IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355
Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making
2017

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

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
14	**Wednesday, December 14, 2016**	**January 4, 2017**
15	**Wednesday, December 28, 2016**	**January 18, 2017**
16	**Friday, January 13, 2017**	**February 1, 2017**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator's office.

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

Note change of filing deadline

EDUCATION DEPARTMENT[281]

Statewide science assessment, 12.8(1)"h" IAB 12/7/16 **ARC 2854C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 6, 2017 9 to 10 a.m.
Community college accreditation, 24.3, 24.5 IAB 12/7/16 **ARC 2853C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 6, 2017 11 a.m. to 12 noon
Educational standards and program requirements for children's residential facilities, ch 35 IAB 12/7/16 **ARC 2852C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	December 27, 2016 10 to 11 a.m.
Career and technical education; career academies, rescind chs 46, 47; adopt ch 46 IAB 12/7/16 **ARC 2855C**	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 6, 2017 1 to 2 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, amendments to chs 20 to 23, 25 to 28, 31, 33 IAB 11/9/16 **ARC 2799C**	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	December 12, 2016 1 p.m.

MEDICINE BOARD[653]

Licensure of acupuncturists, amendments to ch 17 IAB 12/7/16 **ARC 2860C**	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	December 27, 2016 11 a.m.

NATURAL RESOURCE COMMISSION[571]

Lease to beginning farmers program, 21.2, 21.4 to 21.6 IAB 12/7/16 **ARC 2831C**	Conference Room 5W Wallace State Office Bldg. Des Moines, Iowa	January 11, 2017 2 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Licensure of chiropractic physicians, amendments to ch 41 IAB 12/7/16 **ARC 2857C**	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 6, 2017 9 to 9:30 a.m.
Definition of physician supervision of a physician assistant, 327.8 IAB 12/7/16 **ARC 2832C**	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 6, 2017 8 to 9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Vital records, 95.2, 95.7, 95.10 IAB 11/23/16 **ARC 2821C**	Room 518 Lucas State Office Bldg. Des Moines, Iowa *To participate by conference call:* Dial 1-866-685-1580 Conference code: 9327091718	December 14, 2016 9:30 to 11 a.m.

STATE PUBLIC DEFENDER[493]

Claims for indigent defense services—timely submittal of adult claims, 12.2(3) IAB 12/7/16 **ARC 2830C**	Fourth Floor Conference Room 424 Lucas State Office Bldg. Des Moines, Iowa	January 3, 2017 10 a.m.

UTILITIES DIVISION[199]

Iowa electrical safety code, 25.2, 25.3, 25.5 IAB 11/23/16 **ARC 2815C**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	January 24, 2017 1 p.m.

The following list will be updated as changes occur.

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

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

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

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AGING, DEPARTMENT ON[17]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 231.23, the Department on Aging proposes to rescind Chapter 21, "Case Management for Frail Elders," and to adopt new Chapter 21, "The Service of Case Management," Iowa Administrative Code.

The proposed new chapter will update rules relating to the provision of the service of case management, including criteria for service providers, the explanation of the service process and requirements, the client discharge and transfer process, the monitoring and follow-up process, and documentation and records retention.

Any interested person may make written comments on the proposed amendment on or before December 27, 2016. Comments should be directed to Brian Majeski, Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319. Comments may also be sent by e-mail to Brian.Majeski@iowa.gov.

This amendment does not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions found in Chapter 11.

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

These rules are intended to implement Iowa Code section 231.23A.

The following amendment is proposed.

Rescind 17—Chapter 21 and adopt the following **new** chapter in lieu thereof:

CHAPTER 21
THE SERVICE OF CASE MANAGEMENT

17—21.1(231) Authority. This chapter implements the service of case management as provided in Iowa Code section 231.23A and the federal Older Americans Act (OAA).

17—21.2(231) Purpose. This chapter sets out client eligibility, covered services, program administration and program standards to assist clients in coordinating the use of the long-term living continuum which ranges from the independent access of congregate services to the delivery of support services in the home or through facility-based care for the clients served. The service of case management is designed to promote and support independent living of older Iowans funded through Title III (Grants to State and Community Programs on Aging) of the OAA or state funds distributed to the area agencies on aging (AAA) based upon their current area plan.

17—21.3(231) General requirements for providers of case management services.

21.3(1) *Qualifications to provide the service of case management.* An individual providing the service of case management shall have, at a minimum, one of the following qualifications:

a. A bachelor's degree in the human services field including, but not limited to, social work, sociology, special education, rehabilitation counseling, and psychology.

b. An associate's degree and two years of full-time equivalent work experience in a human services field involving direct contact with service to people in overcoming social, economic, psychological or health problems.

c. A license as a registered nurse in Iowa.

21.3(2) *Continuing education requirements for the provider of the service of case management.* An individual providing the service of case management shall:

a. Attend during the term of employment annual and other case management training as required by the department.

b. Obtain eight hours of relevant training annually. If eight hours of training are not provided in accordance with paragraph 21.3(2)*"a,"* the individual shall document training related to the provision of geriatric case management. Documentation shall be included in the individual's personnel record.

c. Complete the mandatory reporter requirements within 90 business days of hiring in accordance with Iowa Code chapter 235B. Each AAA shall ensure that all providers of the service of case management meet this requirement.

21.3(3) *Background checks.* Each AAA shall ensure and document that, prior to beginning employment, every potential provider of the service of case management shall have successfully completed a criminal history background check and child and dependent adult abuse record check.

a. A background check includes, at a minimum, a request that the Iowa department of public safety perform a criminal history background check and that the department of human services perform child and dependent adult abuse record checks of every potential provider.

b. If a potential provider has an unfavorable criminal history background check or child and dependent adult abuse record check, the potential provider shall not provide services under this chapter.

21.3(4) *Contracting for case management services.* An AAA may contract for the provision of the service of case management.

a. The contractor and the individual providing the service of case management shall be subject to and comply with any applicable state or federal laws and regulations, including this chapter.

b. For monitoring purposes, the department shall have access to all records related to the service of case management and all related facilities of the contractor.

c. The AAA shall monitor the contractor in accordance with rule 17—6.10(231).

17—21.4(231) Case management service activities. Case management service activities include the following components.

21.4(1) *Client identification.* The provider of the service of case management may identify clients through public education, awareness, and outreach.

21.4(2) *Intake.* The provider of the service of case management shall follow a defined intake process developed or approved by the department. To become eligible for the service of case management, a potential client with case management needs shall:

a. Be a legal resident of the state of Iowa;

b. Be aged 60 or older;

c. Be in need of the service of case management based on a needs assessment as described in subrule 21.4(3);

d. Be funded through Title III (Grants to State and Community Programs on Aging) of the OAA or state funds distributed to the AAA based upon their current area plan; and

e. Not be entitled to receive case management services or case management service reimbursement from another source.

21.4(3) *Needs assessment.* A face-to-face comprehensive assessment, utilizing a standardized tool developed or approved by the department and preferably conducted in the client's home or place of residence, must be conducted for each case management client to identify the conditions and needs of the client and to establish goals for services provided.

21.4(4) *Service plan development.* Based on a standardized form developed or approved by the department, a written service plan shall be prepared for each client. The service plan shall utilize appropriate and available resources.

a. The service plan shall be developed within 20 calendar days of the needs assessment.

b. The service plan shall identify available services and problem-solving efforts to meet the client's determined needs and to enable the client to live with maximum possible independence.

c. A copy of the service plan shall be given to the client or the client's legal representative and shall be documented in the client's file.

21.4(5) *Service plan implementation.* A referral of the client to an appropriate resource for service provision and problem resolution shall be made and documented in the client's file. If the referral is made to an informal network (e.g., family, friends), the service and problem-solving arrangement agreed to regarding duties and responsibilities shall be documented in the client's service plan. The following services shall be performed for each client, as appropriate and needed:

a. Active intervention and advocacy on behalf of the client to access necessary services from community organizations and to resolve problems experienced by the client;

b. Establishment of connections with service providers for the prompt and effective delivery of services needed by the client, including submission of instructions for service delivery to the appropriate service providers;

c. Encouragement of informal care given by individuals, family, friends, neighbors, and community organizations, so that publicly supported services supplement rather than supplant the roles and responsibilities of these natural support systems.

21.4(6) *Follow-up and reassessment of client status.*

a. *Follow-up.* Monthly monitoring of each client shall be conducted through telephone or face-to-face contact to ensure prompt and effective service delivery and response to changes in the client's needs and status. All follow-up shall be documented in the client's file.

b. *Reassessment.* A face-to-face needs assessment of the client's condition and needs must be conducted in accordance with subrule 21.4(3), preferably in the home of the client, no later than the twelfth month from the last completed needs assessment. This needs assessment must be conducted more frequently if a change in the client's circumstances is identified in a follow-up or a report from a third party.

21.4(7) *Client discharge.*

a. A client shall be discharged from the service of case management when any one of the following situations has occurred:

(1) The client dies;

(2) The client moves out of state;

(3) The client moves into a nursing facility and the stay is expected to be permanent;

(4) The client or the client's legal representative requests termination of case management service;

(5) The client is unwilling or unable to adhere to the agreed-upon service plan;

(6) The client or the client's legal representative refuses to provide access to information necessary for the development or implementation of the service plan;

(7) The service provider determines that the client's needs cannot be met in a way that ensures the client's health, safety and welfare;

(8) The service provider determines that the client's goals are achieved and the client no longer requires the service of case management;

(9) The client becomes eligible for a comparable case management service from another funding source; or

(10) The AAA determines that funding is no longer available to provide the service of case management.

b. A point of contact identified by the AAA shall be notified of and approve all discharges prior to initiation of discharge action.

c. If the discharge is due to the circumstances given in subparagraphs 21.4(7)*"a"*(5) to 21.4(7)*"a"*(9), the AAA providing the service of case management shall provide a 30-day written notice to the client or the client's legal representative stating the reasons for the discharge from case management and include the process for appealing the decision in accordance with rule 17—6.10(231).

21.4(8) *Transfer.* When a client moves from the AAA's geographic service area, the AAA shall, with the documented consent of the client or the client's legal representative, refer the client to the AAA serving the area to which the client has moved.

AGING, DEPARTMENT ON[17](cont'd)

21.4(9) *Monitoring and follow-up.* The AAA shall, and the department may, monitor and follow up with providers of the service of case management.

a. Monitoring shall be conducted to determine whether:

(1) Services are being furnished in accordance with the client's service plan, including the amount of service provided, the client's attendance, and the client's participation in the service.

(2) The client has declined services in the service plan.

(3) Communication is occurring among all providers to ensure coordination of services.

(4) Services in the service plan are meeting the identified needs of the client, including the client's progress toward achieving the goals and actions determined in the service plan.

b. Monitoring shall include accessing and assessing the client, the places of service (including the client's home when applicable), and all services.

