is required. A petition for amendment of a franchise shall be filed with the board for approval when the electric company is:

*a.* Increasing the operating voltage of any electric line, the level to which it is capable of operating, or to a voltage greater than that specified in the existing franchise.

*b.* Constructing an additional circuit which is capable of operating at a nominal voltage of 69 kV or more on a previously franchised line, where an additional circuit at such voltage is not authorized by the existing franchise.

*c.* Relocating a franchised line to a route different from that authorized by an existing franchise which requires that new or additional interests in property be obtained, or that new or additional authorization be obtained from highway or railroad authorities, or for relocations of less than one mile if the right of eminent domain is sought.

**11.6(2)** When a new transmission line is proposed in a county where the electric company has a countywide franchise for all of the electric company's transmission lines in a county, the new transmission line will be included in the countywide franchise as an amendment to the countywide franchise.

**11.6(3)** When an existing franchise in a county is proposed to be combined with another existing franchise in a county, a petition for an amendment of the franchise with the latest expiration date shall be filed to combine the transmission lines into one of the existing franchises.

**11.6(4)** An amendment to a franchise shall not be required for a voltage increase, additional circuit, or electric line relocation where such activity takes place entirely within the boundaries of property owned by an electric company or an end user.

**11.6(5)** Notice of a petition for franchise amendment. Notice of a petition for an amendment to a franchise shall be the same notice that is required for a petition for a new franchise as described in rule 199—11.5(478).

**11.6(6)** Eminent domain notice. If an electric company is requesting the right of eminent domain over property as part of a petition for amendment of a franchise, notice shall be provided pursuant to subrule 11.10(1).

**199—11.7(478) Petition for the abbreviated franchise process.**

**11.7(1) Eligibility for abbreviated franchise process.** Petitions for an electric franchise or an amendment to a franchise may be filed pursuant to the abbreviated franchise process set forth in Iowa Code section 478.1(5) if the following requirements are met:

*a.* The project consists of the conversion, upgrading, or reconstruction of an existing electric line operating at 34.5 kV to a line capable of operating at 69 kV.

*b.* The project will be on substantially the same right-of-way as an existing 34.5 kV line. For purposes of this subrule, "substantially the same right-of-way" means that the new or additional interests in private property right-of-way will be required for less than one mile of the proposed project length. Easements required for conductor and crossarm overhang of private property or for anchor easements shall not be considered when determining the length of additional interests in private property right-of-way.

*c.* The project will have substantially the same effect on the underlying properties as the existing 34.5 kV line.

*d.* The completed transmission line will comply with the Iowa electrical safety code found in 199—Chapter 25.

*e.* The electric company does not request the power of eminent domain.

## UTILITIES DIVISION[199](cont'd)

*f.* The electric company agrees to pay all costs and expenses of the franchise proceeding.

**11.7(2) *Petition using abbreviated process.*** A petition for a new franchise or an amendment to a franchise filed pursuant to the abbreviated franchise process set forth in Iowa Code section 478.1(5) shall be made on forms prescribed by the board, shall be notarized, and shall have all required exhibits attached. Exhibits in addition to those required by this subrule may be attached when appropriate. The exhibits required to be attached are as follows:

*a. Exhibit A.* A legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning point and endpoint of the transmission line, and whether the route is on public, private, or railroad right-of-way. When the route is in or adjacent to the right-of-way of a named road or a railroad, the exhibit shall specifically identify the road or railroad by name. The description shall identify any termini located in other counties.

*b. Exhibit B.* A map showing the route of the transmission line drawn with reasonable accuracy considering the scale. The map may be to any scale appropriate for the level of detail to be shown but may not be smaller than one inch to the mile and must be legible when printed on paper no larger than 11 by 17 inches. The following minimum information shall be provided:

(1) The route of the transmission line which is the subject of the petition, including the beginning point and endpoint and, when the transmission line is parallel to a road or railroad, the side on which the line is located. Line sections with double-circuit construction or underbuild shall be designated. The nominal voltage and ownership of other circuits or underbuild shall be indicated. The nominal voltage of other circuits or underbuild shall be the voltage at which the electric line is capable of operating.

(2) The name of the county, county and section lines, section numbers, and township and range numbers.

(3) The location and identity of roads, railroads, named streams and bodies of water, and any other pertinent natural or man-made features or landmarks influencing the route.

(4) The names and corporate limits of cities.

(5) If any deviation from the existing route is proposed, the original and proposed routes shall be shown and identified.

*c. Exhibit C.* Technical information and engineering specifications describing typical materials, equipment, and assembly methods as specified on forms provided by the board.

*d. Exhibit D.* The exhibit shall consist of written text containing the following:

(1) A listing of any existing franchises that would be terminated or amended in whole or in part by this petition, including the docket number, franchise number, date of issue, county of location, and to whom the franchise is granted.

(2) An allegation, with supporting testimony, that the project is eligible for the abbreviated franchise process.

(3) An allegation, with supporting testimony, that the project is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.

(4) An explanation for any deviations from the existing transmission line route.

(5) A statement regarding the availability of routes on an existing electric line right-of-way and an explanation of why this line was not selected.

*e. Exhibit E.* A statement that the right of eminent domain is not being requested.

*f. Exhibit F.* The exhibit shall consist of a showing of notice to other electric, pipeline, telephone, communication, cable television, rural water district, and railroad companies that have facilities which are crossed by or in shared right-of-way with the proposed transmission line.

*g. Exhibit G.* The exhibit shall consist of the form of notice to be mailed in accordance with subrule 11.7(3) to owners of and persons residing on property where construction shall occur.

**11.7(3) *Notice of franchise or amendment to franchise under abbreviated franchise process.***

*a.* One month prior to commencement of construction, an electric company shall provide written notice concerning the anticipated construction to the last-known address of the owners of record of the property where construction will occur and to persons residing on such property. Notices may be served by ordinary mail, addressed to the last-known address of the owners of record of the property and to

## UTILITIES DIVISION[199](cont'd)

persons residing on such property. The electric company shall make a good-faith effort to identify and notify all owners of record and persons residing on the property.

*b.* The notice shall include the following information:

- (1) A description of the purpose of the project and the nature of the work to be performed.
- (2) A copy of the Exhibit B map.
- (3) The estimated dates the construction or reconstruction will commence and end.
- (4) The name, address, telephone number, and email address of a representative of the electric company who can respond to inquiries concerning the anticipated construction.

*c.* For the purposes of this rule, “construction” means physical entry onto private property by personnel or equipment for the purpose of rebuilding or reconstructing the transmission line.

**199—11.8(478) Petition for extension of franchise.**

**11.8(1) *Petition and exhibits.*** A petition for an extension of a franchise shall be made on forms prescribed by the board; shall be attested to by an officer, official, or attorney with authority to represent the electric company; and shall have all required exhibits attached. Exhibits in addition to those required by this rule may be attached when appropriate. For a transmission line that extends into more than one county, the electric company may file a petition to combine the separate county franchises into one franchise for the entire transmission line.

*a. Exhibit A.* A legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning point and endpoint of the transmission line, and whether the route is on public, private, or railroad right-of-way. When the route is in or adjacent to the right-of-way of a named road or a railroad, the exhibit shall specifically identify the road or railroad by name. The description shall identify any termini located in other counties.

*b. Exhibit B.* A map showing the route of the transmission line drawn with reasonable accuracy considering the scale. The map may be to any scale appropriate for the level of detail to be shown but may not be smaller than one inch to the mile and must be legible when printed on paper no larger than 11 by 17 inches. The following minimum information shall be provided:

(1) The route of the transmission line which is the subject of the petition, including beginning point and endpoint and, when the transmission line is parallel to a road or railroad, which side the line is on. Line sections with double-circuit construction or underbuild shall be designated. The nominal voltage and ownership of other circuits or underbuild shall be indicated. The nominal voltage of other circuits or underbuild shall be the voltage at which the electric line is capable of operating.

(2) The name of the county, county and section lines, section numbers, and township and range numbers.

(3) The location and identity of roads, railroads, named streams and bodies of water, and any other pertinent natural or man-made features or landmarks influencing the route.

(4) The names and corporate limits of cities.

*c. Exhibit C.* Technical information and engineering specifications describing typical materials, equipment and assembly methods as specified on forms provided by the board.

*d. Exhibit D.* The exhibit shall consist of a written text containing the following:

(1) A listing of all existing franchises for which extension in whole or in part is sought, including the docket number, franchise number, date of issue, county of location, and to whom granted.

(2) A listing of all amendments to the franchises listed in subparagraph 11.8(1)“d”(1), including the docket number, amendment number, date of issue, and purpose of the amendment.

(3) A description of any substantial rebuilds, reconstructions, alterations, relocations, or changes in operation not included in a prior franchise or amendment proceeding.

(4) A description of any changes in ownership or operating and maintenance responsibility.

(5) An allegation, with supporting testimony, that the transmission line remains necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.

(6) Any other information or explanation in support of the petition.

## UTILITIES DIVISION[199](cont'd)

**11.8(2) *Date for filing petition for extension.*** A petition for an extension of a franchise shall be filed at least one year prior to expiration of the franchise. This requirement is not applicable to extensions of franchises that expire within one year of [the effective date of these rules]. Extensions of existing countywide franchises are permitted; however, petitions to extend the franchises of separate transmission lines within a county by combining those transmission lines into a countywide franchise are not permitted using the franchise extension process.

**11.8(3) *When petition for extension unnecessary.*** An extension of franchise is unnecessary for an electric line which is capable of operating at 69 kV or more when the electric line has been permanently retired from operation and the board has been notified of the retirement. The notice to the board shall include the franchise number and issue date, the docket number, and, if the entire franchised line is not retired, a map showing the location of the portion retired.

**11.8(4) *Petition for extension of countywide franchise.*** A petition for an extension of a countywide franchise, which includes all of the franchised lines owned by the electric company and within one county, shall include a statement of whether the published notice will contain a legal description of the route or will include a telephone number and an address through which persons may request a map from the electric company at no cost. The map shall comply with the requirements in subrule 11.8(6). A copy of this map shall be filed with the petition.

**11.8(5) *Notice of petition for extension.*** Whenever a petition for an extension of a franchise is filed with the board, the board shall prepare a notice addressed to the citizens of each county through which the transmission line or lines extend. The electric company shall cause this notice to be published for two consecutive weeks in a newspaper of general circulation in each county where the proposed line is to be located. Proof of publication shall be filed with the board. This published notice shall constitute sufficient notice to all affected persons and persons in possession of property where the existing line is located.

**11.8(6) *Maps in published notice.*** Published notices of petitions for franchise shall include provisions whereby interested persons can examine a map of the route. When the petition is filed, the electric company shall state whether a map is to be published with the notice or whether the notice is to include a telephone number and an address through which persons may request a map from the electric company at no cost. The map required by this subrule need not be as detailed as the Exhibit B map but shall include at minimum the proposed route, section lines, section and township numbers, roads and railroads, city boundaries, and rivers and named bodies of water. A copy of this map shall be filed with the petition.

**11.8(7) *Notice to other persons.*** The electric company shall give written notice, by ordinary mail, mailed at the time the petition is filed with the board, accompanied by a map showing the route of the proposed transmission line, to the persons identified in subparagraphs 11.5(1)“b”(6) through 11.5(1)“b”(11) and to the Iowa department of transportation. One copy of each letter of notification or one copy of the letter accompanied by a written statement listing all persons that were sent the notice, the date of mailing, and a copy of the map sent with the letters shall accompany the petition when it is filed with the board.

**199—11.9(478) Additional requirements.**

**11.9(1) *Forms.*** An electric company shall use the appropriate form or forms available on the board’s website when filing a petition, an amendment to an existing franchise, or an extension of an existing franchise. All filings shall be filed electronically in compliance with the board’s electronic filing system requirements in 199—Chapter 14 and shall be considered filed when accepted for filing into the board’s electronic filing system pursuant to 199—Chapter 14.

**11.9(2) *Segmental ownership.***

*a.* Petitions covering transmission line routes, having segments of the total transmission line with different owners, shall establish that the entire transmission line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.



## UTILITIES DIVISION[199](cont'd)

*b.* Petitions covering transmission line routes, having segments of the total transmission line with different owners, shall include documentation showing that the different owners have agreed to the construction being proposed in the petition.

**11.9(3)** *Compliance with Iowa electrical safety code.* If review of Exhibit C, or inspection of an existing electric line which is the subject of a franchise petition, finds noncompliance with 199—Chapter 25, the Iowa electrical safety code, no final action shall be taken by the board on the petition without a satisfactory showing by the electric company that the areas of noncompliance have been or will be corrected. Any disputed safety code compliance issues will be resolved by the board.

**11.9(4)** *Statement of damage claims.*

*a.* A petition proposing transmission line construction shall not be acted upon by the board if the electric company does not file with the board a written statement as to how damages resulting from the construction of the transmission line shall be determined and paid.

*b.* The statement shall contain the following information: the type of damages which will be compensated for, how the amount of damages will be determined, the procedures by which disputes may be resolved, the manner of payment, and the procedures that the affected persons are required to follow to obtain a determination of damages.

*c.* The statement shall be amended as necessary to reflect changes in the law, company policy, or the needs of a specific project.

*d.* A copy of this statement shall be mailed with the notice of informational meeting as provided for in Iowa Code section 478.2(3). Where no informational meeting is required, a copy shall be provided to each affected person prior to entering into negotiations for payment of damages.