21.4(10) *Records and documentation.*

a. A case management service provider shall maintain individual client records in a paper file or in a case management software database approved by the department. The case file for each client shall minimally include the following information:

(1) Intake form(s);

(2) Comprehensive needs assessment;

(3) Copies of release of information (if needed);

(4) Service plan;

(5) Record of referral(s) and request(s);

(6) Correspondence related to the case;

(7) Formal case notes, which include documentation of the follow-up as noted in paragraph 21.4(6)*"a"* or of case closure;

b. Except by written consent of the client or the client's legal representative, the use or disclosure by any person of any information concerning a client for any purpose not directly connected with the administration of the responsibilities of the department, AAA or contractor is prohibited.

c. Upon change in AAA designation, the AAA which has been dedesignated shall transfer all specified records as prescribed by the department to the newly designated AAA.

These rules are intended to implement Iowa Code section 231.23A.

ARC 2854C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(21), the State Board of Education hereby proposes to amend Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

In August 2015, the State Board of Education directed the Iowa Assessment Task Force, convened pursuant to Iowa Code section 256.7(21), to reconvene to recommend a statewide science assessment. On March 21, 2016, the Iowa Assessment Task Force made its recommendation regarding a statewide science assessment. This proposed rule making complies with that directive and reflects that recommendation. The Task Force's report is available on the Web site of the Iowa Department of Education.

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

Interested individuals may make written comments on the proposed amendment until January 6, 2017, at 4:30 p.m. Comments on the proposed amendment should be directed to Phil Wise,

Administrative Rules Co-Coordinator, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on January 6, 2017, from 9 to 10 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

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

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

This amendment is intended to implement Iowa Code section 256.7(21).

The following amendment is proposed.

Amend paragraph **12.8(1)"h"** as follows:

h. Designation of "at least one districtwide assessment."

(1) For purposes of Iowa Code section 256.7, and for a period ending on June 30, 2020, at least one of the districtwide assessments used to measure student progress in core academic indicators in reading and math shall be the assessment developed by the Smarter Balanced Assessment Consortium (SBAC), and at least one of the districtwide assessments used to measure student progress in science shall be the science assessment recommended by the assessment task force established pursuant to Iowa Code section 256.7(21)*"b"*(3).

(2) ~~The~~ In implementing subparagraph (1) of this paragraph, the department shall select a vendor to administer the SBAC assessment or any other assessment that is capable of administration by multiple vendors through a request-for-proposal process.

(3) The assessment task force shall review SBAC and science assessment administration and make a recommendation pursuant to Iowa Code section 256.7(21)*"b"*(3) on or before June 30, 2020.

ARC 2853C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 24, "Community College Accreditation," Iowa Administrative Code.

These proposed amendments to Chapter 24 incorporate changes to the Department's administrative rules that establish accreditation standards for Iowa's community colleges. Several definitions are added to or amended under rule 281—24.3(260C). Several subrules and paragraphs in rule 281—24.5(260C) are revised, including those in which additional state standards pertaining to faculty qualifications, faculty load, and special needs are added. The proposed amendments to subrule 24.5(1) align the Department's standards for faculty with those of the Higher Learning Commission (HLC) (formerly the North Central Association of Colleges and Schools), the regional accrediting body for Iowa's community colleges, whose standards have recently been revised and are effective September 1, 2017. New paragraph 24.5(1)"c" establishes a statewide task force to develop procedures, guidelines and documentation and ensures ongoing compliance with HLC standards. The amendment to paragraph 24.5(2)"b" lifts the daily restriction on the career and technical education faculty load (maximum 6 hours) and simply maintains the aggregate 30 contact hours per week. The amendments to subrule 24.5(3) change the catchwords of the subrule from "special needs" to "special needs and protected

classes" to align with Office for Civil Rights verbiage; the amendments also expand the standard by incorporating other categories protected by state or federal civil rights legislation. These amendments align the Iowa Department of Education's accreditation processes with those of the HLC, the regional accrediting body.

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

Interested individuals may make written comments on the proposed amendments until 4:30 p.m. on January 6, 2017. Comments on the proposed amendments should be directed to Phil Wise, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on January 6, 2017, from 11 a.m. to 12 noon in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

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

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

These amendments are intended to implement Iowa Code sections 260C.47 and 260C.48.

The following amendments are proposed.

ITEM 1. Amend rule 281—24.3(260C) as follows:

281—24.3(260C) Definitions. For purposes of interpreting rule 281—24.5(260C), the following definitions shall apply:

"Applied liberal arts and sciences course." An applied liberal arts and sciences course is a course that is classified as arts and sciences in Iowa's common course numbering system and that primarily consists of hands-on or occupational skill development, including but not limited to accounting, ceramics, criminal investigation, dance, drama, music, photography, and physical education.

"Department." Department refers to the Iowa department of education.

"Director." Director refers to the director of the department.

"Field of instruction." ~~The determination of what constitutes each field~~ Field of instruction ~~should be based on accepted practices of regionally accredited two- and four-year institutions of higher education~~ indicates the discipline or occupational area within which an instructor teaches, which aligns with the content of the course being taught as indicated by the course prefix, title, or description.

"Full-time instructor." An instructor is considered to be full-time if the community college board of directors designates the instructor as full-time. ~~Consideration of determining~~ Determination of full-time status shall be based on local board-approved contracts.

"Higher Learning Commission." The Higher Learning Commission is the regional accrediting authority ~~within the North Central Association of Colleges and Schools~~ recognized by the U.S. Department of Education. Iowa Code sections 260C.47 and 260C.48 require that the state accreditation process be integrated with that of the ~~North Central Association of Colleges and Schools~~ Higher Learning Commission.

~~*"Instructors meeting minimum requirements."* A community college instructor meeting the minimum requirements of Iowa Code Supplement section 260C.48(1) as amended by 2008 Iowa Acts, House File 2679, is an instructor under contract for at least half-time or more teaching college credit courses. Beginning July 1, 2011, a community college instructor meeting the minimum requirements is an instructor teaching college credit courses. Credit courses shall meet requirements as specified in rule 281—21.2(260C), and meet program requirements for college parallel, career and technical education, and career-option programs as specified in rule 281—21.4(260C) and Iowa Code chapter 260C.~~

"Joint enrollment." Joint enrollment refers to any community college credit course offered to students enrolled in a secondary school. Courses offered for joint enrollment include courses delivered through contractual agreements between school districts and community colleges, courses delivered through the postsecondary enrollment options program, and college credit courses taken independently by tuition-paying secondary school students.

~~*"Minimum of 12 graduate hours."* Full-time arts and sciences instructors must possess a master's degree and complete a minimum of 12 graduate hours in their field of instruction. The 12 graduate hours may be within the master's degree requirements or independent of the master's degree, but all hours must be in the instructor's field of instruction.~~

~~*"Organization."* Organization is synonymous with community college and is used in this chapter to align with accreditation terminology used by the Higher Learning Commission.~~

"Qualifying graduate field or major." A qualifying graduate field or major represents an academic discipline in which an instructor must have earned credit in order to teach courses in specified fields of instruction.

"~~Recent and relevant work~~ Relevant tested experience." ~~An hour of recent and relevant work~~ Relevant tested experience ~~is equal to 60 minutes. The community college shall determine what constitutes recent and relevant~~ refers to the breadth, depth, and currency of work experience ~~that relates to the instructor's occupational and teaching area. The college shall maintain documentation of the instructor's educational and work experience~~ outside of the classroom in real-world situations relevant to the field of instruction.

ITEM 2. Amend rule 281—24.5(260C), introductory paragraph, as follows:

281—24.5(260C) Accreditation components and criteria—additional state standards. To be granted accreditation by the state board of education, an Iowa community college shall also meet additional standards pertaining to minimum or quality assurance standards for faculty (Iowa Code section 260C.48(1)); faculty load (Iowa Code section 260C.48(2)); special needs and protected classes (Iowa Code section 260C.48(3)); career and technical education program evaluation (Iowa Code section 258.4(7)); facilities, parking lots and roads; strategic planning; quality faculty plan (Iowa Code section 260C.36); and senior year plus programs (Iowa Code chapter 261E).

ITEM 3. Amend subrule 24.5(1) as follows:

24.5(1) *Faculty.*

a. Community college-employed instructors ~~who are under contract for at least half-time or more, and by July 1, 2011, all instructors~~ who teach ~~in career and technical education or arts and sciences~~ college credit courses shall meet minimum standards and institutional quality faculty plan requirements. ~~In accordance with Iowa Code Supplement section 260C.48(1) as amended by 2008 Iowa Acts, House File 2679, standards~~ Standards shall at a minimum require that all community college instructors ~~who are under contract for at least half-time or more, and by July 1, 2011, all instructors~~ meet the following requirements:

~~*a.*~~ (1) Instructors teaching courses in the ~~subject~~ area of career and technical education shall be registered, certified, or licensed in the occupational area in which the state requires registration, certification, or licensure~~, and shall hold the appropriate registration, certificate, or license for the occupational area in which the instructor is teaching,~~ and shall meet either of the following qualifications:

~~(1)~~ 1. ~~A~~ Possess a baccalaureate ~~or graduate~~ degree or higher in the ~~area or a related area of study or occupational area~~ field of instruction in which the instructor is teaching classes.

~~(2)~~ 2. ~~Special~~ Possess a combination of education, training, and at least 6,000 hours of ~~recent and~~ relevant ~~work~~ tested experience in the ~~occupational area or related occupational area~~ field of instruction in which the instructor teaches classes ~~if~~. If the instructor ~~possesses less than a baccalaureate degree~~ is a licensed practitioner who holds a career and technical endorsement under Iowa Code chapter 272, relevant work experience in the occupational area includes, but is not limited to, classroom instruction in a career and technical education subject area offered by a school district or accredited nonpublic school.

~~*b.*~~ (2) Instructors in the ~~subject~~ area of arts and sciences shall meet ~~either~~ one of the following qualifications:

~~(1)~~ 1. Possess a master's degree or higher from a regionally accredited graduate school~~, and have successfully completed a minimum of 12 credit hours of graduate level courses~~ in each field of instruction in which the instructor is teaching classes.

EDUCATION DEPARTMENT[281](cont'd)

~~(2)~~ 2. ~~Have two or more years of successful experience~~ Possess a master's degree or higher from a regionally accredited graduate school and have completed a minimum of 18 graduate semester hours in a ~~professional field or area~~ combination of the qualifying graduate fields identified as related to the field of instruction in which the instructor is teaching classes ~~and in which postbaccalaureate recognition or professional licensure is necessary for practice, including but not limited to the fields or areas of accounting, engineering, law, law enforcement, and medicine~~. These 18 graduate semester hours must include at least 6 credits in the specific course content being taught, with at least 12 credits required for courses that serve as prerequisites for junior-level courses at transfer institutions.

For the transition period ending September 1, 2017, an instructor deemed qualified to teach with a master's degree and 12 graduate semester hours within a field of instruction and who demonstrates adequate progress toward meeting the goals of the instructor's individual quality faculty plan shall remain qualified to teach until the date specified in the quality faculty plan or September 1, 2017, whichever comes first.

3. For courses identified as applied liberal arts and sciences, possess at least a bachelor's degree and a combination of formal training and professional tested experience equivalent to 6,000 hours. The instructor shall hold the appropriate registration, certification, or licensure in occupational areas in which such credential is necessary for practice.

~~*c.*~~ *b.* Developmental education and ~~adult education~~ noncredit instructors ~~employed half-time or more may or may not meet minimum requirements depending on their teaching assignments and the relevancy of~~ are not subject to standards ~~to the courses they are teaching and the transferability of such courses~~ under this subrule. ~~If instructors are teaching credit courses reported in arts and sciences or career and technical education, it is recommended that these~~ Adult education instructors shall meet minimum standards set forth in ~~281—subrule 21.3(1), paragraph *"a"* or *"b."*~~ rule 281—23.6(260C). ~~By July 1, 2011, all instructors teaching credit courses shall meet minimum standards.~~

c. A faculty standards council shall be convened by the department to review procedures for establishing and reviewing minimum instructor qualifications and definitions for "field of instruction," "applied liberal arts and sciences courses," "qualifying graduate field or major," and "relevant tested experience." Definitions shall be based on accepted practices of regionally accredited two- and four-year institutions of higher education.

(1) The council shall include faculty and academic administrators and meet at least annually. The council shall make recommendations to a committee consisting of the chief academic officers of Iowa's 15 community colleges. The committee shall adopt definitions and minimum faculty qualification standards to be utilized for the state accreditation process. Each community college shall adhere to the adopted definitions and minimum faculty qualification standards.

(2) When utilizing relevant tested experience to qualify an instructor to teach classes within a specific field of instruction, each community college shall maintain well-defined policies, procedures, and documentation in alignment with the adopted definitions and minimum faculty qualification standards. This documentation shall demonstrate that the instructor possesses the experience and expertise necessary to teach in the specified field of instruction and is current in the instructor's discipline. When tested experience is assessed, an hour of relevant work is equal to 60 minutes and one full-time year of relevant work is equal to 2,000 hours.

ITEM 4. Amend paragraph **24.5(2)"b"** as follows:

b. Career and technical education. The full-time teaching load of an instructor in career and technical education programs shall not exceed ~~6 hours per day, and~~ an aggregate of 30 hours per week or the equivalent. An instructor may also teach the equivalent of an additional 3 credit hours, provided the instructor consents to this additional assignment. When the teaching assignment includes classroom subjects (nonlaboratory), consideration shall be given to establishing the teaching load more in conformity with that of paragraph 24.5(2)*"a."*

ITEM 5. Amend subrule 24.5(3) as follows:

24.5(3) *Special needs and protected classes.* Community colleges shall provide equal access ~~in~~ to the full range of program offerings and services including, but not limited to, recruitment, enrollment,

and placement activities for students with ~~disabilities~~ special education needs or protected by state or federal civil rights regulations. Students with disabilities shall be given access to the full range of ~~course~~ program offerings at a college through reasonable accommodations.

ITEM 6. Amend subrule 24.5(4), introductory paragraph, as follows:

24.5(4) *Career and technical education evaluation.* The director of the department shall ensure that Iowa's community colleges annually review at least 20 percent of ~~the~~ approved career and technical educational programs ~~as a basis for continuing approval~~. The community college career and technical program review and evaluation system must ensure that the programs:

ITEM 7. Amend paragraph **24.5(4)"c"** as follows:

c. Meet educational needs of the students and employment community, including students with ~~disabilities, both male and female students, and students from diverse racial and ethnic groups~~ special education needs or protected by state or federal civil rights regulations.

ITEM 8. Amend paragraph **24.5(4)"g"** as follows:

g. Provide students with support services and eliminate access barriers to education and employment for ~~both traditional and nontraditional students, men and women, persons from diverse racial and ethnic groups, and persons with disabilities~~ students with special education needs or protected by state or federal civil rights regulations.

ITEM 9. Amend subparagraph **24.5(7)"b"(9)** as follows:

(9) Compliance with the faculty accreditation standards of the ~~North Central Association of Colleges and Schools~~ Higher Learning Commission and with faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies. It is recommended that the plan provide for the uniform reports with substantiating data currently required for ~~North Central Association of Colleges and Schools~~ Higher Learning Commission accreditation.

ITEM 10. Amend subparagraph **24.5(7)"c"(3)** as follows:

(3) Documentation submitted by the college that the college is implementing the approved plan, including, but not limited to, evidence of plan monitoring, evaluation and updating; evidence that the faculty has attained, or is progressing toward attaining, minimum competencies and standards contained in Iowa Code section 260C.48 ~~as amended by 2008 Iowa Acts, House File 2679, and 2007 Iowa Acts, Senate File 588~~; evidence that faculty members have been notified of their progress toward attaining minimum competencies and standards; and evidence that the college meets the minimum accreditation requirements for faculty required by the ~~North Central Association of Colleges and Schools~~ Higher Learning Commission.

ARC 2852C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(21), the State Board of Education hereby proposes to adopt new Chapter 35, "Educational Standards and Program Requirements for Children's Residential Facilities," Iowa Administrative Code.

New Chapter 35 outlines the educational standards and program requirements for children's residential facilities. 2016 Iowa Acts, Senate File 2304, addresses standards for and certification and inspection of children's residential facilities. This legislation requires the Board to adopt rules

governing educational programs and educational services provided by children's residential facilities pursuant to 2016 Iowa Acts, Senate File 2304, section 11. This rule making follows that directive.

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

Interested individuals may make written comments on the proposed amendment until December 27, 2016, at 4:30 p.m. Comments on the proposed amendment should be directed to Nicole Proesch, Administrative Rules Co-Coordinator, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; e-mail nicole.proesch@iowa.gov; or fax (515)242-5988.

A public hearing will be held on December 27, 2016, from 10 to 11 a.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling (515)281-5295.

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

These rules are intended to implement 2016 Iowa Acts, Senate File 2304.

The following amendment is proposed.

Adopt the following **new** 281—Chapter 35:

CHAPTER 35
EDUCATIONAL STANDARDS AND PROGRAM REQUIREMENTS FOR CHILDREN'S RESIDENTIAL FACILITIES

281—35.1(282) Scope. These rules apply to the provision of educational programs and educational services in children's private residential facilities and juvenile homes.

281—35.2(282) Intent. It is the intent of this chapter that all school-age children, including children younger than 5 years of age and older than 18 years of age, who are eligible children to receive special education, who are living in any children's residential facility operated by a private entity providing residential care to children within the state of Iowa, which is not otherwise exempted by the Iowa Code, shall be provided an appropriate education.

281—35.3(282) Definitions. For purposes of this chapter, the following definitions shall apply:

"Child" or *"children"* means an individual or individuals under 18 years of age. A child is "school-age" if the child is at least 5 years of age on September 15 but not more than 21 years of age or if the child is younger than 5 years of age or older than 18 years of age and is an eligible child to receive special education.

"Children's residential facility" means a facility operated by a private entity and designed to serve children who have been voluntarily placed for reasons other than an exclusively recreational activity outside of their homes by a parent or legal guardian and who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency as defined by 2016 Iowa Acts, Senate File 2304, section 1. "Children's residential facility" shall also be referred to as a "private facility."

"Private entity" means any residential entity that is not a public entity as defined below.

"Public entity" means any facility that houses school-age children and children eligible to receive special education who are under the jurisdiction of the department of corrections, department of human services, board of regents, or other governmental agency and that has current authority to offer direct instruction to children from funding available to one of the above agencies. A public entity shall not bill any Iowa school district or area education agency for educational costs.

281—35.4(282) Establishing an appropriate educational program. A private entity operating a children's residential facility shall not accept any child of school age or a child who is eligible to receive special education services until the entity has been licensed or certified by the department of

human services, juvenile court, or other Iowa governmental agency and has established an appropriate educational program.

35.4(1) A private entity operating a children's residential facility may establish an appropriate educational program in one of three ways:

a. Becoming an accredited nonpublic school through the standards and accreditation process described in Iowa Code section 256.11 and adopted by rule by the state board of education.

b. Utilizing a written contract stating that the public school district in which the private facility is located will provide the educational program and educational services, either directly or by supervision of appropriately licensed staff of the public entity. In the case of a licensed juvenile home, the area education agency of location rather than the school district of location would provide the educational program and educational services.

c. Utilizing a written contract stating that an accredited nonpublic school which is located within the same school district boundaries in which the private facility is located will provide the educational program and educational services, either directly or by supervision of appropriately licensed staff of the accredited nonpublic school. This contract may require that some services related to federal programs and special education be provided by the school district which is otherwise the requirement for the accredited nonpublic school.

35.4(2) The educational program and educational services delivered through a contract established between a private entity and the school district or accredited nonpublic school shall meet, at a minimum, the standards established by rule 281—12.10(256).

35.4(3) Any contract established by the private entity with a school district or accredited nonpublic school shall, at a minimum, include, but not be limited to, the physical location of the educational program and educational services; the parties involved; the purpose of the contract; the program description in detail; the powers, duties and authority of each party to the contract; the jurisdiction of each party to the contract; the dispute resolution procedure; specifications of the services that are contracted, if any, and how costs are to be calculated; billing procedures; how each legal, testing, and reporting requirement will be met; ownership of property belonging to the party that paid the cost or contributed the item; contract amendment procedures; contract approval procedures; contract renewal and termination procedures; duration of the contract; cross indemnification; application of laws, rules and regulations; binding effect; severability; assurances; and signature of the school board with legal power to authorize the terms of the contract. Any contract developed under this rule shall be submitted to the department of education for review and approval by the director of the department of education prior to enactment. A contract that fails to comply with any of the requirements of this chapter is void.

35.4(4) Children residing in a private facility operated by a private entity who require treatment or security throughout the day shall have classrooms made available at the site of the private facility at no cost to the school district, or area education agency in the case of juvenile homes, providing the instructional program or instructional supervision. The classroom must meet the requirements for educational space for children in accordance with the Iowa Code, administrative rules, and state fire marshal regulations.

35.4(5) Nothing included in this chapter shall be interpreted to regulate religious education curricula at the private entity.

281—35.5(282) Display of notices; fees.

35.5(1) A private entity operating a private facility under this chapter shall display prominently in all of the private entity's major publications and on its Internet site a notice accurately describing the educational program and educational services provided by the private entity and who is providing the program and services.