*e.* Nothing in this rule shall prevent a person from negotiating with the electric company for terms which are different from, more specific than, or in addition to those in the statement filed with the board.

**199—11.10(478) Notices.**

**11.10(1)** *Notice of eminent domain proceedings.* If a petition for a franchise or amendment of franchise seeks the right of eminent domain, the electric company shall, in addition to publishing a notice of hearing, serve the written notice required by Iowa Code section 478.6(2) on the landowners, any affected person as defined in rule 199—11.2(478), and persons in possession of lands over which eminent domain is sought. The eminent domain notice shall be filed with the board for approval. Service shall be by certified U.S. mail, return receipt requested, and addressed to the person's last-known address. This notice shall be mailed no later than the first day of publication of the official notice of hearing concerning the petition.

*a.* The notice of eminent domain proceedings shall include the following:

(1) A copy of the Exhibit E filed with the board for the affected property.

(2) The proposed route of the electric transmission line.

(3) The eminent domain rights being sought over the property.

(4) The date, time and location of the hearing and a description of the hearing procedures. The description of the hearing procedures shall include the website address for the board's electronic filing system and contact information of the board's customer service section.

(5) The statement of individual rights required pursuant to Iowa Code section 6B.2A(1).

*b.* Not less than five days prior to the date of hearing, the electric company shall file with the board the return receipt for the certified notice. The ordinary mail notice is not required to persons for which statutory written notice is served in accordance with this subrule.

**11.10(2)** *Notice of franchised line construction.*

*a.* Within 90 days after completion of a transmission line construction or reconstruction project authorized by a franchise or amendment to franchise, the holder of the franchise shall notify the board in writing of the completion. The notice shall include the franchise and docket numbers and the date the franchise was issued.

*b.* If the project is not completed within two years after the date of issuance of the franchise or amendment to franchise, the electric company shall file a progress report regarding construction of the transmission line.

## UTILITIES DIVISION[199](cont'd)

c. If construction of the transmission line authorized by a franchise has not commenced within two years of the date the franchise is granted, or within two years after final disposition of judicial review of a franchise order or of condemnation proceedings, the franchise shall be forfeited unless the electric company petitions the board for an extension of time to commence construction. The board may grant the extension if good cause is shown for the failure to commence construction.

**11.10(3) Notice of transfer or assignment of franchise.** The holder of a franchise shall notify the board in writing, when transferring any franchise or portion of a franchise, stating the applicable franchise number and docket number which are affected and a description of the route of the transmission line when less than the total franchised line is affected, together with the name of the transferee and date of transfer, not more than 30 days after the effective date of the transfer.

**11.10(4) Notice of relocations not requiring an amendment to franchise.** Whenever a transmission line under franchise is relocated in a manner that does not require an amendment to franchise, the holder of the franchise shall notify the board in writing of the relocation, stating the franchise and docket numbers and date of franchise issuance for the affected transmission line, and providing revised Exhibits A and B that reflect the changes in the route.

**11.10(5) Notice of transmission line reconstruction not requiring an amendment to franchise.** Whenever a transmission line is reconstructed with different materials or specifications than those that appear on the most recent Exhibit C and an amendment to franchise is not required, the holder of the franchise shall notify the board in writing of the reconstruction, stating the franchise and docket numbers and date of franchise issuance for the affected transmission line, and providing a revised Exhibit C that reflects the changes in the manner of construction.

**199—11.11(478) Common and joint use.**

**11.11(1) Common use construction.** Whenever an overhead electric line capable of operating at 69 kV or more is built or rebuilt on public road rights-of-way located outside of cities, all parallel overhead electric supply circuits on the same road right-of-way shall be attached to the same or common line of structures unless the board authorizes, for good cause shown, the construction of separate pole lines. A request for the construction of separate pole lines shall be filed separately from the petition for the electric transmission line franchise.

**11.11(2) Relocating lines.** When a transmission line is to be constructed in a location occupied by an electric line or a communication line, the expense of relocating the existing line shall be borne by the electric company proposing the new transmission line. The electric company proposing the new transmission line shall not be required to pay any part of the used life of the existing line, but shall pay only the nonbetterment expense of relocating the existing line.

**199—11.12(478) Termination of franchise petition proceedings.**

**11.12(1) Termination of docket.** Upon notice to the board by an electric company that a franchise petition or petition for amendment of a franchise is withdrawn, the docket shall be closed by board order.

**11.12(2) Failure to respond.** If an electric company fails to respond to written notification by the board, to correct an incomplete or deficient franchise petition, or to publish the official notice within 90 days after the form of notice is provided by the board, the board may dismiss the petition as abandoned. If dismissal would cause an existing transmission line to be without a franchise, the board may also pursue imposition of civil penalties.

**199—11.13(478) Fees and expenses.** The electric company shall pay the actual cost incurred by the board attributable to the processing, investigation, and inspection related to a petition requesting an electric franchise, an amendment to an electric franchise, or an extension of an electric franchise.

These rules are intended to implement Iowa Code chapter 478.

**ARC 4767C**

**VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]**

**Notice of Intended Action**

**Proposing rule making related to injured veterans grant program  
and providing an opportunity for public comment**

The Iowa Department of Veterans Affairs hereby proposes to amend Chapter 11, “Injured Veterans Grant Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 35A.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 35A.14 as amended by 2019 Iowa Acts, House File 288.

*Purpose and Summary*

2019 Iowa Acts, House File 288, amends Iowa Code section 35A.14 related to veteran eligibility for the injured veterans grant program. Veterans no longer have to have been injured in a combat zone to be eligible for the program. This proposed rule making amends rule 801—11.3(35A) to reflect this change.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on December 10, 2019. Comments should be directed to:

Melissa Miller  
Iowa Department of Veterans Affairs  
Camp Dodge, Bldg. #3465  
7105 NW 70th Avenue  
Johnston, Iowa 50131  
Email: [melissa.miller2@iowa.gov](mailto:melissa.miller2@iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental

## VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rule 801—11.3(35A) as follows:

**801—11.3(35A) Eligible veterans.**

**11.3(1)** For purposes of this program, the term “veteran” means:

*a.* A resident of this state who is or was a member of the national guard, reserve, or regular component of the armed forces of the United States who has served on active duty at any time after September 11, 2001, and, if discharged or released from service, was discharged or released under honorable conditions; or

*b.* A nonresident of this state who is or was a member of a national guard unit located in this state prior to alert for mobilization who has served on active duty at any time after September 11, 2001, was injured while serving in the national guard unit located in this state, is not eligible to receive a similar grant from another state for that injury, and, if discharged or released from service, was discharged or released under honorable conditions.

**11.3(2)** In addition to the requirements set out in subrule 11.3(1), an eligible veteran must meet all of the following conditions:

*a.* The veteran must have sustained a ~~combat-related~~ service-related injury in a ~~combat zone or the line of duty~~, based upon the circumstances known at the time of evacuation or injury; in support of a named overseas operation; or in a hostile fire zone; and

*b.* The ~~combat-related~~ service-related injury was serious enough to require medical evacuation from the ~~combat zone~~ theater of operation to a military hospital or the injury required at least 30 consecutive days of hospitalization at a military hospital; ~~and~~.

*c.* ~~The combat-related injury was or is considered by the military to have been received in the line of duty, based upon the circumstances known at the time of evacuation or injury.~~

**11.3(3)** The veteran shall remain eligible for the grant after discharge from the military so long as the veteran continues to receive medical treatment or rehabilitation services for the specific injury or illness.

**11.3(4)** The commission may consider a request for a waiver of any of these requirements only pursuant to the provisions of Iowa Code section 17A.9A.

ARC 4779C

**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed****Rule making related to managed care passive enrollment**

The Human Services Department hereby amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 514I.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 514I.

*Purpose and Summary*

These amendments add language to reflect the Department's implementation of a passive managed care enrollment process. HAWK-I-eligible individuals will be passively enrolled with a managed care plan; however, the eligibility effective date will remain consistent with current practices. The amendments also add necessary definitions, revise the time frame for a decision on eligibility, clarify policy on when a waiting period does not apply, revise premium payment language, eliminate the lock-out period for premium nonpayment, make technical changes, and remove outdated program language.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 28, 2019, as **ARC 4627C**.

The Department received one comment from the Iowa Hospital Association (IHA). IHA stated it is in favor of any proposal that seeks to increase efficiencies in the Medicaid program while ensuring the goals of improving patient outcomes and reducing the overall cost of care. However, hospitals have concerns with the implementation of a passive managed care enrollment process for HAWK-I-eligible individuals, based on past experience. IHA urged the Department to include safeguards to ensure the MCOs are aware of which members are assigned to them as soon as that assignment has been made. This will allow for eligible individuals to receive the care they need in a timely manner, and for providers to receive proper reimbursement. IHA does not disagree with the expansion of the premium payment grace period from 10 to 45 days. However, IHA urged the Department to implement a real-time process to ensure an individual has medical coverage. Hospitals want to avoid situations in which the MCO's system automatically removes or suspends the member from the MCO list for nonpayment if the premium payment is made after the due date but within the 45-day grace period. IHA is concerned that early removal could lead to delayed care and/or increased administrative burdens on providers.

No changes were made as a result of the concerns expressed by IHA. The Department will be monitoring any implementation issues and will address any potential problems as they occur. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the HAWK-I Board on October 21, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

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

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on December 25, 2019.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Enrollment broker” and “Passive enrollment process” in rule **441—86.1(514I)**:

“*Enrollment broker*” shall mean the entity the department uses to enroll eligible children with a managed care organization. The enrollment broker must be conflict-free and meet all applicable requirements of state and federal law.

“*Passive enrollment process*” shall mean the process by which the department assigns a child to a participating health or dental plan and which seeks to preserve existing provider-enrollee relationships, if possible. In the absence of existing relationships, the process ensures that members are equally distributed among all available health or dental plans.

ITEM 2. Amend subrule 86.3(8) as follows:

**86.3(8) Time limit for decision.** Decisions regarding the applicant's eligibility to participate in the HAWK-I program shall be made within ~~ten~~ 45 working days from the date of receiving the completed application and all necessary information and verification unless the application cannot be processed for reasons beyond the control of the department ~~or third-party administrator~~. Day one of the ~~ten-day~~ 45-day period starts the first working day following the date of receipt of a completed application and all necessary information and verification.

ITEM 3. Amend subrule 86.5(1) as follows:

**86.5(1) Initial application.** Coverage for a child who is determined eligible for the HAWK-I program on the basis of an initial application for either HAWK-I or Medicaid shall be effective the first day of the month following the month in which the application is filed, regardless of the day of the month the application is filed. However, when the child does not meet the provisions of paragraph 86.2(4)“a,” coverage shall be effective the first day of the month following the month in which health insurance coverage is lost. Also, a one-month waiting period shall be imposed for a child who is subject to a monthly premium pursuant to paragraph 86.8(2)“c” when the child's health insurance coverage ended in the month of application. EXCEPTIONS: A waiting period shall not be imposed if any of the following conditions apply:

a. to e. No change.

f. The child's parent is determined eligible for advance payment of the premium tax credit for enrollment in a qualified health plan through the Health Insurance Marketplace because the employer-sponsored insurance in which the family was enrolled is determined unaffordable in accordance with 26 CFR 1.36B-2(c)(3)(v).

HUMAN SERVICES DEPARTMENT[441](cont'd)

g. The cost of family coverage that includes the child exceeds 9.5 percent of the annual household income.

ITEM 4. Amend rule 441—86.6(514I) as follows:

~~441—86.6(514I) Selection of a plan. At the time of initial application, if there is more than one participating health or dental plan available in the child's county of residence, the applicant shall select the health or dental plan in which the applicant wishes to enroll as part of the eligibility process. Upon the child's eligibility effective date, the child shall be assigned to a health or dental plan using the department's passive enrollment process. The enrollee may change plans only at the time of the annual review unless the provisions of subrule 86.7(1) or paragraph 86.6(2) "a" 86.6(1) "a" or subrule 86.6(2) apply. The applicant may designate the plan choice verbally or in writing. Form 470-3574, Selection of Plan, may be used for this purpose but is not required.~~

**86.6(1) Period of enrollment.** Once enrolled in a health or dental plan, the child shall remain enrolled in the selected health or dental plan for a period of 12 months.

*a. Exceptions.* A child may be enrolled in a plan for less than 12 months if:

(1) The child is disenrolled in accordance with the provisions of rule 441—86.7(514I). If a child is disenrolled from the health or dental plan and subsequently reapplies before the end of the original 12-month enrollment period, the child shall be enrolled in the health or dental plan from which the child was originally disenrolled ~~unless the provisions of subrule 86.7(1) apply.~~

(2) No change.

(3) A request to change plans is accepted in accordance with ~~paragraphs 86.6(2) "b" and "c."~~ paragraph 86.6(1) "b."

*b. Request to change plan.* An enrollee may ask to change the health or dental plan either verbally or in writing to the enrollment broker:

(1) ~~Within 90 days following the date the initial enrollment was sent to the health or dental plan regardless of the reason for the plan change or whether the original health or dental plan was selected by the applicant or was assigned in accordance with subrule 86.6(3) of the enrollee's initial enrollment with the health or dental plan for any reason.~~

(2) At any time for cause. "Cause" as defined in 42 CFR 438.56(d)(2) as amended to ~~May 13, 2010~~ May 6, 2016, includes, but is not limited to:

1. to 4. No change.