35.5(2) The private entity operating a private facility shall include in any promotional, advertising, or marketing materials available by print, broadcast, or via the Internet or any other means all fees charged by the private entity for the educational program and educational services offered or provided and the entity's refund policy for the return of refundable portions of any fees. This subrule shall not apply to sponsorship by a private entity of public radio or public television broadcasts.

35.5(3) If the educational programs and educational services are provided by or through the public school district of location, all fees related to the educational programs and educational services shall be authorized by the Iowa Code, including but not limited to Iowa Code chapter 282, and shall be the same fees as charged to other enrolled students. The public school district cannot charge nonresident students a higher fee than resident students.

281—35.6(282) Provision of appropriate educational services.

35.6(1) Private entities shall fully cooperate with the area education agency and school district in which the facility is located to fulfill the area education agency's responsibilities for child find under 281—Chapter 41. A child shall be made available for evaluation and provision of services for which the child is eligible.

35.6(2) If a child does not require treatment or security by the private entity in such a time or manner as is required to remain on the campus of the private facility, a child with an individual education plan shall be provided special education instruction and related services with other nondisabled children within the least restrictive environment to the maximum extent appropriate.

35.6(3) The area education agency in which the private facility is located, the school district of residence, and other appropriate public or private agencies or private individuals involved with the care or placement of a child shall cooperate with the school district in which the private facility is located in sharing educational information, textbooks, curriculum, assignments, and materials in order to plan and to provide for the appropriate education of the child living in a private facility and to ensure academic credit is granted to the child for instructional time earned upon discharge from the private residential facility.

35.6(4) A private facility that houses eligible children who are 4 years of age by September 15 of the school year shall notify the parents or legal guardians of these eligible children about the opportunities to access quality preschool programs. Children whose parents are Iowa residents may access the statewide voluntary preschool program under 281—Chapter 16 at no cost to the parents, and transportation will be provided by the public school district in which the statewide voluntary preschool provider is located from its statewide voluntary preschool programs funding. Children whose parents are not Iowa residents may access the statewide voluntary preschool programs, if space is available, through a tuition and transportation agreement with the public school district in which the statewide voluntary preschool program provider is located.

281—35.7(282) Reporting. A private entity shall comply with requests by the Iowa department of education for basic educational and financial information.

These rules are intended to implement 2016 Iowa Acts, Senate File 2304.

ARC 2855C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to rescind Chapter 46, "Vocational Education Programs," and to adopt a new Chapter 46, "Career and Technical Education," and to rescind Chapter 47, "Career Academies," Iowa Administrative Code.

The proposed new Chapter 46 implements the provisions of 2016 Iowa Acts, House File 2392, division II. 2016 Iowa Acts, House File 2392, grants the State Board of Education authority to adopt

standards for career and technical education service areas, regional secondary career and technical education planning partnerships, career academies, regional centers, and more. Accordingly, proposed Chapter 46 establishes the revised career and technical education services areas and aligns national career clusters to each service area. A process for establishing standards for the career and technical education service areas is also proposed. The proposed chapter establishes the secondary program approval and regular review process through which all secondary career and technical education programs will be approved and reviewed. The proposed chapter clarifies the duties, requirements, and membership of local program advisory councils and establishes alternative council structures which programs may utilize in meeting statutory requirements. Standards for regional career and technical education planning partnerships are established, including standards related to partnership approval, compliance, duties, and permissible uses of funds. Standards are also established for career academies and regional centers. Because rules for career academies are included in new Chapter 46, existing Chapter 47 pertaining to career academies is rescinded and reserved.

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

Interested individuals may make written comments on the proposed amendments until January 6, 2017, at 4:30 p.m. Comments on the proposed amendments should be directed to Phil Wise, Administrative Rules Co-Coordinator, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail phil.wise@iowa.gov; or fax (515)242-5988.

A public hearing will be held on January 6, 2017, from 1 to 2 p.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

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

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

These amendments are intended to implement Iowa Code chapter 258 and 2016 Iowa Acts, chapter 1108.

The following amendments are proposed.

ITEM 1. Rescind 281—Chapter 46 and adopt the following **new** chapter in lieu thereof:

CHAPTER 46
CAREER AND TECHNICAL EDUCATION

281—46.1(258) Federal Act accepted. The provisions of the Act of Congress known as the Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended, and the benefit of all funds appropriated under said Act and all other Acts pertaining to career and technical education, are accepted.

281—46.2(258) Definitions. As used in this chapter:

"Approved career and technical education program" means a career and technical education program offered by a school district or community college and approved by the department which meets the requirements for career and technical education programs established under this chapter.

"Approved practitioner preparation school, department, or class" means a school, department, or class approved by the board as entitled under this chapter to federal moneys for the training of teachers of career and technical education subjects.

"Approved regional career and technical education planning partnership" means a regional entity that meets the requirements for regional career and technical education planning partnerships pursuant to rule 281—46.10(258).

"Board" means the board for career and technical education as provided in rule 281—46.3(258).

"Career academy" means a career academy established under rule 281—46.11(258).

EDUCATION DEPARTMENT[281](cont'd)

"Career and technical education service area" means any one of the service areas specified in rule 281—46.4(258).

"Career cluster" means a nationally recognized framework for organizing and classifying career and technical education programs.

"Community college" means an institution as defined under Iowa Code section 260C.2(1).

"Department" means the department of education.

"Director" means the director of the department of education.

"District" means a public school district.

"Partnership" means a regional career and technical education planning partnership as established under rule 281—46.10(258).

"Program" means a minimum of three sequential units of career and technical education coursework.

"Sector partnership" means a regional industry sector partnership as defined in rule 281—25.18(260H).

"Shared program" means a program or portion of a program offered through an agreement pursuant to Iowa Code section 256.13.

"Work-based learning" means opportunities and experiences that include but are not limited to tours, job shadowing, rotations, mentoring, entrepreneurship, service learning, internships, and apprenticeships.

"Work-based learning intermediary network" means the statewide work-based learning intermediary network established pursuant to 281—Chapter 48.

281—46.3(258) State board for career and technical education. The state board of education shall constitute the board for career and technical education. In that capacity, the board shall approve the multiyear state plan developed by the director in accordance with applicable federal laws and regulations governing career and technical education.

281—46.4(258) Career and technical education service areas. Districts shall comply with the requirements of rule 281—46.5(258) in offering programming pursuant to this rule. Instructors teaching courses pursuant to this rule shall hold and maintain appropriate board of educational examiners licensure pursuant to Iowa Code chapter 272.

46.4(1) *Grades 7-8.* Pursuant to 281—subrule 12.5(4), districts shall offer career exploration and development in grades 7 and 8. Career exploration and development shall be designed so that students are appropriately prepared to create an individual career and academic plan pursuant to 281—Chapter 49, incorporate foundational career and technical education concepts aligned with the six career and technical education service areas as defined in subrule 46.4(2), and incorporate relevant twenty-first century skills.

46.4(2) *Grades 9-12.* Pursuant to 281—subrule 12.5(5), districts shall offer career and technical education programming in the following service areas:

a. Agriculture, food, and natural resources, including the career cluster of agriculture, food, and natural resources.

b. Information solutions, including the career clusters of arts, audio and video technology, and communications; and information technology.

c. Applied sciences, technology, engineering, and manufacturing, including the career clusters of architecture and construction; manufacturing; science, technology, engineering, and mathematics; and transportation, distribution, and logistics.

d. Health sciences, including the career cluster of health science.

e. Human services, including the career clusters of education and training; human services; hospitality and tourism; government and public administration; and law, public safety, corrections, and security.

f. Business, finance, marketing, and management, including the career clusters of business, management, and administration; finance; and marketing.

281—46.5(258) Standards for career and technical education. The board shall adopt content standards for the career and technical education service areas. Districts shall include, at a minimum, the content standards for career and technical education service areas adopted pursuant to this rule in career and technical education programs as the standards are adopted by the board.

281—46.6(258) Career and technical education program approval and review. The purpose of the career and technical education program approval and review process is to promote the establishment and maintenance of high-quality secondary and postsecondary career and technical education programs that implement best practices resulting in effective teaching and learning. The program approval and review process will ensure that all career and technical education programs are compatible with educational reform efforts, are capable of responding to technological change and innovation, and meet the educational needs of students and the employment community.

46.6(1) *Secondary program approval.* All career and technical education programs offered by a district shall be approved by the department. As a condition for approval, a district shall comply with the following requirements for career and technical education program approval.

a. Data collection and analysis. A district shall, for each program, conduct an analysis of appropriate data and information related to the program and occupational fields applicable to the program. For purposes of this subrule, data shall include, at a minimum, program enrollment numbers and trends by high school, course completion rates and trends, data required under federal statute governing career and technical education, and labor market information and socioeconomic and demographic data elements as provided by the partnership.

b. Program report and self-study. A district shall create a program report and self-study for each offered program. The program report and self-study shall include narrative on the following criteria:

(1) Program overview. This section shall include an overview of the program's purpose, a summary of data and information as described under paragraph 46.6(1)*"a"* and any conclusions drawn from this data and information, and an analysis of future trends in occupations associated with the program.

(2) Statement of program goals, objectives, and outcomes. This section shall include clear statements of the program's goals, objectives, and outcomes, including a justification of the program's goal(s), objective(s), and outcome(s) based on the review conducted under subparagraph 46.6(1)*"b"*(1), and describe methods which will be used to measure the program's stated outcomes.

(3) Competencies. This section shall describe the established program competencies aligned with state standards pursuant to rule 281—46.5(258) and the program's goals, objectives, and outcomes; include evidence of advisory committee approval of competencies, technical skill assessment tool(s), and proficiency benchmarks; include evidence of postsecondary approval of competencies and technical skill assessment tool(s); outline and describe the coherent sequence of coursework which constitutes the program, including any related foundational and concurrent enrollment coursework, depicted in a plan of study template; describe processes utilized to employ contextualized and effective work-based, project-based, and problem-based learning approaches; describe efforts to integrate career and technical education student organization(s) into the program, if applicable; and describe processes utilized to review and update the curriculum, ensuring continued relevancy to the occupational field.

(4) Student assessment. This section shall describe how the program will assess student outcomes established under subparagraph 46.6(1)*"b"*(2) and program competencies established under subparagraph 46.6(1)*"b"*(3) and the established technical skill assessment tool(s) to measure competencies, utilizing industry-approved technical skill assessments, where available and appropriate.

(5) Educational resources. This section shall describe key equipment and materials currently used in instruction; processes to determine whether the equipment is relevant and up to date; processes to maintain the equipment; and new equipment needs, with a description of how the proposed new equipment would improve the program.

(6) Advisory council. This section shall describe how the program engages with the business community to recruit members for the advisory council pursuant to rule 281—46.8(258) and include a current member list with titles and company; describe advisory committee meeting logistics including, but not limited to, meeting frequency, agendas, and minutes; detail and describe the advice the advisory

council has suggested for the program and any actions or results taken by the program which stem from this advice as well as any advice not acted upon by the program; and include, as an appendix to the narrative, advisory council minutes from the prior year.