All approved changes shall be made prospectively and shall be effective no later than the first day of the second month beginning after the date on which the change request is received.

~~*c. Response to request.*~~

~~(1) If the enrollee has not requested to change health or dental plans within 90 days following the date the initial enrollment was sent to the health or dental plan and it is determined that cause does not exist, the request to change plans shall be denied.~~

~~(2) All approved changes shall be made prospectively and shall be effective on the first day of the month following the month in which the request was made.~~

~~**86.6(2) Failure to select a health or dental plan.** When more than one health or dental plan is available, if the applicant fails to select a health or dental plan within ten working days of the written request to make a selection, the third-party administrator shall select the health or dental plan and notify the family of the enrollment. The third-party administrator shall select the plan on a rotating basis to ensure an equitable distribution between participating health and dental plans.~~

~~**86.6(3) 86.6(2) Child moves from the service area.** The child may be disenrolled from the health or dental plan when the child moves to an area of the state in which the health or dental plan does not have a provider network established. If the child is disenrolled, the child shall be enrolled in a participating health or dental plan in the new location. The period of enrollment shall be the number of months remaining in the original certification period.~~

~~**86.6(4) 86.6(3) Change at annual review.** If more than one health or dental plan is available at the time of the annual review of eligibility, the family may designate another plan either verbally or in writing to the enrollment broker. Form 470-3574, Selection of Plan, may be used for this purpose. The child~~

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

shall remain enrolled in the current health or dental plan if the family does not notify the ~~third-party administrator~~ enrollment broker of a new health or dental plan choice by the end of the current 12-month enrollment period.

ITEM 5. Amend subrule 86.7(3) as follows:

**86.7(3) *Nonpayment of premiums.*** The child shall be canceled from the program as of the first day of the month in which premiums are not paid in accordance with the provisions of subrules 86.8(3), ~~86.8(4)~~ and 86.8(5), unless premiums are subsequently received in accordance with the grace period provisions of subrule 86.8(4).

ITEM 6. Amend rule 441—86.8(514I) as follows:

**441—86.8(514I) Premiums and copayments.**

**86.8(1) and 86.8(2)** No change.

**86.8(3) *Due date.***

*a.* No change.

*b. Payment upon renewal.* “Renewal” means any application used to establish ongoing eligibility, without a break in coverage, for any enrollment period subsequent to an enrollment period established by an initial application.

(1) No change.

(2) All premiums due must be paid before the child will be enrolled for coverage. When the premium is received, the ~~third-party administrator~~ department shall notify the health and dental plans of the enrollment.

*c. Subsequent payments.* All subsequent premiums are due by the fifth day of each month for the next month’s coverage ~~and must be postmarked no later than the last day of the month before the month of coverage.~~ Premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

*d.* No change.

**86.8(4) *Grace period.*** A grace period shall be allowed on any monthly premium not received as prescribed in paragraph 86.8(3) “c.” The grace period shall be the coverage month for which the premium is due ~~month immediately following the last month for which the premium has been paid.~~

*a.* Failure to submit a premium by the last calendar day of the grace period shall result in disenrollment.

*b.* If the premium for the grace period and the premium for the following month’s coverage is subsequently received within 45 calendar days following the last calendar day of the grace period, coverage will be reinstated ~~if the premium was postmarked or otherwise paid;~~ effective the first day of the calendar month following the grace period, without the need to reapply for coverage.

~~(1) In the grace period, or~~

~~(2) In the 14 calendar days following the grace period.~~

**86.8(5) *Method of premium payment.*** Premiums may be submitted in the form of cash, personal checks, electronic funds transfers (EFT), or other methods established by the ~~third-party administrator~~ department.

**86.8(6) and 86.8(7)** No change.

**86.8(8) *Program lock-out.*** A child who has been disenrolled from the program due to nonpayment of premiums shall be locked out of the program until the arrearage is paid in full or for a period not to exceed 90 days, whichever occurs first.

*a.* Failure to pay the unpaid premiums shall result in denial of the application if less than 90 days has elapsed since the effective date of disenrollment. EXCEPTION: The unpaid premium obligation shall be reduced to zero if upon reapplication a premium would not be assessed because the household’s income is less than 150 percent of the federal poverty level.

*b.* ~~If the arrearage is not paid within 24 months of failing to pay a premium, the debt shall be expunged and shall no longer be owed.~~



HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 7. Amend subrule 86.20(3) as follows:

**86.20(3) Premiums.** Premiums for participation in the supplemental dental-only plan are assessed as follows:

*a.* No premium is charged to families who meet the provisions of subparagraph 86.8(2) “a”(1) or to families whose countable income is less than or equal to 167 percent of the federal poverty level for a family of the same size using the modified adjusted gross income methodology.

*b.* If the family’s countable income is equal to or exceeds ~~167~~ 168 percent of the federal poverty level but does not exceed 203 percent of the federal poverty level for a family of the same size, the premium is \$5 per child per month with a \$10 monthly maximum per family.

*c. to e.* No change.

*f.* The provisions of subrules 86.8(3) to 86.8(6) ~~and 86.8(8)~~ apply to premiums specified in this subrule.

[Filed 10/22/19, effective 12/25/19]

[Published 11/20/19]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/20/19.

**ARC 4780C**

## **INSURANCE DIVISION[191]**

**Adopted and Filed**

### **Rule making related to agency procedure and organization**

The Insurance Division hereby rescinds Chapter 1, “Organization of Division,” and adopts new Chapter 1, “Administration”; rescinds Chapter 2, “Declaratory Orders,” and adopts new Chapter 2, “Public Records and Fair Information Practices”; amends Chapter 3, “Contested Cases”; rescinds Chapter 4, “Agency Procedure for Rule Making and Waiver of Rules,” and adopts new Chapter 4, “Agency Procedure for Rule Making, Waiver of Rules, and Declaratory Orders”; and amends Chapter 10, “Insurance Producer Licenses and Limited Licenses,” Chapter 36, “Individual Accident and Health—Minimum Standards and Rate Hearings,” Chapter 39, “Long-Term Care Insurance,” Chapter 41, “Limited Service Organizations,” Chapter 55, “Licensing of Public Adjusters,” Chapter 58, “Third-Party Administrators,” and Chapter 76, “External Review,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3, 17A.7, 17A.9, 17A.9A, 22.11, 502.601 and 502.605 and chapter 505.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 17A, 22, 502 and 505.

#### *Purpose and Summary*

The rescission of existing Chapters 1, 2, and 4 and adoption of new Chapters 1, 2, and 4 update the Division’s rules to add and clarify statutory requirements as well as streamline the chapters to eliminate rules that are duplicative of statute.

The amendments to Chapters 3, 10, 36, 39, 41, 55, 58, and 76 update the address, the website, and several out-of-date email addresses for the Division.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 25, 2019, as **ARC 4660C**. A public hearing was held on October 21, 2019, at 10 a.m. at

INSURANCE DIVISION[191](cont'd)

the Division's offices, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa. One person attended the public hearing and provided a comment regarding the process to request confidential information detailed in rule 191—2.6(17A,22). No other comments were received.

In response to the comment, the Division has modified rule 191—2.6(17A,22) regarding the request for confidential treatment to be more similar to the agency uniform rules. The Division has also modified this rule to clarify when the Division may disclose to the public information that was not requested to be confidential. In rule 191—1.4(502,505), the Division's address has been corrected.

#### *Adoption of Rule Making*

This rule making was adopted by Douglas M. Ommen, Iowa Insurance Commissioner, on October 30, 2019.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

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

#### *Waivers*

These rules do not include a provision for the waiver of a rule because the Division's general waiver rules of 191—Chapter 4 apply.

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

#### *Effective Date*

This rule making will become effective on December 25, 2019.

The following rule-making actions are adopted:

ITEM 1. Rescind 191—Chapter 1 and adopt the following **new** chapter in lieu thereof:

### CHAPTER 1 ADMINISTRATION

**191—1.1(502,505) Definitions.** For rules of the insurance division, the following definitions apply:

“*Commissioner*” means the commissioner of insurance or the commissioner's designee.

“*Division*” means the Iowa insurance division.

“*Division's website*” means the information and related content found at [iid.iowa.gov](http://iid.iowa.gov).

**191—1.2(502,505) Mission.** The division protects consumers through consumer education and enforcement while effectively and efficiently providing a fair, flexible, and positive regulatory environment.

**191—1.3(502,505) General course and method of operations.** The division is the state regulator which supervises all insurance business transacted in the state of Iowa as well as securities and other regulated industries.

INSURANCE DIVISION[191](cont'd)

**191—1.4(502,505) Contact information and business hours.** The division's office and mailing address is Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309-3738. The general telephone number for the division is 515-281-5705 or 1-877-955-1212. The division's facsimile number is 515-281-3059. The division's website address is [iid.iowa.gov](http://iid.iowa.gov). The division's hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays.

**191—1.5(502,505) Information, forms, and requests.** Information, applications, and forms may be obtained from the division's website, in person at the division's offices, or by telephone using the division's general telephone number. Specific instructions, forms and guidance may be provided in administrative rules or on the division's website. Submissions and requests can be submitted through the division's website, in person, or by telephone.

**191—1.6(502,505) Organization.** The division is headed by the commissioner, who is assisted by a first deputy commissioner, a second deputy commissioner, a deputy commissioner for supervision, and other deputy commissioners and assistant commissioners. The functions of the division are divided into eight bureaus.

**1.6(1) Administrative bureau.** The administrative bureau provides staff support to the commissioner and the division and is responsible for budget, personnel, procurement, communication, legislative, and other services.

**1.6(2) Company regulation bureau.** The company regulation bureau is responsible for the following:

*a.* Regulating domestic and foreign insurance companies licensed in Iowa, through licensure, analysis and financial and market examinations.

*b.* Examining the financial condition of domestic insurance companies not less than once every five years. Foreign companies are examined as deemed appropriate. The bureau ensures compliance with National Association of Insurance Commissioners accreditation mandates and with financial examination and analysis standards.

*c.* Serving as a general insurance information repository and resource for both insurers and consumers regarding, for example, insurance companies' statuses, addresses, telephone numbers, certifications, and financial statements; statutory construction; life and health insurance guaranty association fund calculations; compilation of statistics; and publication of the division's annual report to the governor required by Iowa Code section 505.12.

*d.* Reviewing and approving filed company transactions, including but not limited to approval of acquisitions and mergers of domestic insurers, intercompany contractual agreements and assumption reinsurance agreements.

*e.* Authorizing and overseeing individual and group workers' compensation self-insurance.

*f.* Authorizing, examining and analyzing benevolent associations and fraternal benefit societies.

*g.* Authorizing and reviewing multiple employer welfare arrangements.

*h.* Registering and verifying compliance for risk retention groups.

*i.* Supervising the rehabilitation and liquidation of insurance companies.

*j.* Auditing and monitoring premium tax remittances for admitted companies and supervising statutory deposits.

*k.* Reviewing and approving admission applications for foreign surplus lines insurers as well as conducting premium tax audits associated with the nonadmitted insurance industry.

*l.* Implementing and maintaining the division's information technology resources.

**1.6(3) Securities and regulated industries bureau.** The securities and regulated industries bureau is responsible for administering and enforcing the Iowa uniform securities Act through enforcement, licensing, and securities registration to ensure investor protection and a positive climate for capital formation. The bureau is also responsible for protecting the public by administering and enforcing rules related to motor vehicle service contracts, residential service contracts, retirement facilities, cemeteries, and preneed purchase agreements for cemetery merchandise, funeral merchandise and funeral services.

**1.6(4) Consumer advocate bureau.** The consumer advocate bureau consists of the consumer advocate and, in addition to being responsible for the duties described in Iowa Code section 505.8(6) "b,"

## INSURANCE DIVISION[191](cont'd)

is responsible for providing outreach to consumers, assisting in creation of consumer protection laws and regulations, and reviewing complaints. In order to fulfill the prescribed duties, the commissioner has delegated investigation and enforcement duties to the market regulation, enforcement, and fraud bureaus.

**1.6(5) Market regulation bureau.** The market regulation bureau is responsible for the following:

- a. Ensuring fair treatment of consumers.
- b. Investigating unfair or deceptive trade practices in the business of insurance.
- c. Reviewing, investigating and responding to inquiries and complaints from the public regarding insurance producers and insurers.
- d. When requested by consumers, coordinating external reviews of health insurance claim decisions if insurance companies deny benefits either on the basis that the services were not medically necessary or on the basis that the services were investigational or experimental.
- e. When requested by consumers, coordinating independent reviews of long-term care insurance claim decisions if insurance companies deny benefits on the basis that insureds did not meet benefit trigger requirements.

**1.6(6) Enforcement bureau.** The enforcement bureau takes administrative action against individuals and entities regulated by the division for violations of insurance, securities, and other laws under the authority of the division and provides legal counsel to the division.

**1.6(7) Fraud bureau.** The fraud bureau confronts the problem of insurance and securities fraud by prevention, investigation, and prosecution of fraudulent insurance acts in an effort to reduce the amount of premium dollars used to pay fraudulent insurance claims, as set forth in Iowa Code chapter 507E. Matters investigated by the fraud bureau may be referred to the attorney general's office or to local prosecutors for potential action or prosecution.

**1.6(8) Product and producer regulation bureau.** The product and producer regulation bureau is responsible for the following:

- a. Reviewing, approving or disapproving property, casualty, life and health forms and, where provided by law, premium rates of certain types of insurance.
- b. Performing actuarial analysis of life and health insurance plans funded by certain public bodies.
- c. Licensing, registering, and monitoring entities and individuals under the authority of the commissioner.
- d. Overseeing the senior health insurance information program (SHIIP) and senior Medicare patrol (SMP). SHIIP's mission is to advocate for, inform, educate and assist consumers on Medicare and related health insurance information issues so Iowans can make informed decisions and access resources to address their needs. SMP seeks to increase public awareness on how to prevent, detect, and report health care fraud, errors and abuse through grassroots education and community engagement. Iowa SHIIP-SMP services are local, carried out by a statewide network of certified, trained volunteer counselors located at sponsor site offices across Iowa. Iowa SHIIP-SMP volunteers provide one-to-one Medicare counseling and conduct community education on Medicare and fraud prevention. The Administration for Community Living (ACL), Office of Healthcare Information and Counseling, manages the competitively obtained Iowa SHIIP and SMP grants. ACL is a part of the U.S. Department of Health and Human Services.

**191—1.7(505) Service of process.** Certain individuals and entities under the jurisdiction of the commissioner are required by law to consent to having the commissioner serve as agent for the individual or entity for the purpose of receiving service of process.

**1.7(1) Request for service.** A party to a proceeding who requests that the commissioner accept service of process as allowed by law must submit to the division, at the address stated in rule 191—1.4(502,505), all of the following:

- a. For each individual or entity to be served, one original and one copy of the documents to be served by the division.
- b. A cover letter indicating the name of each individual or entity to be served by the division.

## INSURANCE DIVISION[191](cont'd)

c. A check for service fees, made payable to Iowa Insurance Division, for \$50 for each individual or entity to be served, unless another amount is required by law.

**1.7(2) Division actions.** After the division receives the items listed in paragraph 1.7(1)“a,” the division must do the following:

- a. Accept the service of process on behalf of the individual or entity.
- b. Forward, by certified mail, the original documents to the individual or entity to be served.
- c. File a notice of acceptance electronically through the Iowa court electronic filing system.

**1.7(3) Types of documents the division will serve.**

a. The division will serve documents related to the initiation of a case, such as original notices, petitions, and jury demands. The division will not serve documents related to later processes in a case, including but not limited to subpoenas and garnishments, unless required to do so by law.

b. The division will serve documents related to matters in the Iowa court system. The division will not serve documents related to matters in other courts, including but not limited to the federal court system, or matters in other administrative systems, except for workers' compensation cases filed with the Iowa division of workers' compensation.

These rules are intended to implement Iowa Code sections 17A.3, 502.601, 502.605, 505.1 and 505.30.

ITEM 2. Rescind 191—Chapter 2 and adopt the following **new** chapter in lieu thereof:

CHAPTER 2  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

**191—2.1(17A,22) Statement of policy.** The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound division determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This division is committed to the policies set forth in Iowa Code chapter 22. Division staff will cooperate with members of the public in implementing the provisions of that chapter.

**191—2.2(17A,22) Definitions.** The definitions in Iowa Code section 22.1 are incorporated into this chapter by this reference. In addition to the definitions in rule 191—1.1(502,505), the following definitions apply:

“*Confidential record*” means a record that is not available as a matter of right for inspection and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the division is prohibited by law from making available for inspection by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provisions of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Division*” means the insurance division of the department of commerce, created by Iowa Code section 505.1. The division is both the “government body” and the “lawful custodian” as defined in Iowa Code sections 22.1(1) and 22.1(2). The division is also the “state agency” as defined in Iowa Code chapter 17A and referenced in Iowa Code chapter 22. For purposes of this chapter, “division” includes both the commissioner of insurance and the administrator as defined in Iowa Code chapter 502.

“*File*,” “*filed*,” or “*filing*,” when used as a verb, means submitting or having submitted to the division a record or information. “File” or “filing,” when used as a noun, means a record or information.

“*Inspect*” or “*inspection*” means the same as “examine” or “examination” in Iowa Code chapter 22. The term “examination” in this chapter does not mean the same as “examination” as used in Iowa Code chapter 22.

## INSURANCE DIVISION[191](cont'd)

“*Lawful custodian*,” as used in Iowa Code section 22.1(2), is the division, the division’s record officer, or an employee lawfully delegated authority by the division to act for the division in implementing Iowa Code chapter 22.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means all or part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the division.

“*Record system*” means any group of records under the control of the division from which a record may be retrieved by a personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual.

**191—2.3(17A,22) General provisions.**

**2.3(1)** *Entities holding division records covered by this rule.* This rule applies to records belonging to, required by, or created by the division. This rule applies to records held by third parties, including other state agencies, that do any of the following:

- a. Perform division functions on behalf of the division;
- b. Store records for the division;
- c. Perform services for the division; or
- d. Otherwise handle records that would be governed by this rule if they were in the possession of the division.

**2.3(2)** *Existing records.* A request for access shall apply only to records that exist at the time the request is made and access is provided. The division is not required to create, compile or procure a record solely for the purpose of making it available except as described in Iowa Code section 22.3A and subrule 2.4(6).

**2.3(3)** *Public records.* All of the division’s records are open records available to the public except for records that are confidential under rule 191—2.12(17A,22) or redactable under rule 191—2.11(17A,22).

**2.3(4)** *Availability of open records.* Open records of the division are available to the public for examination and copying unless otherwise provided by state or federal law, regulation or rule.

**2.3(5)** *Internet access.* The division provides public access to many public records, with no request for access necessary, on the division’s website.

**2.3(6)** *Office hours.* Open records are available for inspection during customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

**2.3(7)** *Data processing system.* Some agency data processing systems that have common data elements can match, collate and compare personally identifiable information.

**2.3(8)** *Scope.* This chapter does not:

- a. Require the division to index or retrieve records which contain information about individuals by that person’s name or other personal identifier.
- b. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
- c. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the division which are governed by the regulations of another agency.
- d. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs.
- e. Make available records compiled in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, the Code of Professional Responsibility, and applicable regulations.
- f. Make any warranty of the accuracy or completeness of a record.

**191—2.4(17A,22) Requests for access to records.**

## INSURANCE DIVISION[191](cont'd)

**2.4(1) Request for access.** Requests for access to open records not available on the division's website may be made in writing or in person. A request may be made by mail, email, or online as instructed on the division's website. Requests must identify the particular records sought by name or description in order to facilitate the location of the record. Requests must include the name, address, email address if available, and telephone number of the person requesting the information. A person is not required to give a reason for requesting an open record. If the division has records in its possession that may be public records but that are copies of materials from another agency or public organization, the division may refer persons seeking inspection of those records to the originating agency or public organization.

**2.4(2) Response to requests.**

*a. Access.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the division must comply with the request as soon as feasible. The division requests that members of the public make appointments for the in-person inspection of public records because the division needs time to locate stored records and office space is limited.

*b. Delay.* Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4), for redaction by the division of confidential information, or for search and review of requested records. The division must promptly give written notice to the requester of the reason for any delay and an estimate of the length of that delay.

*c. Deny.* The division may deny access to the record by members of the public when warranted under Iowa Code chapter 22 or other applicable law or when the record's disclosure is prohibited by a court order.

**2.4(3) Security of record.** No person may, without permission from the division, search or remove any record from division files. Inspection and copying of division records must be supervised by the division or a designee of the division in order for the records to be protected from damage and disorganization.

**2.4(4) Copying.** A reasonable number of copies of an open record may be made in the division's office. If photocopy equipment is not available in the division office where an open record is kept, the division must permit the record's inspection in that office and arrange to have copies promptly made elsewhere.

**2.4(5) Fees.** The division may charge fees for records as authorized by Iowa Code section 22.3 or another provision of law. Under Iowa Code section 22.3, the fee for the copying service, whether electronic or hard copy, or mailing shall not exceed the cost of providing the service. An hourly fee may be charged for actual division expenses in the inspection, reviewing, and copying of requested records when the total staff time dedicated to fulfilling the request requires an excess of two hours. When the open records request will cause time required in excess of the allotted two hours, the division may require a requester to make an advance payment to cover all of the estimated fee.

**2.4(6) Information released.** If a person is provided access to less than an entire record, the division shall take measures to ensure that the person is furnished only the information that is to be released. This may be done by providing to the person either an extraction of the information to be released or a copy of the record from which the information not to be released has been otherwise redacted.

**191—2.5(17A,22) Access to confidential records.**

**2.5(1) Procedure.** The following provisions are in addition to those specified in rule 191—2.4(17A,22) and are minimum requirements. A statute or another administrative rule may impose additional requirements for access to certain classes of confidential records. A confidential record may, due to its nature or the way it is compiled or stored, contain a mixture of confidential and nonconfidential information. The division shall not refuse to release the nonconfidential information simply because of the manner in which the record is compiled or stored.

*a. Form of request.* The division shall ensure that there is sufficient information to provide reasonable assurance that access to a confidential record may be granted. Therefore, the division may require the requester to:

- (1) Submit the request in writing.

## INSURANCE DIVISION[191](cont'd)

- (2) Provide proof of identity and authority to secure access to the record.
- (3) Sign a certified statement or affidavit listing the specific reasons justifying access to the record and provide any proof necessary to establish relevant facts.

*b. Response to request.* The division must notify the requester of approval or denial of the request for access. The notice must include:

- (1) The name and title or position of the person responding on behalf of the division; and
- (2) A brief statement of the grounds for denial, including a citation to the applicable statute or other provision of law.

*c. Request granted.* When the division grants a request for access to a confidential record to a particular person, the division must notify that person and indicate any lawful restrictions imposed by the division on that person's inspection and copying of the record.

*d. Reconsideration of denial.* A requester whose request is denied by the division may apply to the commissioner of insurance for reconsideration of the request.

**2.5(2) Release of confidential records by the division.** The division may release a confidential record or a portion of it to:

- a.* The legislative services agency pursuant to Iowa Code section 2A.3.
- b.* The ombudsman pursuant to Iowa Code section 2C.9.
- c.* Other governmental officials and employees only as needed to enable them to discharge their duties.
- d.* The public information board pursuant to Iowa Code section 23.6.

**2.5(3) Release of confidential records by the division.**

*a.* The division may release a confidential record or a portion of it to a person not covered in rule 191—2.6(17A,22) if the release:

- (1) Is permitted by statute, rule or another provision of law; and
- (2) Is not inconsistent with the stated or implied purpose of the law which establishes or authorizes confidentiality.

*b.* Before the division releases a record to a person not covered in rule 191—2.6(17A,22), the division may notify the subject of the record of the impending release and may give the subject a reasonable amount of time to seek an injunction.

**191—2.6(17A,22) Requests for confidential treatment.** The division may treat a record as a confidential record and withhold it from inspection or refuse to disclose that record to members of the public only to the extent that the division is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order.

**2.6(1) Request.** A person may request that all or a portion of a record be confidential. The request for confidential treatment must be submitted in writing to the division and:

- a.* Identify the information for which confidential treatment is sought.
- b.* Cite the legal and factual basis that justifies confidential treatment.
- c.* Identify the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.
- d.* Specify the precise period of time for which the confidential treatment is requested should the request be only for a limited time period.

**2.6(2) Additional information.** The division may request additional factual information from the person to justify treatment of the record as a confidential record.

**2.6(3) Decision.** The division must notify the requester in writing of the granting or denial of the request and, if the request is denied, the reasoning for the denial.

**2.6(4) Request denied.** If the request for confidential treatment of a record is denied, the requester may apply to the commissioner for reconsideration of the request. However, the record shall not be withheld from public inspection for any period of time if the division determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record.

**2.6(5) Failure to request.** Failure of a person to request confidential record treatment for a record does not preclude the division from treating it as a confidential record. However, if a person who has



## INSURANCE DIVISION[191](cont'd)

submitted information to the division does not request that it be withheld from public inspection, the division may proceed as if that person has no objection to its disclosure to members of the public.

**191—2.7(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** Except as otherwise provided by law, the person who is the subject of a record may have a written statement of additions, dissents or objections entered into that record. The statement shall be filed with the division. The statement must be dated and signed by the person who is the subject of the record and include the person's current address and telephone number. This rule does not authorize the person who is the subject of the record to alter the original record or to expand the official record of any division proceeding.

**191—2.8(17A,22) Disclosures without the consent of the subject.**

**2.8(1)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject.

**2.8(2)** Authority to release confidential records. The division may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect these records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 191—2.6(17A,22). If the division initially determines that it will release such records, the division may notify interested persons and withhold the records from inspection as provided in rules 191—2.6(17A,22) and 191—2.7(17A,22).

**191—2.9(17A,22) Consent to disclosure by the subject of a confidential record.** To the extent permitted by any applicable provision of law, the subject of a confidential record may consent to have a copy of the portion of that record that concerns the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed and the particular person or class of persons to whom the record may be disclosed. The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. Appearance of counsel before the division on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the division to disclose records about that person to the person's attorney.