(7) Partnerships. This section shall describe how the program's curriculum is integrated with other curricular offerings required of all students; describe the articulation, contractual agreements for shared courses with community colleges, and other agreements with community colleges and other postsecondary institutions; and describe how the program partners with counselors at various levels to assist all students and stakeholders in the exploration of pathway opportunities within the service area.

(8) Removing barriers. This section shall describe how the program removes barriers for all students to access education opportunities both while in and beyond high school.

c. Feedback. The district shall submit the program report and self-study completed under paragraph 46.6(1)*"b"* to the partnership for peer review and feedback. The partnership shall complete a review of the program report and self-study and provide the district with recommendations and feedback based on that review. The partnership's recommendations shall be documented and submitted to the department and the district. The partnership shall include in the recommendations a determination of whether the program should or should not receive department approval. A program must be recommended for approval by the partnership for the program to receive approval by the department. The district will modify the program report and self-study based on the partnership's recommendations. The partnership's recommendations shall be included as an appendix to the program report and self-study submitted to the department. The final program report and self-study shall be submitted by the district to the department.

d. Department approval. Final approval of programs will be reserved for the department. Approval shall be awarded to a program if clear evidence of compliance with the criteria established in this rule is provided in the program report and self-study as required under paragraph 46.6(1)*"b."* A program which fails to be approved by the department will have one year to address identified deficiencies and resubmit for approval of the program. The department will provide a summary of the deficiencies in need of addressing.

46.6(2) *Postsecondary program approval.* All community college career and technical education programs shall be approved through the process established in 281—subrule 21.4(3).

46.6(3) *Secondary program review.* The program review process will ensure that 20 percent of secondary career and technical education programs are reviewed on an annual basis and that career and technical education programs meet standards adopted by the board. The review shall include an assessment of the extent to which the competencies in the program are being mastered by the students enrolled, the costs are proportionate to educational benefits received, the career and technical education curriculum is articulated and integrated with other curricular offerings required of all students, the programs would permit students with career and technical education backgrounds to pursue other educational interests in a postsecondary institutional setting, and the programs remove barriers for all students to access educational and employment opportunities.

a. Secondary program review. As a condition of continuing approval, districts shall comply with the following requirements for career and technical education program review. Units of instruction required under rule 281—46.4(258) must have students from each participating high school enrolled. Each district that sends students to a shared program with another district which is used by the sending district to fulfill the requirements of rule 281—46.4(258) must have students from the sending district enrolled in the shared program.

(1) Conclusions drawn from annual program measurement. A district shall, for each program, annually review and evaluate program outcomes and student assessment data. The district shall describe any conclusions drawn from the review and evaluation of program outcomes and student assessment data, and how those conclusions impact the future direction of the program. In addition to and as a result of this review, the district shall identify program strengths, in order of importance, and describe how these strengths will be maintained; perceived barriers to accomplishing the program's goal(s) and objective(s); and primary opportunities for improvement, in order of importance, and how these opportunities for improvement will be addressed. The district shall also review program enrollment and participation data

by high school to determine if students from each participating high school have access to the program. The district shall describe how the district is ensuring access to the program for all students from each participating high school.

(2) Revision of program goals, objectives, and outcomes. The district shall update and make appropriate revisions to the program, including goals, objectives, and outcomes, as outlined in the program report and self-study based on the results of the activities prescribed under subparagraph 46.6(3)*"a"*(1).

b. Feedback. The district shall submit the program report and self-study completed under subparagraph 46.6(3)*"a"*(2) to the partnership for peer review and feedback. The partnership shall complete a review of the program report and self-study and provide the district with recommendations and feedback based on the review. The partnership's recommendations shall be documented and submitted to the department and the district. The partnership shall include in the recommendations a determination of whether the program should or should not receive department approval. A program must be recommended for approval by the partnership for the program to receive approval by the department. The district will modify the program report and self-study based on the partnership's recommendations. The partnership's recommendations shall be included as an appendix to the program report and self-study submitted to the department. The final program report and self-study shall be submitted by the district to the department.

c. Department approval. Final approval of programs will be reserved for the department. Approval shall be awarded to a program if clear evidence of compliance with the criteria established in this rule is provided in the program report and self-study as required under this rule. A program which fails to be approved by the department will have one year to address identified deficiencies and resubmit for approval of the program. The department will provide a summary of the deficiencies in need of addressing.

46.6(4) *Postsecondary program review.* The postsecondary program review process shall ensure career and technical education programs meet standards adopted by the board. The review shall include an assessment of the extent to which the competencies in the program are being mastered by the students enrolled, the program costs are proportionate to educational benefits received, the curriculum is articulated and integrated with other curricular offerings required of all students, the program provides opportunities for students to pursue other educational interests in a postsecondary institutional setting, and the program removes barriers for all students to access educational and employment opportunities.

a. Process. Each community college shall establish a process which ensures at least 20 percent of career and technical education programs are reviewed on an annual basis. The department will ensure compliance with the requirements of this paragraph through the community college accreditation process established in 281—Chapter 24.

b. Components. The following minimum components will be addressed through the process outlined in paragraph 46.6(4)*"a."*

(1) Industry or professional standards. Community colleges shall utilize standards established and recognized by industry or professional organizations when available and appropriate. In lieu of these standards, community colleges shall develop program standards through a structured group interview process, which involves committees of incumbent workers within an occupational cluster analyzing standards which include new and emerging technologies, job seeking, leadership, entrepreneurial, and occupational competencies. This analysis includes identifying standards that ensure program participants have access to instruction which leads to employment and further training. All standards will be analyzed for the reinforcement of academic skills.

(2) Program standards. Additional standards which shall be addressed during the program review include currency of curriculum; faculty qualifications; professional development; adequacy of equipment and facilities; student outcomes, in terms of student demographics to include gender, race and ethnicity, national origin, and disability; enrollment retention, completion, and replacement rates; articulation; and employment rates and wages.

(3) Advisory council. The community college shall document how the program engages with the business community to recruit members for the advisory council required under rule 281—46.8(258).

Program review documentation shall include a current member list with titles and employer; advisory committee meeting logistics including, but not limited to, meeting frequency, agendas, and minutes; advice the advisory council has suggested for the program; and any actions or results taken by the program which stem from this advice.

(4) Articulation. Teachers and administrators from both secondary and postsecondary instructional levels shall (when applicable) meet to identify competencies required at each level and to jointly prepare agreements of articulation between secondary and postsecondary levels for specific occupational areas. Such joint articulation efforts will facilitate the secondary-postsecondary transition and help reduce duplication between the two levels.

46.6(5) *Program modification.* Any modifications to a program must be approved by the department. Modification includes, but is not limited to, a change to the courses in the program, a change to the description of a program, discontinuing a program or option, a change to instructional or occupational classification, or changes in program entrance requirements.

281—46.7(258) Accreditation standards not met. Reserved.

281—46.8(258) Advisory council.

46.8(1) *Appointment.* The board of directors of a school district or community college that maintains a career and technical education program receiving federal or state funds under this chapter shall, as a condition of approval by the board, appoint a program-oriented and program-specific advisory council for each career and technical education program offered by the school district or community college. The local advisory council shall give advice and assistance to the board of directors, administrators, and instructors in the establishment and maintenance of the career and technical education program. An advisory council established under this rule shall meet at least twice annually.

46.8(2) *Joint advisory council.* A school district and a community college that maintain a career and technical education program receiving federal or state funds may create a joint local advisory council which may serve in place of an advisory council required under subrule 46.8(1).

46.8(3) *Regional advisory council.* A regional advisory council established by a regional career and technical education planning partnership approved by the department pursuant to rule 281—46.10(258) may serve in place of an advisory council required under subrule 46.8(1).

46.8(4) *Membership.* The membership of each advisory council established under this rule shall consist of public members from multiple businesses within the occupation or occupational field related to the career and technical education program and of other stakeholders with expertise in the occupation or occupational field related to the career and technical education program. There shall be a good-faith effort to include secondary and postsecondary career and technical education teachers from related secondary and postsecondary programs on the advisory council. Members of an advisory council shall serve without compensation. Local advisory councils are not subject to the requirements of Iowa Code section 69.16.

281—46.9(258) Distribution of career and technical education funds.

46.9(1) An approved regional career and technical education planning partnership is eligible to receive from state funds reimbursement for expenditures made during the fiscal year for purposes allowed under subrule 46.10(6). If federal and state funds are not sufficient to make the reimbursement to the extent provided in this rule, the director shall prorate the respective amounts available to the regional career and technical education planning partnerships entitled to reimbursement.

a. At the beginning of a fiscal year, the department shall assign to each partnership a portion of the total career and technical education funds from which the partnership may claim reimbursement from the department.

b. Each partnership shall be assigned a portion of the total career and technical education funds based on the following formula:

(1) Half of the total career and technical education funds shall be disbursed equally between the approved partnerships.

(2) Half of the total career and technical education funds shall be disbursed based on the number of students enrolled in approved career and technical education programs.

46.9(2) All federal funds shall be spent pursuant to the state plan required under the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended.

281—46.10(258) Regional career and technical education planning partnerships. Regional career and technical education planning partnerships are established to assist school districts in providing an effective, efficient, and economical means of delivering high-quality secondary career and technical education programs.

46.10(1) *Establishment.* Partnerships shall be established to serve all school districts in the state no later than June 30, 2017.

a. There shall be established in the state no fewer than 12 and no greater than 15 regions in which partnerships may operate.

b. A partnership shall be considered established if approved pursuant to subrule 46.10(2).

c. Convening the regional career and technical education planning partnership shall be the joint responsibility of the area education agency and community college located within the region. In convening the partnership, the area education agency and community college shall secure the participation of interim members of the partnership. When selecting interim members, the area education agency and community college shall ensure the membership requirements of subrule 46.10(3) are satisfied.