**191—2.10(17A,22) Notice to suppliers of information.** When the division requests a person to supply information about that person, the division must notify the person of the use that will be made of the information, which persons outside the division might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

**191—2.11(17A,22) Personally identifiable information collected by the division.** The division collects and maintains open records, some of which may contain personally identifiable information, and some of which may be shared with other state or federal agencies or organizations or vendors. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the division. Unless otherwise stated, the authority for the collection of the record is provided by Iowa Code chapter 502 or 505. Some personally identifiable information is protected by Iowa Code sections 502.607(2) "e" and 505.8(9).

**2.11(1) Nature and extent.** The following records may contain personally identifiable information:

*a.* Confidential records. Records listed as confidential records are described in rule 191—2.12(17A,22).

*b.* Rule-making records. Rule-making records may contain information about people who make written or oral comments about proposed rules.

## INSURANCE DIVISION[191](cont'd)

*c.* Contested case records. Contested case records contain names and identifying numbers of people involved. Evidence and documents submitted as a result of a contested case are contained in contested case records.

*d.* Licensing records. Licensing records of individuals and entities regulated by the division contain names and identifying numbers of the regulated individual or individuals designated as responsible for the regulated entity.

*e.* Complaint, inquiry, investigation, and examination records. Complaint, inquiry, investigation, and examination records contain names and identifying numbers of the people who submit, are the subject of, or are otherwise involved in the complaint, inquiry, investigation or examination.

*f.* Personnel files. The division maintains files containing information about employees of the division and applicants for positions with the division. The files contain payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

**2.11(2) Redaction.** To the extent that the division finds it necessary to allow inspection of records containing personally identifiable information, the division must, when allowed by law, redact the personally identifiable information prior to allowing the inspection.

**2.11(3) Means of storage.** Paper and various electronic means of storage are used to store records containing personally identifiable information. Some information is stored electronically by third parties on behalf of the division.

**191—2.12(17A,22) Confidential records.** This rule describes the types of agency information or records that are confidential. This rule is not exhaustive. The following records shall be kept confidential. Records are listed by category and include a citation to the legal basis for withholding that category from public inspection.

**2.12(1)** Records which are exempt from disclosure under Iowa Code section 22.7.

**2.12(2)** Records which constitute attorney work product, or attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

**2.12(3)** Those portions of the division's staff manuals, instructions or other statements issued by the division which set forth criteria or guidelines to be used by division staff in auditing, making inspections, settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when the disclosure of such statements would enable law violators to avoid detection, facilitate disregard of requirements imposed by law, or give a clearly improper advantage to persons who are in an adverse position to the division, pursuant to Iowa Code sections 17A.2 and 17A.3.

**2.12(4)** All information obtained and prepared in the course of an inquiry, complaint, or investigation, including but not limited to communications, insurer documents, data, reports, analysis, and notes, pursuant to Iowa Code section 505.8 and chapters 502, 502A, 505, 507A, 507E, 522B, 523C, and 523I.

**2.12(5)** Information of insurers designated as confidential by applicable law, including but not limited to information and reports that are part of an examination, pursuant to Iowa Code sections 505.17 and 507.14.

**2.12(6)** Information of the Iowa life and health guaranty association, pursuant to Iowa Code chapters 508C and 515B.

**2.12(7)** Insurance holding company systems registration and holding company examinations, pursuant to Iowa Code section 522.7.

**2.12(8)** Information related to the uniform securities Act that is designated nonpublic pursuant to Iowa Code section 502.607.

INSURANCE DIVISION[191](cont'd)

**2.12(9)** Information filed with the division related to preneed sellers and sales agents of cemetery and funeral merchandise and funeral services pursuant to Iowa Code chapter 523A.

**2.12(10)** Information obtained in the course of an examination of a cemetery pursuant to Iowa Code chapter 523I.

**2.12(11)** All records relating to prearranged funeral contracts, except upon approval by the commissioner of insurance or the attorney general, pursuant to Iowa Code section 523A.204(3).

**2.12(12)** Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“e.”

**2.12(13)** Sealed bids received prior to the time set for public opening of bids, pursuant to Iowa Code section 72.3.

**2.12(14)** Information related to external review of health care coverage decisions, pursuant to Iowa Code chapter 514J.

**2.12(15)** Information related to automobile insurance cancellation, pursuant to Iowa Code chapter 515D.

**2.12(16)** Determination of any suspension of an insurance producer’s or other licensee’s pending application for licensure, pending request for renewal, or current license, when the suspension is related to failure to pay child support, foster care, or state debt, pursuant to rule 191—10.21(252J) or 191—10.23(82GA,SF2428). Notwithstanding any statutory confidentiality provision, the division may share information with the child support recovery unit or the centralized collection unit of the department of revenue, through manual or automated means, for the sole purpose of identifying registrants, applicants or licensees subject to enforcement under Iowa Code chapter 252J or 272D, respectively.

**2.12(17)** Information which is confidential under the law governing a person providing information to the division and pursuant to a written sharing agreement referencing that law and how it applies to allow the division to share the information.

**2.12(18)** All other information or records that by law are or may be confidential.  
These rules are intended to implement Iowa Code section 22.11.

ITEM 3. Amend rule 191—3.4(17A), introductory paragraph, as follows:

**191—3.4(17A) Requests for contested case proceeding.** Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question. The request shall be filed with the insurance division, at the address disclosed in rule ~~191—1.2(502,505)~~ 191—1.4(502,505).

ITEM 4. Amend subrule 3.12(5) as follows:

**3.12(5)** Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Insurance Division at the address disclosed in ~~191—1.2(502,505)~~ 191—1.4(502,505) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

ITEM 5. Rescind 191—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4  
AGENCY PROCEDURE FOR RULE MAKING, WAIVER OF RULES,

INSURANCE DIVISION[191](cont'd)

## AND DECLARATORY ORDERS

DIVISION I  
AGENCY PROCEDURE FOR RULE MAKING

**191—4.1(17A) Applicability.** Except to the extent otherwise expressly provided by statute, all rules proposed or adopted by the division are subject to the provisions of Iowa Code chapter 17A and the provisions of this chapter.

**191—4.2(17A) Definitions.** The definitions in Iowa Code section 17A.2 are incorporated into this chapter by this reference. In addition to those definitions and the definitions in rule 191—1.1(502,505), the following definitions apply:

“*Commissioner*” means the commissioner of insurance or the commissioner’s designee. For the purposes of this chapter, “commissioner” includes both the commissioner of insurance and the administrator as defined in Iowa Code chapter 502.

“*Waiver*” means action by the division that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “variance” as used in Iowa Code chapter 17A is included in this definition of “waiver” for purposes of this chapter.

**191—4.3(17A) Severability.** If any provision of any rule adopted by the division, or if the application of any such rule to any person or circumstance, is for any reason held to be invalid, illegal or unenforceable by any court of law, the validity, legality and enforceability of the remainder of the rule and its application to other persons or circumstances shall not be affected or impaired thereby.

**191—4.4(17A) Public rule-making docket.** The division shall maintain on the division’s website a current public rule-making docket listing each pending rule-making proceeding and relevant rule-making information, including the information required by Iowa Code sections 17A.3(1) “d” and 17A.6A(2). If a rule-making docket for all agencies is maintained on the Iowa legislature’s website, the division may utilize the legislature’s docket, in whole or in part, instead of creating a duplicative separate docket.

**191—4.5(17A) Rule making.**

**4.5(1) Notice of proposed rule making.** The division must publish a Notice of Intended Action in the Iowa Administrative Bulletin prior to the adoption of a rule unless otherwise authorized by Iowa Code section 17A.4(3). The Notice of Intended Action must include:

- a. A brief explanation of the purpose of the proposed rule;
- b. The specific legal authority for the proposed rule;
- c. Except to the extent impracticable, the text of the proposed rule;
- d. The methods that persons and agencies may use to present their views on the proposed rule; and
- e. Any other information required by statute or rule.

**4.5(2) Public participation.**

a. With regard to proposed rules published under Notice of Intended Action, the division must receive and consider, from any person or agency, written comments and written requests to make an oral presentation when the comments and requests are prepared and submitted in conformance with the following:

(1) Comments and requests must clearly state the name, address and telephone number of the person or agency authoring the comment or request and the number and title of the proposed rule as given in the Notice of Intended Action.

(2) If an oral presentation is requested, the requester is encouraged to set forth the general subject of the presentation.

(3) Comments and requests must be submitted as specified in the Notice of Intended Action and received no later than the date specified in the Notice. The specified date must be no less than 20 days after publication of the Notice.

## INSURANCE DIVISION[191](cont'd)

*b.* The receipt and acceptance for consideration of written comments and written requests must be promptly acknowledged by the division.

(1) Written comments received after the deadline may be accepted by the division although their consideration is not assured.

(2) Written requests to make an oral presentation received after the deadline will not be accepted.

*c.* In addition to the formal procedures contained in this rule, the division may solicit viewpoints or advice concerning proposed rules through informal conferences or consultations as the division may deem desirable.

**4.5(3) *Regulatory analysis.*** A request for the issuance of regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the division at the address in rule 191—1.4(502,505) or as instructed on the division's website.

**4.5(4) *Concise statement.*** The division must issue a concise statement of the principal reasons for and against a rule that has been adopted if the statement is requested in accordance with this subrule.

*a.* The request for a concise statement must:

(1) Clearly state the name, address and telephone number of the person or agency authoring the request and the number and title of the rule which is the subject of the request.

(2) Be submitted in writing to the division at the address set forth in rule 191—1.4(502,505) or as instructed on the division's website and be postmarked no later than 30 days after publication in the Iowa Administrative Bulletin of the rule that is the subject of the request for a concise statement.

*b.* The concise statement issued by the division in response to the request must include the following:

(1) The principal reasons for adopting the rule;

(2) An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change; and

(3) The principal reasons urged in the rule-making proceeding for and against the rule, and the division's reasons for overruling the arguments made against the rule.

*c.* A requested concise statement must be issued either at the time of rule adoption or within 35 days after the division receives the request.

**4.5(5) *Registration for copies of Notices of Intended Action.*** Any person, entity, small business, or trade or occupational association may register its name and address with the agency to receive copies of Notices of Intended Action.

*a.* The request must be in writing, specify whether the requester wants to receive insurance rules, securities rules, or both, and specify the number of copies of the Notice of Intended Action the requester wishes to receive.

*b.* The requester must reimburse the division for the actual costs incurred in providing copies.

*c.* The division must promptly acknowledge the receipt of the request.

**4.5(6) *Records.*** The division must maintain public rule-making documents and other public records related to rule making in an accessible format for public inspection.

**191—4.6(17A) Differences between adopted rule and rule proposed in Notice of Intended Action.** The division shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action upon which the adopted rule is based unless the differences are within the scope of the subject matter announced in the Notice of Intended Action, are in character with the issues raised in that Notice, and are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto.

**191—4.7(17A) Petition for rule making.**

**4.7(1)** Any person or agency may file a petition for rule making with the division at the address disclosed in rule 191—1.4(502,505) or as instructed on the division's website. A petition is deemed filed when it is received. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

## INSURANCE DIVISION[191](cont'd)

**4.7(2)** The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER	
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (State subject matter).	} PETITION FOR RULE MAKING

**4.7(3)** The petition shall provide the following information in separate numbered paragraphs:

1. The petitioner's name, address, and telephone number.
2. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation to the particular portion or portions of the rule proposed to be amended or repealed.
3. A citation to any law deemed relevant to the division's authority to take the action urged or to the desirability of that action.
4. A brief summary of the petitioner's arguments in support of the action urged in the petition.
5. A brief summary of any data supporting the action urged in the petition.
6. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.
7. If desired, a request to meet informally with the division to discuss the petition.

**4.7(4)** The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, email address if available, and telephone number of the petitioner and the petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**4.7(5)** The division may deny a petition because it does not substantially conform to the required form.

**4.7(6)** The petitioner may submit a brief in support of the action urged in the petition. The division may request a brief from the petitioner or from any other person concerning the substance of the petition.

**4.7(7)** Upon request by the petitioner in the petition, the division must schedule a brief and informal meeting between the petitioner and the division or a member of the division's staff to discuss the petition. The division may request the petitioner to submit additional information or argument concerning the petition.

**4.7(8)** Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the division must, in writing, deny the petition, and notify the petitioner of its action and the specific grounds for the denial, or grant the petition and notify the petitioner that it has instituted rule-making proceedings on the subject of the petition. The petitioner shall be deemed notified of the denial or grant of the petition on the date when the division mails or delivers the required notification to the petitioner.

The rules in this division are intended to implement Iowa Code section 17A.7.

**191—4.8 to 4.20** Reserved.

DIVISION II  
 WAIVER AND VARIANCE OF RULES

**191—4.21(17A) Waivers.**

**4.21(1)** *Scope.* Division II of this chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede the rules in this division with respect to any waiver from that rule. Division II of this

## INSURANCE DIVISION[191](cont'd)

chapter shall not preclude the division from granting waivers in other contexts or on the basis of other standards if a statute or agency rule authorizes the division to do so and the division deems it appropriate to do so.

**4.21(2) Authority to grant waivers.** The division may grant a waiver from a rule only if the division has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The division may not waive the following categories of rules:

- a. Rules setting requirements that are created or duties that are imposed by statute.
- b. Rules that provide definitions or interpretations, set fees, clarify enforcement authority, deal with fraud or are the subject of prosecutorial discretion.
- c. Rules that merely define the meaning of a statute or other provision of law or precedent if the commissioner does not possess delegated authority to bind the courts to any extent with the commissioner's definition.