46.10(2) *Approval.* All partnerships shall be approved by the department. As a condition of approval, each partnership shall meet the following requirements:

a. *Approval.* By June 30, 2017, each partnership shall have adopted bylaws in a manner and format prescribed by the department. The partnership shall submit to the department by June 30, 2017, the partnership's bylaws, a membership list which clearly denotes the required membership under subrule 46.10(3) and the chair, vice-chair, and secretary, the designated fiscal agent for the partnership, minutes from all meetings held prior to June 30, 2017, and a schedule of future meetings.

b. *Continuing approval.* By June 30, 2018, each partnership shall have adopted a multiyear plan meeting the requirements of subrule 46.10(5). The multiyear plan shall be reviewed and, as necessary, revised on an annual basis by the partnership and submitted to the department. To maintain approval, the partnership shall maintain evidence that the duties assigned to the partnership under subrule 46.10(4) are performed on a continuing basis.

c. *Failure to maintain approval.* If the department denies or grants conditional approval of a partnership, the director, in consultation with the partnership, shall establish a plan detailing all areas of deficiency and prescribing the procedures that must be taken to achieve approval and a timeline for completion of the prescribed procedures. A final plan shall be submitted to the director within 45 days following notice of the department denying or granting conditional approval of a partnership. The partnership shall continue to perform the duties assigned to the partnership under subrule 46.10(4) for the duration of the timeline established in the plan. If at the end of the timeline established in the plan the noted deficiencies have not been adequately addressed, the partnership will be denied approval. Within one year of the action to deny approval of the partnership, the director will establish a plan which details how the partnership will be merged or restructured.

d. *Resolution of disputes.* In the event of a dispute regarding the assignment of a district to a partnership under this rule, the director shall first attempt to mediate the dispute. If mediation is unsuccessful, the director shall schedule a hearing to obtain testimony. At the sole discretion of the director, the hearing may be held electronically or in person. The director shall issue within ten days after the hearing a written decision which shall be a final administrative decision.

46.10(3) *Membership.* The membership of each partnership shall consist of stakeholders in a position to contribute to the development and successful implementation of high-quality career and technical education programs. Each district which falls within the boundaries of the partnership shall be represented on the partnership. Once established pursuant to subrule 46.10(1), the partnership shall

be responsible for identifying and maintaining appropriate membership. Membership of the partnership shall include but not be limited to the following:

a. The superintendent of a school district within the regional planning partnership, or the superintendent's designee.

b. The president of a community college within the regional planning partnership, or the president's designee.

c. The chief administrator of an area education agency within the regional planning partnership, or the chief administrator's designee.

d. Representatives of a regional work-based learning intermediary network.

e. Representatives of regional economic and workforce entities including regional advisory boards established under Iowa Code section 84A.4.

f. Representatives of business and industry, including representatives of regional industry sector partnerships.

g. Career and technical education teachers and faculty.

46.10(4) *Duties.* The partnership shall perform the following duties on a continuing basis.

a. Develop a multiyear plan which meets the requirements of subrule 46.10(5). The plan shall be updated annually.

b. Collect and review all relevant plans required by the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended; career and academic plans required under 281—Chapter 49; and regional labor market, socioeconomic, and demographic information.

c. Ensure compliance with standards adopted by the board for regional career and technical education planning partnerships.

d. Appropriately expend career and technical education funds in accordance with subrule 46.10(6) assigned to the partnership pursuant to rule 281—46.9(258).

e. Collect, review, and make available to districts appropriate labor market, socioeconomic, and other state, regional, or national information necessary for completing the program approval and review process pursuant to rule 281—46.6(258).

f. Review career and technical education programs of school districts within the region and recommend to the department career and technical education programs for approval in accordance with subrules 46.6(1) and 46.6(3).

g. Coordinate and facilitate advisory councils for career and technical education programs and, as necessary, establish regional advisory councils to serve in the same capacity as local advisory councils.

h. Plan for regional centers with the purpose of achieving equitable access to high-quality career and technical education programming and concurrent enrollment opportunities for all students.

46.10(5) *Multiyear plan.* The multiyear plan developed by the partnership shall outline the partnership's goals, objectives, and outcomes; how the partnership will execute the authority and duties assigned to the partnership; how the partnership will secure collaboration with secondary schools, postsecondary educational institutions, and employers to ensure students have access to high-quality career and technical education programming, including career academies, that aligns career guidance, twenty-first century career and technical education and academic curricula, and work-based learning opportunities that empower students to be successful learners and practitioners; and how the partnership will ensure compliance with standards established under this rule. In addition, the multiyear state plan shall include, but not be limited to, the following components:

a. *Goals, objectives, and outcomes.* The plan shall detail the partnership's goals, objectives, and outcomes, which shall include, but not be limited to, the following goals:

(1) Promote career and college readiness through thoughtful career guidance and purposeful academic and technical planning practices.

(2) Promote high-quality, integrated career and technical education programming, including career academies and the delivery of quality career and technical education programs by school districts in fulfillment of the requirements of rule 281—46.4(258) comprised of secondary exploratory and transitory

coursework to prepare students for higher-level, specialized academic and technical training aligned with labor market needs.

(3) Afford students the opportunity to access a spectrum of high-quality work-based learning experiences through collaboration with a work-based learning intermediary network.

(4) Afford all students equitable access to programs and encourage the participation of underrepresented student populations in career and technical education programming.

b. Process to measure goals, objectives, and outcomes. The plan shall outline the processes to be used by the partnership to measure all goals, objectives, and outcomes established pursuant to paragraph 46.10(5)*"a."*

c. Program approval and review process. The plan shall outline the process the partnership will utilize in reviewing career and technical education programs of school districts within the region based on standards established in rule 281—46.6(258). The process shall detail how 20 percent of programs will be reviewed on an annual basis. The partnership shall provide a written five-year program review schedule which clearly indicates the specific year in which a program is to be reviewed within the five-year cycle.

d. Advisory councils. The plan shall outline the process that the partnership will utilize in coordinating and facilitating local advisory councils for career and technical education programs as required under rule 281—46.8(258) and establishing regional advisory councils to serve in the same capacity as local advisory councils, as necessary.

e. Use of funds. The plan shall detail the partnership's budget including intended use of funds designated to the partnership pursuant to rule 281—46.9(258). The intended use of funds shall comply with the requirements of subrule 46.10(6) and be clearly connected to the goals, objectives, and outcomes of the partnership established under paragraph 46.10(5)*"a"* and the needs of career and technical education programs and teachers as identified through the program approval and review process under rule 281—46.6(258).

f. Planning for regional centers. The plan shall outline the process that the partnership will utilize in planning for regional centers, consistent with the requirements of rule 281—46.12(258), with the purpose of achieving equitable access to high-quality career and technical education programming and concurrent enrollment opportunities for all students.

g. Meeting regularly. The plan shall outline the intended schedule of partnership meetings for a five-year period. The partnership shall meet at least twice per academic year.

h. Annual review of multiyear plan. The plan shall outline the process to be utilized by the partnership to annually review and, as necessary, revise the plan. This process shall ensure that all members and stakeholders are included in the review and revision of the plan. The partnership shall maintain a written record of all reviews of and revisions to the plan.

i. Assurance statement. The plan shall include, in a format prescribed by the department, an assurance that in all operations of and matters related to the partnership, the partnership does not discriminate against individuals protected under federal and state civil rights statutes.

46.10(6) *Secondary career and technical education funds.* An approved regional career and technical education partnership may use funds received from state and federal sources for the following:

a. To convene, lead, and staff the regional career and technical education planning partnership. A partnership may use state career and technical education funds allocated to the partnership pursuant to rule 281—46.9(258) for no more than one full-time equivalent staff position.

b. To offer regional career and technical education professional development opportunities, coordinate and maintain a career guidance system pursuant to 281—Chapter 49, and purchase equipment on behalf of school districts and community colleges participating in the regional career and technical education planning partnership. All expenditures on allowable uses specified under this paragraph must conform to the requirements of the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended.

EDUCATION DEPARTMENT[281](cont'd)

281—46.11(258) Career academies.

46.11(1) *Establishment and responsibilities.* A career academy may be established under an agreement between a single school district and a community college, or by multiple school districts and a community college organized into a regional career and technical education planning partnership pursuant to rule 281—46.10(258). A career academy established under this rule shall be a career-oriented or occupation-oriented program of study that includes a minimum of two years of secondary education, which may fulfill the sequential unit requirement in one of the four service areas required under 281—subrule 12.5(5), includes concurrent enrollment programming aligned with a postsecondary education program which meets the requirements of 281—Chapter 22, and is approved by the director. A career academy shall do all of the following:

a. Utilize regional career and technical education planning partnerships outlined in rule 281—46.10(258) in an advisory capacity to inform the selection and design of the career academy and establishment of industry standards.

b. Establish a program of study that meets all of the following criteria:

(1) Is designed to meet industry standards and prepare students for success in postsecondary education and the workforce.

(2) Integrates academic coursework; includes foundational and transitory career and technical education coursework; includes work-based learning; and utilizes the individual career and academic planning process established under 281—Chapter 49.

(3) Integrates as a portion of the career academy a hands-on, contextualized learning component.

(4) Allows students enrolled in the academy an opportunity to continue on to an associate degree and, if applicable, a postsecondary baccalaureate degree program.

46.11(2) *Contract or agreement.* A career academy must receive approval from district and community college boards participating in the career academy. A contract or 28E agreement must set forth the purposes, powers, rights, objectives, and responsibilities of the contracting parties and be signed by all participating parties and be in effect prior to initiation of a career academy. An assurance form, as defined by the department, which specifies that the career academy includes all the components required under this rule shall be sent to the director.

46.11(3) *Faculty requirements.* Faculty providing college credit instruction in a career academy program of study must meet community college faculty minimum standards as specified in 281—subrule 24.5(1) and the requirements of the quality faculty plan as approved by the community college board pursuant to 281—subrule 24.5(7). Instructors teaching courses that provide only secondary level credit must have appropriate secondary licensure pursuant to Iowa Code chapter 272.

46.11(4) *Compliance.* Districts and community colleges shall maintain compliance with the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, 20 U.S.C. §2301 et seq., as amended, in implementing career academies.

46.11(5) *Data collection.* Data collection and enrollment reporting must follow specified requirements as determined by the department.

281—46.12(258) Regional centers. The state board shall adopt standards pertaining to regional centers. The standards shall include, but not be limited to, those which provide for increased and equitable access to high-quality career and technical education programs and require that regional centers incorporate appropriate educational programs, meet appropriate state and federal regulations for safety and access, maintain adequate participation, and are located within an appropriate distance of participating high schools, and that transportation is provided to all students.

46.12(1) *Minimum requirements.* As a condition for approval, a regional center shall comply with standards adopted by the board and shall consist of a minimum of four career academies on site. A regional center shall be compatible with the development of a statewide system of regional centers serving all students. A regional center shall serve either of the following:

a. A combined minimum of 120 students from no fewer than two school districts.

b. A minimum of four school districts.

46.12(2) to **46.12(4)** Reserved.

EDUCATION DEPARTMENT[281](cont'd)

46.12(5) *Approval.* The director shall approve all facilities meeting the definition and requirements for regional centers under this rule.

These rules are intended to implement Iowa Code chapter 258 and 2016 Iowa Acts, chapter 1108.

ITEM 2. Rescind and reserve **281—Chapter 47**.