**4.21(3) Criteria for order for waiver.** In response to a petition completed pursuant to rule 191—4.22(17A), except for a petition seeking a waiver order issued pursuant to subrule 4.21(4), the division may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the division finds, based on clear and convincing evidence, all of the following:

- a. Application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. Waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. Provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and
- e. If the rule implements Iowa Code chapter 502 or is being applied in conjunction with implementation of Iowa Code chapter 502, the waiver is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes fairly intended by the policy and provisions of Iowa Code chapter 502.

**4.21(4) Criteria for waiver related to approval of a manner of electronic delivery of notices of cancellation, nonrenewal or termination.** This subrule is intended to implement Iowa Code sections 17A.9A and 505B.1.

- a. For purposes of Iowa Code chapter 505B and this subrule, in addition to the definitions in rule 191—4.2(17A), the following definitions shall apply:

*"Intended recipient"* means the person to whom notice is required to be delivered, including but not limited to notices listed in the definition of "notice of cancellation, nonrenewal or termination" in this paragraph and in 191—paragraphs 20.80(1)"b," 30.9(1)"b," 35.9(1)"b," 39.33(1)"b," and 40.26(1)"b."

*"Notice of cancellation, nonrenewal or termination"* means:

1. Notice of an insurance company's termination of an insurance policy at the end of a term or before the termination date;
2. Notice of an insurance company's decision or intention not to renew a policy; and
3. For purposes of notices required by Iowa Code chapters 505B, 508, 509B, 513B, 514, 514B, 514D, 514G, 515, 515D, 518, 518A and 519, includes but is not limited to the following:
  - An insurance company's notice of cancellation, nonrenewal, suspension, exclusion, intention not to renew, failure to renew, termination, replacement, rescission, forfeiture or lapse in an annuity policy, a life insurance policy, a long-term care insurance policy, or an insurance policy other than life;
  - An insurance company's rescission or discontinuance of an accident and health insurance policy;
  - An insurance company's notice of cancellation of personal lines policies or contracts;
  - A health maintenance organization's notice to an enrollee of cancellation or rescission of membership;

## INSURANCE DIVISION[191](cont'd)

- An employer's or group policyholder's notice to an employee or member of the termination or substantial modification of the continuation of an employer group accident or health policy; or
- A carrier's advance notice to affected small employers, participants, and beneficiaries of its decision to discontinue offering a particular type of health insurance coverage.

*b.* This subrule shall apply to all insurance companies holding a certificate of authority to transact the business of insurance in Iowa, health maintenance organizations, employers, group policyholders, or carriers and to all requirements by statute or rule related to notices of cancellation, nonrenewal or termination. This subrule shall apply when an insurance company, health maintenance organization, employer, group policyholder, or carrier seeks the commissioner's approval of a manner for delivering by electronic means required notices of cancellation, nonrenewal or termination, as described in Iowa Code section 505B.1.

*c.* The commissioner, by order pursuant to this chapter, may approve a request for approval of a manner for delivering notices of cancellation, nonrenewal or termination by an electronic means if the commissioner has jurisdiction to enforce the statute or rule requiring the notice and if the requested approval is consistent with Iowa Code section 505B.1 and with this chapter.

*d.* In response to a petition submitted pursuant to rule 191—4.22(17A) and related statutes and rules, the commissioner may issue an order approving an insurer's proposed manner for delivering notices of cancellation, nonrenewal or termination by an electronic means rather than mail, if the commissioner finds, based on clear and convincing evidence, all of the following:

- (1) The proposed manner allows the commissioner, the insurer and the intended recipient to verify receipt by the intended recipient;
- (2) The proposed manner provides for consent, by the intended recipient, to have notices or documents delivered by electronic means, in compliance with Iowa Code chapter 505B; and
- (3) The proposed manner provides that the insurance company shall maintain adequate records of notices, receipts and consents. The records shall be available for review upon request by the commissioner and the intended recipient and be shall maintained for a period of five years from the date of cancellation, nonrenewal or termination.

*e.* Such an order would constitute approval by the commissioner to satisfy Iowa Code chapter 505B.

*f.* Although any proposed manner that complies with the above requirements may be approved, the following system is provided as an example, for purposes of guidance, of an insurer's system of verifiable receipt that will be approved by the commissioner if the system includes all of the following aspects:

(1) The system provides that the intended recipients shall give written consent to the insurer of delivery of required notices of cancellation, nonrenewal and termination by electronic means, in compliance with Iowa Code section 505B.1.

(2) The system provides that when an insurer is required to provide notices of cancellation, nonrenewal and termination, the insurer shall provide to the intended recipients a link to the required notice by electronic mail.

(3) The system provides that the insurer provide intended recipients with user names and passwords to log in to the insurer's notice system website.

(4) The system provides that the link required by subparagraph 4.21(4) "f"(2) shall be to a secure website that requires the intended recipients' user names and passwords for the intended recipients to access the insurer's notice system website and the contents of the notices.

(5) The system provides that when the intended recipients log in to the insurer's notice system website, either the insurer's notice to the intended recipients or the intended recipients' online inboxes will be the first thing automatically displayed.

(6) The system provides a procedure whereby, if the intended recipients do not log in to the intended recipients' accounts within seven days after the insurer sent the link to the intended recipients by email, the insurer shall mail paper copies of the notices to the intended recipients' last-known physical addresses.



INSURANCE DIVISION[191](cont'd)

(7) The system provides for adequate maintenance of records by the insurer as required by subparagraph 4.21(4) "d"(3).

g. The commissioner may, upon proper request by an insurance company pursuant to rule 191—2.6(17A,22) or another applicable rule, maintain the confidentiality of information in any document or materials submitted in support of a request for approval under this rule:

(1) If release of the specific information would disclose trade secrets protected by law pursuant to Iowa Code section 22.7(3) and 191—subrule 2.12(12); or

(2) If the specific information otherwise must be withheld from public inspection pursuant to Iowa Code chapter 22 or rule 191—2.12(17A,22).

**191—4.22(17A) Petition for waiver.** A petition for a waiver must be submitted in writing to the division as follows:

**4.22(1) Applications.** If the petition relates to an application or license, the petition must be made in accordance with the filing requirements for the application or license in question.

**4.22(2) Contested cases.** If the petition relates to a pending contested case, the petition must be filed in the contested case proceeding, using the caption of the contested case. The waiver petition shall be decided within the context of the contested case unless the presiding officer, other than the commissioner, determines that the petition should be referred directly to the commissioner.

**4.22(3) Other.** If the petition does not relate to an application or a pending contested case, the petition must be submitted to the division at the address in rule 191—1.4(502,505) or as instructed on the division’s website.

**4.22(4) Content of petition.** A petition for waiver must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER	
In the matter of: (Name of Person Requesting Waiver or Variance)	}
	REQUEST FOR WAIVER OF RULE (Specify number of rule for which waiver is requested)

**4.22(5)** The petition shall provide the following information in separate numbered paragraphs:

1. The name, address and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the criteria described in subrule 4.21(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes justify a waiver.

5. A history of any prior contacts between the division and the petitioner relating to the regulated activity, application or license affected by the proposed waiver, including a description of each affected license held by the petitioner, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the prior five years and any waivers or waiver applications filed by the petitioner with the division within the prior five years.

6. Any information known to the petitioner regarding the division’s treatment of similar cases.

7. The name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address and telephone number of any entity or person who would be adversely affected by the granting of a waiver.

9. The name, address and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

## INSURANCE DIVISION[191](cont'd)

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the division with information relevant to the waiver.

**4.22(6) Notice.** The division must acknowledge a petition upon receipt. The division must ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the division attesting that notice has been provided.

**191—4.23(17A) Waiver hearing procedures and ruling.**

**4.23(1) Procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute.

**4.23(2) Additional information.** Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the division.

**4.23(3) Division discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division, upon consideration of all relevant factors. Each petition for a waiver must be evaluated by the division based on the unique, individual circumstances set out in the petition.

**4.23(4) Ruling.** An order granting or denying a waiver must be in writing and must contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**4.23(5) Burden of persuasion.** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver from a division rule.

**4.23(6) Narrowly tailored exception.** A waiver, if granted, must provide the narrowest exception possible to the provisions of a rule.

**4.23(7) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the division must balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**4.23(8) Conditions.** The division may place any condition on a waiver that the division finds desirable to protect the public health, safety, and welfare.

**4.23(9) Time period of waiver.** A waiver must not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the division, a waiver may be renewed if the division finds that grounds for a waiver continue to exist.

**4.23(10) Time for ruling.** The division must grant or deny a petition for a waiver as soon as practicable but, in any event, must do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the division must grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**4.23(11) When deemed denied.** Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver.

**4.23(12) Service of order.** Within seven days of its issuance, any order issued under this chapter must be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

INSURANCE DIVISION[191](cont'd)

**4.23(13) Cancellation of a waiver.** A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, modified or revoked if, after appropriate notice and hearing, the division issues an order finding any of the following:

- a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- c. The subject of the waiver order has failed to comply with all conditions contained in the order; or
- d. The waiver is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

**4.23(14) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

The rules in this division are intended to implement Iowa Code section 17A.9A and Executive Order Number 11 (September 14, 1999).

**191—4.24 to 4.36** Reserved.

DIVISION III  
DECLARATORY ORDERS

**191—4.37(17A) Petition for declaratory order.**

**4.37(1)** Any person or agency may file a petition with the division for a declaratory order as to the applicability to specified circumstances of a statute, rule or order within the primary jurisdiction of the division.

**4.37(2)** The petition must be submitted to the division at the address provided in rule 191—1.4(502,505) or as instructed on the division’s website.

**4.37(3)** The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE IOWA INSURANCE COMMISSIONER	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}
PETITION FOR DECLARATORY ORDER	

**4.37(4)** The petition for declaratory order must provide the following information in separate numbered paragraphs:

1. The petitioner’s name, address, and telephone number.
2. The citation to and the exact words, passages, sentences or paragraphs of the statute, rule, or order that is the subject of the petition.
3. A clear and concise statement of all relevant facts upon which the declaratory order is requested.
4. The questions the petitioner wants answered, stated clearly and concisely.
5. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
6. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
7. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
8. Any request by the petitioner for a meeting provided for by rule 191—4.43(17A).

## INSURANCE DIVISION[191](cont'd)

**4.37(5)** The petition for declaratory order must be dated and signed by the petitioner or the petitioner's representative.

**4.37(6)** If applicable, the petition must also include the name, mailing address, and telephone number of the petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**4.37(7)** A petition is deemed filed when it is received by the division. The division must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

**191—4.38(17A) Notice of petition.** Within 15 days after receipt of a petition for a declaratory order, the division must give notice of the petition to all persons not served by the petitioner pursuant to rule 191—4.42(17A) to whom notice is required by any provision of law. The division may also give notice to any other persons deemed appropriate.

**191—4.39(17A) Intervention.** A person may file a petition for intervention at any time prior to issuance of an order and may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division.

**191—4.40(17A) Briefs.** The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

**191—4.41(17A) Inquiries.** Inquiries concerning the status of a declaratory proceeding may be made to the division at the address disclosed in rule 191—1.4(502,505).

**191—4.42(17A) Service and filing of petitions and other papers.**

**4.42(1)** *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

**4.42(2)** *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the division at the address disclosed in rule 191—1.4(502,505). All petitions, briefs, or other papers required to be served upon a party shall be filed simultaneously with the division.

**4.42(3)** *Method of service, time of filing, proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 191—3.12(17A).

**191—4.43(17A) Consideration.** Upon request by the petitioner, the division must schedule an informal meeting between the original petitioner, all intervenors, and the commissioner, or a member of the commissioner's staff, to discuss the questions raised.

**191—4.44(17A) Action on petition.**

**4.44(1)** Within the time allowed by Iowa Code section 17A.9(5), after receiving a petition for a declaratory order, the division shall take action on the petition as required by Iowa Code section 17A.9(5).

**4.44(2)** The date of issuance of an order is as defined in rule 191—3.2(17A).

**191—4.45(17A) Refusal to issue order.**

**4.45(1)** The division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1) and may refuse to issue a declaratory order on some or all questions raised for any of the following reasons:

*a.* The petition does not substantially comply with the required form.

INSURANCE DIVISION[191](cont'd)

- b.* The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by failure of the division to issue an order.
- c.* The division does not have jurisdiction over the questions presented in the petition.
- d.* The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
- e.* The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
- f.* The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
- g.* There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
- h.* The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a division decision already made.
- i.* The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.
- j.* The petition requests the division to determine whether a statute is unconstitutional on its face.

**4.45(2)** A refusal by the division to issue a declaratory order must indicate the specific grounds for refusal and constitutes final agency action on the petition.

**4.45(3)** Refusal to issue a declaratory order pursuant to this rule does not preclude a petitioner from filing a new petition that seeks to eliminate the grounds for refusal to issue a ruling.

**191—4.46(17A) Contents of declaratory order—effective date.**

**4.46(1)** In addition to the order itself, a declaratory order must contain the date of its issuance, the name of the petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

**4.46(2)** A declaratory order is effective on the date of issuance.

**191—4.47(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order must be mailed or emailed by the division promptly to the original petitioner and all intervenors.

**191—4.48(17A) Effect of a declaratory order.** A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. Issuance of a declaratory order constitutes final agency action on the petition.

The rules in this division are intended to implement Iowa Code section 17A.9.

ITEM 6. Amend subrule 10.18(6) as follows:

**10.18(6) Business name.** A business entity licensed under this rule must keep the division informed of its business name. If a business entity changes the name under which it is operating, notification from the designated responsible producer must be submitted to the division within 30 days of the name change. The notification may be sent by electronic mail to [producer.licensing@iid.state-ia.us](mailto:producer.licensing@iid.state-ia.us), or through the NIPR Gateway, if available, or as instructed on the division's website.

ITEM 7. Amend paragraph **36.20(3)“f”** as follows:

*f.* The notice shall state the following:

NOTICE OF PROPOSED PREMIUM INCREASE

Dear [INSURED]

INSURANCE DIVISION[191](cont'd)

[CARRIER] has asked the Iowa Insurance Division to approve an increase in premium rates of approximately [\_\_\_]% with a proposed effective date of [DATE].

For your policy, the increase is anticipated to be as follows:

[CURRENT MONTHLY RATE] + [PROPOSED INCREASE] = [PROPOSED MONTHLY RATE]

Your actual premium increase may be less or greater than the proposed average premium increase due to a variety of factors that are independent of the proposed premium rate increase, including but not limited to age, geographic area, and plan design. In addition, the final rate you receive may be different than that listed above due to changes in those factors while the rate is pending approval or due to input from the Iowa Insurance Commissioner.

[RANKING AND QUANTIFICATION OF THOSE FACTORS THAT ARE RESPONSIBLE FOR THE AMOUNT OF THE RATE INCREASE PROPOSED]

A public hearing will be held at [TIME], [DATE], at [LOCATION] before the Iowa Insurance Commissioner to receive comments from [CARRIER] and the Iowa Insurance Consumer Advocate on the proposed rate increase.

You may contact the Consumer Advocate for assistance or to comment on the proposed premium rate at:

Iowa Insurance Division Consumer Advocate  
 Iowa Insurance Division  
 Two Ruan Center  
~~330 Maple Street~~ 601 Locust Street, Fourth Floor  
 Des Moines, Iowa ~~50319~~ 50309  
 Telephone: (515)281-5705  
 Iowa-toll free: 1-877-955-1212  
 Fax: (515)281-3059  
 E-mail: ~~insuranceeca@iid.iowa.gov~~ consumer.advocate@iid.iowa.gov

All comments received will be considered public records. The Consumer Advocate will post comments received on the ~~Consumer Advocate's Internet Web site (http://iainsuranceeca.wordpress.com/)~~, which is also accessible through the ~~Insurance Division's Internet Web site (www.iid.state.ia.us)~~, division's website at www.iid.iowa.gov, and the Consumer Advocate will present the comments at the public hearing.

ITEM 8. Amend paragraph **36.20(4)“b”** as follows:

b. The consumer advocate shall post without delay all comments received on the ~~consumer advocate's Internet website (iainsuranceeca.wordpress.com/)~~, which is also accessible through the ~~division's Internet website (www.iid.state.ia.us)~~.

ITEM 9. Amend subrule 39.53(3) as follows:

**39.53(3)** Procedures to ensure that the insured is notified in writing of the insured's right to object to the independent review entity selected by the insurer or to the licensed health care professional designated by the independent review entity to conduct the review by filing a notice of objection, along with the reasons for the objection, with the commissioner at the Iowa Insurance Division, ~~330 Maple Street, Des Moines, Iowa 50319~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309, within ten days of the receipt of a notice from the independent review entity.

ITEM 10. Amend rule 191—39.55(514G) as follows:

**191—39.55(514G) Insurance division Division application and reports.** The independent review entity shall provide the commissioner such data, information, and reports as the commissioner determines necessary to evaluate the independent review process established under Iowa Code chapter 514G as amended by 2008 Iowa Acts, House File 2694. An application for certification as an independent review entity must be submitted in duplicate to the Iowa Insurance Division, ~~330 Maple Street, Des Moines, Iowa 50319~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309. An application must be submitted in full to be considered. Every applicant will be notified

## INSURANCE DIVISION[191](cont'd)

of the certification decision. A list of certified independent review entities shall be maintained at the insurance division and shall be available through the division's website, [www.iid.state.ia.us](http://www.iid.state.ia.us).

ITEM 11. Amend paragraph **41.9(2)“g”** as follows:

g. State that the enrollee may request such hearing by forwarding one copy of the notice of cancellation, marked to request a hearing, to the Commissioner of Insurance, ~~330 E. Maple Street, Des Moines, Iowa 50319~~ Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50309.

ITEM 12. Amend subrule 55.9(4) as follows:

**55.9(4)** Change in name, address or state of residence.

a. *Name change.* If a licensed public adjuster's name is changed, the licensed public adjuster must file notification with the division within 30 days of the name change. Notification may be filed ~~via electronic mail to [producer.licensing@iid.state.ia.us](mailto:producer.licensing@iid.state.ia.us), or through the NIPR Gateway, if available, or as instructed on the division's website.~~ The notification must include the licensed public adjuster's:

(1) to (3) No change.

b. *Address change.* If a licensed public adjuster's address is changed, including an ~~E-mail~~ email address, the licensed public adjuster must file notification with the division within 30 days of the address change. Notification may be filed ~~via electronic mail to [producer.licensing@iid.state.ia.us](mailto:producer.licensing@iid.state.ia.us), or through the NIPR Gateway, if available, or as instructed on the division's website.~~ The notification must include the licensed public adjuster's:

(1) to (4) No change.

c. No change.

ITEM 13. Amend subrule 58.12(1) as follows:

**58.12(1)** A third-party administrator shall notify the commissioner within 30 days of any change in the information required to be filed under these rules including, but not limited to, a change of original application content. Reports of changes shall be filed electronically ~~at [tparegistration@iid.iowa.gov](mailto:tparegistration@iid.iowa.gov)~~ as instructed on the division's website. Failure to timely file changes is grounds for suspension of a certificate of registration and imposition of a \$100 civil penalty.

ITEM 14. Amend **191—Chapter 76, Appendix B**, section 2, paragraph 1, as follows:

1. This External Review Request Form, signed and dated, with the sections completed for your particular situation as described in Section 1. If you would like help completing your external review request for submission, contact the ~~Consumer Assistance Program~~ Market Regulation Bureau of the Iowa Insurance Division by calling ~~877-955-1212~~ 515-281-6348, or by e-mail at ~~<http://insuranceca.iowa.gov>~~ [iid.marketregulation@iid.iowa.gov](mailto:iid.marketregulation@iid.iowa.gov).

[Filed 10/30/19, effective 12/25/19]

[Published 11/20/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/20/19.

**ARC 4781C**

**INSURANCE DIVISION[191]**

**Adopted and Filed**

**Rule making related to surplus lines insurers and rules review updates**

The Insurance Division hereby amends Chapter 21, “Requirements for Surplus Lines, Risk Retention Groups and Purchasing Groups,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 515E.14 and 515I.15.

INSURANCE DIVISION[191](cont'd)

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 515E and chapter 515I as amended by 2019 Iowa Acts, Senate File 558.

*Purpose and Summary*

This rule making is amending Chapter 21 as part of the Division's five-year review of rules and to implement the changes in 2019 Iowa Acts, Senate File 558, which allows domestic surplus lines insurers to be eligible surplus lines insurers.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 28, 2019, as **ARC 4622C**. A public hearing was held on September 23, 2019, at 10 a.m. at the Division's offices, Fourth Floor, Two Ruan Center, 601 Locust Street, Des Moines, Iowa. No one attended the public hearing.

One comment was received regarding the reference in rule 191—21.5(515I) to the Uniform Certificate of Authority Application. The Division has revised rule 191—21.5(515I) to remove this reference. In addition, subrule 21.5(1) was changed to clarify that the Division's general waiver provisions apply. The catchwords for subrule 21.2(1) were changed to more accurately describe the content of the subrule, and a reference to 2019 Iowa Acts, Senate File 558, in rule 191—21.1(515I) has been removed because this legislation has been codified in Iowa Code chapter 515I.

*Adoption of Rule Making*

This rule making was adopted by Douglas M. Ommen, Iowa Insurance Commissioner, on October 30, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

The Division's general waiver provisions of 191—Chapter 4 apply to these rules.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on December 25, 2019.

The following rule-making action is adopted:

Amend **191—Chapter 21** as follows:

CHAPTER 21  
REQUIREMENTS FOR SURPLUS LINES,



INSURANCE DIVISION[191](cont'd)

## RISK RETENTION GROUPS AND PURCHASING GROUPS

[Prior to 10/22/86, Insurance Department[510]]

**191—21.1(515E,515I) Definitions.** In addition to the definitions provided in Iowa Code chapters 515E and 515I, the following definitions shall apply to this chapter, unless the context clearly requires otherwise:

“*Division*” means the Iowa insurance division, supervised by the commissioner pursuant to Iowa Code section 505.8, in the division’s performance of the duties of the commissioner under Iowa Code chapters 515E and 515I.

“*Division’s Web-site website*” means the ~~Web-site~~ website of the Iowa insurance division, ~~www.iid.iowa.gov~~ iid.iowa.gov.

“*Place*” or “*places*” means obtaining insurance for an insured with a specific insurer.

**191—21.2(515I) Eligible surplus lines insurer’s duties.**

**21.2(1) ~~Insurer liable. Premium tax payment.~~** Where, pursuant to Iowa Code chapter 515I, coverage is placed with an eligible surplus lines insurer, but the surplus lines insurance producer fails to pay to the ~~state of Iowa division~~ the premium tax required by Iowa Code section 515I.3(2) and rule ~~191—21.3(515)~~ 191—21.3(515I), the eligible surplus lines insurer ~~shall be liable for~~ must pay the premium tax required by Iowa Code chapter 515I and this chapter.

**21.2(2) ~~How premium tax quoted.~~** An eligible surplus lines insurer or a ~~broker~~ surplus lines producer for an eligible surplus lines insurer is authorized to quote a premium which includes tax as is required by Iowa Code chapter 515I, and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component ~~when promulgated~~. Any fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

**191—21.3(515I) Surplus lines insurance producer’s duties.**

**21.3(1) ~~Surplus lines insurance producer’s collection of tax.~~** A surplus lines insurance producer who places insurance with an eligible surplus lines insurer ~~shall~~ must collect premium tax from the eligible surplus lines insurer by withholding 1 percent of the premiums for such tax.

**21.3(2) ~~Electronic reporting of premium tax.~~** A surplus lines insurance producer who places insurance with an eligible surplus lines insurer ~~shall~~ must file electronically the premium tax information with the division, as instructed on the division’s website, on or before March 1 for policies issued during the preceding calendar year.

**21.3(3) ~~Annual report.~~** On or before March 1 of each year, every surplus lines insurance producer who has placed insurance with an eligible surplus lines insurer when the policies have been issued during the preceding calendar year ~~shall~~ must file electronically with the division, or as otherwise directed by the division, a sworn report and supporting documentation, as instructed on the division’s website, which may include evidence of a diligent search required pursuant to Iowa Code section 515I.3, of all such business written during the preceding calendar year and ~~shall~~ must submit the amount to cover the taxes due on all such business. The manner of filing electronically and the content of the report and required supporting documentation are listed on the division’s website. If no business was ~~written issued~~ during the preceding calendar year, no report is required. Failure to file an annual report or pay the taxes imposed by Iowa Code chapter 515I will be deemed grounds for the revocation of a surplus lines insurance producer’s license by the division, and failure to file an annual report or pay taxes within the time requirements of this rule will subject the surplus lines insurance producer to the penalties of Iowa Code section 515I.12.

**191—21.4(515I) Surplus lines insurance producer’s duty to insured.** A surplus lines insurance producer who places coverage with an eligible surplus lines insurer ~~as defined in Iowa Code section 515I.2~~ shall must deliver to the insured, within 30 days of the date the policy is issued, a notice that states the following: “This policy is issued, pursuant to Iowa Code chapter 515I, by a ~~nonadmitted~~

## INSURANCE DIVISION[191](cont'd)

~~company~~ an eligible surplus lines insurer in Iowa and as such is not covered by the Iowa Insurance Guaranty Association.” A surplus lines insurance producer may comply with this rule by verifying disclosure of this language in a clear and conspicuous position on the policy or by electronic delivery authorized by Iowa Code chapter 505B, if the method of delivery of the notice allows the division, the surplus lines insurance producer and the intended recipient to verify receipt of the specific notice.