ARC 2849C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4 and 2016 Iowa Acts, House File 2460, section 27, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These changes are proposed to bring administrative rules into compliance with 2015 Iowa Acts, chapter 137, section 149, subsection (1)(q), as amended by 2016 Iowa Acts, House File 2460, section 27, which requires the Department of Human Services to increase the contractual managed care rate floors and the fee-for-service rates and payment limits by 1 percent over the rates in effect April 1, 2016, for providers of home- and community-based service (HCBS) waiver services for which the managed care rate floor is based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014.

The outdated language regarding encumbering a portion of the cost of home and vehicle modification over 12 months is also being removed as these paragraphs were to be stricken in a prior rule making that removed the cost of home and vehicle modification from the monthly cap under the waiver program.

These amendments increase fee-for-service upper payment limits and reimbursement rates by 1 percent over the rates in effect June 30, 2016, for providers of HCBS waiver services for which the managed care rate floor is based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014.

These amendments also increase managed care, the contractual reimbursement rate floor based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014, by 1 percent over the rate floor in effect on April 1, 2016.

The caps on the total monthly cost of HCBS waiver services for members under each waiver and the annual respite limit for the intellectual disability (ID) waiver are also being increased by 1 percent. The increases in the caps are put in place so members may receive the same services after the rate increases.

Finally, these amendments correct the annual limit for specialized medical equipment in Chapter 78 to align with the limit listed in subrule 79.1(2).

Any interested person may make written comments on the proposed amendments on or before December 27, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 2848C**. The purpose of this Notice is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

These ammendments may increase private sector wages for employees providing home- and community-based services under HCBS waiver programs.

These amendments are intended to implement Iowa Code section 249A.4 and 2016 Iowa Acts, House File 2460, section 27.

ARC 2847C

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4 and 2015 Iowa Acts, chapter 137, section 149(1)(f)(1), as amended by 2016 Iowa Acts, House File 2460, section 27, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This proposed amendment increases the home health low utilization payment adjustment (LUPA) rates by 2.93 percent. This is estimated to be the maximum possible increase within the $1 million of state funding appropriated for this purpose, as required by 2015 Iowa Acts, chapter 137, section 149(1)(f)(1), as amended by 2016 Iowa Acts, House File 2460, section 27.

Any interested person may make written comments on the proposed amendment on or before December 27, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

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

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 2846C**. The purpose of this Notice of Intended Action is to solicit public comment on that submission, the subject matter of which is incorporated by reference.

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

This amendment is intended to implement Iowa Code section 249A.4 and 2015 Iowa Acts, chapter 137, section 149(1)(f)(1), as amended by 2016 Iowa Acts, House File 2460, section 27.

ARC 2850C

LAW ENFORCEMENT ACADEMY[501]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 80B.11(1)"a" and 80B.11(1)"h," the Iowa Law Enforcement Academy hereby gives Notice of Intended Action to amend Chapter 2, "Minimum Standards for Iowa Law Enforcement Officers," and Chapter 10, "Reserve Peace Officers," Iowa Administrative Code.

LAW ENFORCEMENT ACADEMY[501](cont'd)

The rules in Chapters 2 and 10 describe the minimum hiring requirements for certified peace officers and certified reserve peace officers. These proposed amendments bring Chapters 2 and 10 into compliance with 2016 Iowa Acts, House File 2267, which amends Iowa Code section 400.17(3) to change the residency requirement of civil service employees employed by cities and to allow those employees to reside outside of the state of Iowa if a city ordinance allows it. Chapters 2 and 10 are also being amended to allow certified police officers and certified reserve peace officers who are allowed to live outside of the state of Iowa to possess out-of-state driver's licenses.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 27, 2016. Written comments should be directed to Russell Rigdon, Iowa Law Enforcement Academy, P.O. Box 130, Johnston, Iowa 50131. Comments may be submitted by fax to (515)725-9636 or by e-mail to russell.rigdon@iowa.gov.

These amendments were approved by the Iowa Law Enforcement Academy Council on October 6, 2016.

After analysis and review of this rule making, the fiscal impact of these amendments on the law enforcement agencies affected may be significant. Law enforcement agencies in Iowa have seen significant issues with hiring and retention of trained officers, and agencies and officers often have incurred significant relocation expenses to comply with the former residency requirements. Iowa Code section 400.17(3) as amended by 2016 Iowa Acts, House File 2267, and the amendments to Chapters 2 and 10 may significantly lower many of these costs for agencies and officers.

After analysis and review of this rule making, no adverse impact on jobs is anticipated.

These amendments are intended to implement Iowa Code section 400.17(3) as amended by 2016 Iowa Acts, House File 2267.

The following amendments are proposed.

ITEM 1. Amend subrule 2.1(1) as follows:

2.1(1) Is a citizen of the United States and a resident of Iowa or intends to become a resident upon being employed; provided that~~, with the approval of the Iowa law enforcement academy council, a city located on a state border that is within a standard metropolitan statistical area may allow officers to reside in an adjacent state within that statistical area upon written application by the agency administrator to the council showing substantial reason and documenting undue hardship~~ the state residency requirement under this subrule shall not apply to employees of a city or county that has adopted an ordinance to allow employees of the city or county to reside in another state and shall not apply to an employee of a city or county that later repeals such an ordinance if the employee resides in another state at the time of the repeal. A city or county that has adopted an ordinance to allow the employees of the city or county to reside in another state shall provide a current copy of the ordinance to the Iowa law enforcement academy. Railway special agents who are approved by the commissioner of public safety as special agents of the department shall be exempt from the Iowa residency requirement.

ITEM 2. Amend subrule 2.1(3) as follows:

2.1(3) Has a valid driver's or chauffeur's license issued by the state of Iowa. Railway special agents who are approved by the commissioner of public safety as special agents of the department and officers who are allowed to reside in an adjacent state ~~within a standard metropolitan statistical area~~ shall be required to possess a valid driver's or chauffeur's license of the state of residence of the officer.

ITEM 3. Amend subrule 10.100(1) as follows:

10.100(1) Is a citizen of the United States and a resident of Iowa or intends to become a resident of Iowa upon appointment as a reserve peace officer~~. However, with the approval of the Iowa law enforcement academy council, a city located on a state border that is within a standard metropolitan statistical area may allow reserve peace officers to reside in an adjacent state within that statistical area upon written application by the agency administrator to the council showing substantial reason and documenting undue hardship~~; provided that the state residency requirement under this subrule shall not apply to employees of a city or county that has adopted an ordinance to allow the employees of the city or county to reside in another state and shall not apply to an employee of a city or county that later repeals such an ordinance if the employee resides in another state at the time of the repeal. A city or county that

has adopted an ordinance to allow the employees of the city or county to reside in another state shall provide a current copy of the ordinance to the Iowa law enforcement academy.

ITEM 4. Amend subrule 10.100(3) as follows:

10.100(3) Has a valid driver's or chauffeur's license issued by the state of Iowa. Reserve peace officers who are allowed to reside in an adjacent state ~~within a standard metropolitan statistical area~~ shall be required to possess a valid driver's or chauffeur's license of the state of residence of the officer.

ARC 2860C

MEDICINE BOARD[653]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Medicine hereby proposes to amend Chapter 17, "Licensure of Acupuncturists," Iowa Administrative Code.

The purpose of Chapter 17 is to establish licensure requirements and practice standards for acupuncturists. The proposed amendments update requirements for licensure, renewal and reinstatement; identify diagnostic and treatment modalities performed by acupuncturists; provide definitions of additional terms associated with acupunctural services; revise requirements for the display, distribution and retention of a disclosure sheet which contains information for patients; establish requirements for the delegation of certain aspects of treatment; and establish a requirement that licensees report changes in their full legal names.

The Board approved this Notice of Intended Action during a regularly scheduled meeting on October 28, 2016.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on December 27, 2016. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by e-mail to mark.bowden@iowa.gov.

There will be a public hearing on December 27, 2016, at 11 a.m. at the Board's office, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

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

These amendments are intended to implement Iowa Code chapters 147, 148, 148E, and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 653—17.2(148E) as follows:

653—17.2(148E) ~~Licensure exceptions~~ Scope of chapter. The rules in this chapter shall only apply to individuals licensed under Iowa Code chapter 148E. In accordance with Iowa Code section 148E.3, the ~~following~~ rules ~~govern those persons engaged in the practice of acupuncture not~~ in this chapter shall not apply to the following:

1. A person otherwise licensed by the state to practice medicine and surgery, osteopathic medicine and surgery, chiropractic, podiatry, or dentistry who is exclusively engaged in the practice of the person's profession.

2. A student practicing acupuncture under the direct supervision of a licensed acupuncturist as part of a course of study approved by the board ~~as one that leads to eligibility for licensure is not required to obtain a license~~.

MEDICINE BOARD[653](cont'd)

ITEM 2. Amend rule 653—17.3(148E) as follows:

653—17.3(148E) Definitions.

"Accreditation Commission for Acupuncture and Oriental Medicine" or *"ACAOM"* means the United States-based accreditation commission that certifies acupuncture and oriental medicine training programs and colleges. The ACAOM oversees all professional oriental medicine and acupuncture degree programs in the United States. The ACAOM was formerly known as the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

"Acupuncture" means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

"Acupuncture needle" means a solid-core instrument including but not limited to acupuncture needles, dermal needles, intradermal needles, press tacks, plum blossom needles, prismatic needles, and disposable lancets.

"Acupuncture point" means a specific anatomical location on the human body that serves as the treatment site for the use of acupuncture.

"Applicant" means a person not otherwise authorized to practice acupuncture under Iowa Code section 148E.3 who applies to the board for a license.

"Ashi acupuncture point" means an acupuncture point that is located according to tenderness upon palpation. An ashi acupuncture point is also known as a trigger point.

"Board" means the board of medicine established in Iowa Code chapter 147.

"Committee" means the ~~license and examination~~ licensure committee of the board with oversight responsibility for administration of the licensure of acupuncturists.

"Department" means the Iowa department of public health.

"Disclosure sheet" means the written information licensed acupuncturists must provide to patients on initial contact.

"Disposable needles" means presterilized needles that are discarded after initial use pursuant to Iowa Code section 148E.5.

"License" means a license issued by the board pursuant to Iowa Code section 148E.2.

"Licensed acupuncturist" or *"licensee"* means a person holding a license to practice acupuncture granted by the board ~~under the provisions of~~ pursuant to Iowa Code chapter 148E.

"National Certification Commission for ~~the Certification of Acupuncturists~~ Acupuncture and Oriental Medicine" or "NCCAOM" means the ~~National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM)~~ United States-based commission that validates entry-level competency in the practice of acupuncture and oriental medicine through professional certification.

"Practice of acupuncture" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medicine concepts.

"Professional development activity ~~(PDA)~~" or "PDA" means any activity for the purpose of continuing a person's education that is defined and approved by NCCAOM. One PDA point equals one hour of continuing education.

"Service charge" means the amount charged by the board for making a service available ~~on line~~ online and is in addition to the actual fee for a service itself. For example, one who renews a license ~~on line~~ online will pay the license renewal fee and a service charge.