**191—21.5(515I) Procedures for qualification and renewal of a nonadmitted insurer as an eligible surplus lines insurer.**

~~21.5(1) Application and procedures for initial qualification of a nonadmitted insurer as an eligible surplus lines insurer.~~

~~a. Any nonadmitted insurer or domestic surplus lines insurer who wishes to qualify under Iowa Code chapter 515I as an eligible surplus lines insurer shall must make an application with the division in a format prescribed by the division, as instructed on the division’s website.~~

~~b. The nonadmitted insurer’s application shall contain the following information, which also is listed on the division’s Web site must include:~~

~~(1) A completed National Association of Insurance Commissioners Uniform Certificate of Authority Application (NAIC UCAA) Expansion Application, available through the division’s Web site or through the NAIC Web site, [www.naic.org/industry](http://www.naic.org/industry).~~

~~(2) (1) The name of an Iowa-licensed Iowa resident surplus lines insurance producer qualified in Iowa to write surplus lines insurance, whom the nonadmitted insurer is designating as the person to accept inquiries and notices on behalf of the nonadmitted insurer.~~

~~(3) (2) Remittance of Payment of the greater of a \$100 filing fee or a retaliatory fee, and a \$500 examination fee for all new applicants.~~

~~(3) Demonstrated maintenance of the capital and surplus required pursuant to Iowa Code chapter 515I.~~

~~c. In addition to the above requirements, the nonadmitted insurer shall:~~

~~(1) Maintain the greater of either minimum capital and surplus of \$5 million or risk-based capital pursuant to Iowa Code chapter 521E, and~~

~~(2) Have must have been actively in operation for at least three years without significant changes in ownership or management during the three-year period.~~

~~These financial and This management requirements requirement may be waived by the division upon a finding that the insurer will be offering coverage in a line of insurance for which there is an unavailability of capacity and an extraordinary need for coverage in this state. The division may require other information as deemed necessary pursuant to the division’s waiver process in 191—Chapter 4.~~

~~21.5(2) Procedures for renewal of a nonadmitted an insurer as an eligible surplus lines insurer. A nonadmitted An eligible surplus lines insurer that is not an alien insurer as defined in Iowa Code section 515.70 and that was approved by the division as an eligible surplus lines insurer shall, except for an alien insurer under Iowa Code section 515I.2(7) “b,” must by March 1 of each year following the year of approval:~~

~~a. Continue to comply Be in compliance with paragraph 21.5(1) “e” subparagraph 21.5(1) “b” (3);~~

~~b. Pay the greater of a \$100 renewal fee or a retaliatory fee; and~~

~~c. Submit to the division the documents and materials listed on the division’s Web site website.~~

~~21.5(3) Periodic reporting. An eligible surplus lines insurer, except for an alien insurer under Iowa Code section 515I.2(7) “b,” must submit quarterly financial statements to the division as instructed on the division’s website.~~

~~21.5(3) 21.5(4) Failure to comply with renewal procedures. Failure of a nonadmitted an eligible surplus lines insurer to timely submit the renewal materials required in this rule or to otherwise fail to comply with this rule shall by subrule 21.5(2) will result in the automatic termination of the nonadmitted insurer’s status as an eligible surplus lines insurer.~~

**191—21.6(515E) Procedures for qualification as a risk retention group.**

INSURANCE DIVISION[191](cont'd)

**21.6(1)** Any insurer who wishes to register under Iowa Code chapter 515E as a risk retention group shall file with the division an application that contains must:

- a. The File with the division an application that contains information required by Iowa Code section 515E.4, which also is listed on the division's Web site website; and
- b. Remittance Pay the greater of a \$100 filing fee plus any additional or a retaliatory fees fee and, for all new applicants, an examination fee.

**21.6(2)** A risk retention group shall must pay a \$100 renewal fee by March 1 of each year following the year of registration. The risk retention group shall must annually provide information requested by the division for determination of continued registration.

**191—21.7(515E) Risk retention groups.** A risk retention group as defined in Iowa Code chapter 515E may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, the producers shall must file the premium tax information electronically with the division through the division's Web site website on or before March 1 for policies issued during the preceding calendar year.

**191—21.8(515E) Procedures for qualification registration as a purchasing group.**

**21.8(1)** Prior to doing business in this state, a purchasing group shall must furnish to the division notice that ~~shall include~~ includes:

- a. The information set forth in Iowa Code section 515E.8, which also is listed on the division's Web site website; and
- b. Designation of the commissioner for service of process, as set forth in Iowa Code section 515E.8(3); and
- ~~b. c.~~ Remittance of a \$100 filing fee.

**21.8(2)** A registered purchasing group shall must pay a \$100 renewal fee by March 1 of each year following the year of registration. The purchasing group must provide information requested by the division for determination of continued registration.

**191—21.9(515E,515I) Failure to comply; penalties.** Failure of a producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to comply with this chapter or with Iowa Code chapters 515E and 515I may subject the producer, surplus lines insurance producer, insurer, risk retention group or purchasing group to penalties set forth in Iowa Code ~~chapter~~ chapters 507B, 515E or and 515I.

These rules are intended to implement Iowa Code ~~sections 515.120 to 515.122~~ chapters 515I and 515E.

[Filed 10/30/19, effective 12/25/19]

[Published 11/20/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/20/19.

**ARC 4782C**

**SCHOOL BUDGET REVIEW COMMITTEE[289]**

**Adopted and Filed**

**Rule making related to school district requests for modified supplemental amount**

The School Budget Review Committee (SBRC) hereby amends Chapter 1, "Organization and Administrative Procedures," Chapter 4, "Agency Procedures for Rule Making," and Chapter 6, "Duties and Operational Procedures," Iowa Administrative Code.

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

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 257.30.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 257.30, 257.31, and 257.40.

*Purpose and Summary*

The amendments reflect changes brought about during the 2018 Legislative Session to the application and approval processes regarding Iowa school district requests for modified supplemental amount for programs for at-risk students, secondary students who attend alternative programs and alternative schools, and returning dropouts and dropout prevention. The amendments also reflect changes in terminology and SBRC procedures.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 14, 2019, as **ARC 4604C**. A public hearing was held on September 3, 2019, at 10 a.m. in the State Board Room, Grimes State Office Building, Second Floor, 400 East 14th Street, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the SBRC on October 15, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

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

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the SBRC for a waiver of the discretionary provisions, if any, pursuant to 289—Chapter 8.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on December 25, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 1.4(1) as follows:

**1.4(1) Number.** The committee shall meet and hold hearings each year and shall continue in session until it has reviewed budgets of school districts and completed the other duties as found in ~~2009~~ Iowa

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

Code Supplement sections 257.30 and 257.31 as amended by 2010 Iowa Acts, House File 2030, and Iowa Code sections through 257.32 and 260C.18B. A minimum of three sessions to hold hearings shall be scheduled each fiscal year and shall be held during the months of October, December, and March. Revisions to these regularly scheduled sessions may be made if there are scheduling conflicts, if the SBRC determines that additional sessions are necessary, or if there are not sufficient hearing requests to hold a session.

ITEM 2. Amend rule 289—4.6(17A), catchwords, as follows:

**289—4.6(17A) Regulatory flexibility analysis.**

ITEM 3. Amend rule 289—6.1(257), definition of “Modified allowable growth,” as follows:

“Modified allowable growth supplemental amount” means an amount expressed in dollars which is added to the district’s authorized budget.

ITEM 4. Amend subrule 6.3(3) as follows:

**6.3(3) Material for the hearing.**

a. Any information requested by the committee must be provided within the timelines requested by the committee in order for the school corporation to be included on the schedule for a hearing. ~~One original and 11 copies of written material, and one full set of the materials provided electronically in a format that can be cut and pasted into official documentation,~~ shall be submitted at least four weeks prior to the scheduled hearing. The SBRC chairperson may set an earlier due date for information if necessary for adequate review based on the quantity or complexity of hearings. If a school corporation’s exhibits for a hearing the school corporation has requested are not received timely, the school corporation’s hearing may be postponed to the next following regularly scheduled session. Where applicable, the committee will provide forms or checklists to school corporations to obtain uniform and comparable data for determining committee decisions.

b. School corporations shall include in their materials for the hearing a copy of the board minutes that include the official action taken by the applicable school corporation board on the subject of the hearing and authorizing the school corporation’s administrative officials to request modified allowable growth supplemental amount or use of the unexpended fund balance.

c. to g. No change.

h. Applications for modified allowable growth supplemental amount for increased certified enrollment over the prior year’s enrollment, applications for modified allowable growth supplemental amount to pay tuition costs for open-enrolled-out students who were not enrolled in the district on the certified enrollment date in the prior year, and applications for modified allowable growth supplemental amount for excess costs of instructional programs for limited English proficient students must be received no later than December 1 of the budget year.

i. Applications for modified allowable growth supplemental amount for returning dropout and dropout prevention programs adopted program plans for at-risk students, secondary students who attend alternative programs and alternative schools, and returning dropouts and dropout prevention shall be filed by ~~December~~ January 15 of the base year.

j. No change.

k. Applications described in paragraphs 6.3(3) “g” and “i” that are not timely filed will not be considered for supplemental aid or for modified allowable growth supplemental amount. Applications described in paragraphs 6.3(3) “h” and “j” that are not timely filed may be considered at the discretion of the SBRC.

ITEM 5. Amend subrule 6.3(7) as follows:

**6.3(7) Routine action by the committee.** School corporations do not need to be represented when action under consideration is for such items as cash reserve levies, ~~returning dropout/dropout prevention programs;~~ adopted program plans for at-risk students, secondary students who attend alternative programs and alternative schools, and returning dropouts and dropout prevention; special education balances or other situations which are considered class actions as determined by the SBRC.

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

ITEM 6. Amend subrule 6.3(8) as follows:

**6.3(8) Basic policies.** The SBRC has established the following basic policies that it shall consider in rendering its decisions.

a. Modified ~~allowable-growth~~ supplemental amount requests shall be considered only for costs up through the budget year, except where the Iowa Code expressly authorizes modified ~~allowable-growth~~ supplemental amount to be granted for a subsequent year.

b. Modified ~~allowable-growth~~ supplemental amount requests shall be considered only for expenditures permitted from the general fund pursuant to the Iowa Code.

c. Modified ~~allowable-growth~~ supplemental amount requests may be brought before the committee for unusual, unique or unforeseeable circumstances.

d. Modified ~~allowable-growth~~ supplemental amount requests shall be considered only to the extent of the actual, documented costs.

ITEM 7. Amend subrule 6.3(10) as follows:

**6.3(10) Modified ~~allowable-growth~~ supplemental amount to an AEA.** If the SBRC approves modified ~~allowable-growth~~ supplemental amount for special education support services, approves an additional amount to be added to district costs for media services or educational services, or approves modified ~~allowable-growth~~ supplemental amount for unusual circumstances, the amount shall be included in the budget of each district in the AEA for the subsequent budget year in the proportion that the appropriate enrollment of each district in the AEA bears to the total enrollment of all districts in the AEA.

ITEM 8. Amend **289—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 257.30, 257.31, 257.32, 257.40, and 298.10 and chapter 260C.

[Filed 10/22/19, effective 12/25/19]

[Published 11/20/19]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/20/19.

### Utilities Division

Pursuant to Iowa Code §17A.4(6), the Administrative Rules Review Committee voted to object to Rule 199 IAC 20.20—Service to Electric Vehicle Charging Stations. The Committee initially reviewed the rule at its June 11, 2019 meeting, during which Committee members questioned the rule's impact on a charging service provider's ability to generate its own electricity or procure electricity from sources other than the electric utility with an exclusive right to serve that location. Upon the rule's return to this Committee, the rule has not changed and the Iowa Utilities Board has yet to address these issues; therefore, the Committee objects on the grounds that the rule is unreasonable, arbitrary and capricious, and beyond the authority delegated to the Iowa Utilities Board.

The rule is unreasonable due to the Iowa Utilities Board's failure to consider the legislative policy underlying the state's exclusive service territory law, Iowa Code §476.25. The policy states that it is in the public interest to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public. The Board received comments on how Rule 20.20 could be revised to satisfy this policy; however, in adopting the rule, the Board addresses neither how Rule 20.20 furthers this policy nor any of the revisions proposed. Instead, the Board's order states only the obvious—that §476.25 is not altered and must be followed.

The Committee also believes the rule is arbitrary and capricious in that it has been adopted without regard to the facts presented during the rulemaking. The record developed during the Board's rulemaking suggests that certain logical and predictable configurations and arrangements supporting self-generation may violate Iowa's definition of public utility and the exclusive service territory law; yet the Board failed to address these arrangements and discuss how they could become compliant with existing statutes and rules.

Rule 20.20 also goes beyond the authority delegated to the Iowa Utilities Board because it is based on an erroneous interpretation of the term "public utility." Subrule 20.20(1) exempts electric energy sold for the purpose of electric vehicle charging from Board regulation by declaring that it is neither the "furnishing of electricity to the public" nor the "resale of electric service." The Committee believes this language is beyond the authority delegated to the Iowa Utilities Board because it is contrary to the plain language of Iowa Code §476.1(3)(a) and the definition of "public utility" therein, and is contrary to the interpretation of §476.1 in *SZ Enterprises LLC v. Iowa Utilities Board*, 850 N.W.2d 441 (Iowa 2014), in which appropriately sized behind-the-meter generation factored heavily into whether an entity qualified as a public utility. Furthermore, because "public utility" is a defined term and Chapter 476 does not explicitly give the Board authority to interpret the term, the Board has no authority to interpret, define, or modify the term "public utility." The Board's rule language is an interpretation of this statutorily defined term, for which the Board has no authority, and the Board's rule language is likely not entitled to deference upon review.

Finally, in arguments made to the Committee at its June 11, 2019 meeting, the Board stated that a scenario under which a charging service provider could generate and sell its own electricity directly to the public was perhaps 10 years away. The Committee believes this is irrelevant. Rulemaking participants have provided the Board with the logical and predictable outcomes of Rule 20.20 and the Committee believes the time to address them is now, and not in the future.

Objection filed November 12, 2019