ITEM 3. Amend paragraph **17.4(1)"d"** as follows:

d. Successfully complete a three-year postsecondary training program or acupuncture college program which is accredited by, in candidacy for accreditation by, or which meets the standards of~~, the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine~~ the Accreditation Commission for Acupuncture and Oriental Medicine.

MEDICINE BOARD[653](cont'd)

ITEM 4. Amend rule 653—17.5(147,148E) as follows:

653—17.5(147,148E) Application requirements.

17.5(1) *Application for licensure.* To apply for a license to practice acupuncture, an applicant shall:

a. Submit the completed application form provided by the board, including required credentials and documents, ~~and~~ a completed fingerprint packet and a sworn statement by the applicant attesting to the truth of all information provided by the applicant; and

b. No change.

c. Pay the fee identified in 653—paragraph ~~8.2(2)*"f"*~~ 8.2(2)*"e"* for the evaluation of the fingerprint packet and the ~~DCI and FBI~~ national criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

17.5(2) *Contents of the application form.* Each applicant shall submit the following information on the application form provided by the board:

a. The applicant's full legal name, date and place of birth, and home address, mailing address and principal business address;

b. No change.

c. A chronology accounting for all time periods from the date the applicant entered an acupuncture and oriental medicine training program or college to the date of the application;

~~*c.*~~ *d.* The other jurisdictions in the United States or other nations or territories in which the applicant is authorized to practice acupuncture, including license, certificate of registration or certification numbers, and date of issuance~~, and an explanation indicating the basis upon which authorization to practice acupuncture was received~~;

~~*d.*~~ *e.* Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories. Copies of the legal documents may be requested if needed during the review process;

~~*e.*~~ *f.* ~~Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories~~ A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, acupuncture or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction;

g. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

~~*f.*~~ *h.* The NCCAOM score report verification form submitted directly to the board by the NCCAOM;

~~*g.*~~ *i.* An official statement from NCCAOM that the applicant holds active status as a diplomate in NCCAOM or, after June 1, 2004, an official statement from NCCAOM that the applicant holds active status as a diplomate in acupuncture or oriental medicine;

~~*h.*~~ *j.* ~~An official statement showing~~ Proof of successful completion of a course in clean needle technique approved by the NCCAOM;

~~*i.*~~ *k.* A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in the practice of acupuncture and provide patients with safe and healthful care;

~~*j.*~~ *l.* A description of the applicant's clinical acupuncture training, work experience and, where applicable, supporting documentation;

m. A copy of the applicant's acupuncture degree issued by an educational institution. If a copy of the acupuncture degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained an acupuncture degree from a specific educational institution;

n. A complete translation of any diploma not written in English. An official transcript, written in English and received directly from the educational institution, showing graduation from an acupuncture training program or an educational institution is a suitable alternative;

o. A sworn statement from an official of the educational institution certifying the date the applicant received the acupuncture degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. If a sworn statement from an official of the educational institution cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained an acupuncture degree from a specific educational institution;

~~*k.*~~ *p.* An official transcript sent directly from ~~the institution of higher education or acupuncture school~~ an acupuncture training program or an educational institution attended by the applicant and, if ~~necessary~~ requested by the board, an English translation of the official transcript;

~~*l.*~~ *q.* Proof of the applicant's proficiency in the English language, when the applicant has not passed the English version of the NCCAOM written and practical examinations;

~~*m.* A copy of the disclosure sheet to be used in practice, as described in 17.5(3); and~~

~~*n.* A completed fingerprint packet to facilitate a national criminal history background check. The fee for evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.~~

r. Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board; and

s. A completed fingerprint packet to facilitate a national criminal history background check. The fee for evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

17.5(3) *Disclosure sheet.* ~~Pursuant to Iowa Code section 148E.6, applicants shall also provide a copy of the disclosure sheet to be given to each patient that includes the following information:~~

~~*a.* The name, business address and business telephone number of the acupuncturist;~~

~~*b.* A fee schedule;~~

~~*c.* A listing of the acupuncturist's education, experience, degrees, certificates, or other credentials related to acupuncture awarded by professional acupuncture organizations, the length of time required to obtain degrees or credentials, and experience;~~

~~*d.* A statement indicating any license, certificate, or registration in a health care occupation which was revoked by any local, state, or national health care agency;~~

~~*e.* A statement that the acupuncturist is complying with statutes and with rules adopted by the board, including a statement that only presterilized, disposable needles are used by the acupuncturist;~~

~~*f.* A statement that the practice of acupuncture is regulated by the board; and~~

~~*g.* A statement indicating that a license to practice acupuncture does not authorize a person to practice medicine and surgery in this state, and that the services of an acupuncturist must not be regarded as diagnosis and treatment by a person licensed to practice medicine and must not be regarded as medical opinion or advice.~~

17.5(4) *Application cycle.* ~~Applications for initial licensure shall be open for 90 days from the date the application form is received in the board's office.~~ If the applicant does not submit all materials, including a completed fingerprint packet, within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status.

a. ~~After the 90 days, applicants shall update credentials and submit a nonrefundable reactivation of application fee of $100 unless granted an extension in writing by the committee or the board. The period for requesting reactivation of the application is limited to one year from the date the application form is received by the board.~~ To reactivate the application, an applicant shall submit a nonrefundable reactivation of application fee of $100 and shall update application materials if requested by the board. The period for requesting reactivation is limited to 90 days from the date the applicant is notified that the application is inactive, unless the applicant is granted an extension in writing by the committee or the board.

b. Once the application reactivation period is expired, applicants must reapply and submit a new, nonrefundable initial application fee ~~of $300~~ and a new application, including required documents and credentials.

17.5(5) No change.

17.5(6) *Licensure application review process.* The process below shall be utilized to review each application. Priority shall be given to processing a licensure application when a written request is received in the board office from an applicant whose practice will primarily involve provision of services to underserved populations, including but not limited to persons who are minorities or low-income or who live in rural areas.

a. No change.

b. After reviewing each application, staff shall notify the applicant about how to resolve any problems identified by the reviewer. An applicant shall provide additional information when requested by staff or the board.

c. No change.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure ~~and administration~~ and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) and (2) No change.

e. and *f.* No change.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) ~~Grant a license;~~ If an applicant has not engaged in active practice in the past three years in any jurisdiction of the United States, require an applicant to:

1. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

2. Successfully pass a competency evaluation approved by the board;

3. Successfully pass an examination approved by the board; or

4. Successfully complete a reentry to practice program or monitoring program approved by the board;

(4) Issue a license;

~~(4)~~ (5) ~~Grant~~ Issue a license under certain terms and conditions or with certain restrictions;

~~(5)~~ (6) Request that the applicant withdraw the licensure application; or

~~(6)~~ (7) Deny a license.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) ~~Grant a license;~~ If an applicant has not engaged in active practice in the past three years in any jurisdiction of the United States, require an applicant to:

1. Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

2. Successfully pass a competency evaluation approved by the board;

3. Successfully pass an examination approved by the board; or

4. Successfully complete a reentry to practice program or monitoring program approved by the board;

(4) Issue a license;

~~(4)~~ (5) ~~Grant~~ Issue a license under certain terms and conditions or with certain restrictions;

~~(5)~~ (6) Request that the applicant withdraw the licensure application; or

~~(6)~~ (7) Deny a license. The board may deny a license for any grounds on which the board may discipline a license.

17.5(7) to **17.5(13)** No change.

ITEM 5. Amend rule 653—17.6(147,148E) as follows:

653—17.6(147,148E) Display of license and disclosure of information to patients.

17.6(1) No change.

~~**17.6(2)** *Approval of the disclosure sheet and time limit for revisions.* Pursuant to Iowa Code section 148E.6, upon issuing a license, the board shall provide notification to the licensee of the approval or rejection of the disclosure sheet to be provided to patients on initial contact submitted subsequent to 17.5(4)*"m."*~~

~~*a.* If rejected, the board shall provide the licensee with a written statement explaining the reasons for rejecting the disclosure sheet submitted and indicating the necessary amendments or revisions.~~

~~*b.* Upon receiving the rejection, the licensee shall submit within 14 days a revised mandatory disclosure sheet to the board for its approval.~~

~~**17.6(3)**~~ **17.6(2)** *Distribution and retention of disclosure sheet.* ~~The~~ Pursuant to Iowa Code section 148E.6, the licensee shall distribute ~~the~~ a disclosure sheet on initial contact with patients and retain a copy, signed and dated by the patient, for a period of at least five years after termination of ~~the~~ treatment. The disclosure sheet shall include the following:

a. The name, business address, and business telephone number of the acupuncturist.

b. A fee schedule.

c. A listing of the acupuncturist's education, experience, degrees, certificates, or credentials related to acupuncture awarded by professional acupuncture organizations and the length of time required to obtain the degrees or credentials and experience.

d. A statement indicating any license, certificate, or registration in a health care occupation that was revoked by any local, state, or national health care agency.

e. A statement that the acupuncturist is complying with statutes and rules adopted by the board, including a statement that only presterilized, disposable needles are used by the acupuncturist.

f. A statement indicating that the practice of acupuncture is regulated by the board.

g. A statement indicating that a license to practice acupuncture does not authorize a person to practice medicine and surgery in this state and that the services of an acupuncturist must not be regarded as diagnosis and treatment by a person licensed to practice medicine and must not be regarded as medical opinion or advice.

ITEM 6. Amend rule 653—17.7(147,148E,272C) as follows:

653—17.7(147,148E,272C) Biennial renewal of license required. Pursuant to Iowa Code section 148E.2, a license is renewed every two years on ~~November 1~~ October 31 for a fee of $300 ~~with documented evidence that the licensee has completed the 30 hours of continuing education required by the board~~. Beginning June 1, 2004, renewal shall require evidence of the licensee's current active status as a diplomate in acupuncture or oriental medicine from NCCAOM.

17.7(1) No change.

17.7(2) *Prorated fees.* The first renewal fee for a license shall be prorated on a monthly basis according to the date of issue.

17.7(3) *Renewal requirements and penalties for late renewal.* Each licensee shall be sent a renewal notice at least 60 days prior to the expiration date. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of responsibility for renewing that license.

a. ~~Pursuant to Iowa Code section 147.10, application for renewal shall be made in writing to the board accompanied by the required fee at least 30 days prior to the expiration date.~~ When online renewal is used, the licensee must complete the online renewal prior to midnight on December 31 in order to ensure that the license will not become inactive. The license becomes inactive and invalid at 12:01 a.m. on January 1.

b. Upon receipt of the completed renewal application, staff shall administratively issue a two-year license that expires on October 31. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration.

~~*b.*~~ *c.* Every renewal shall be displayed in connection with the original certificate of licensure.

~~*c.*~~ *d.* ~~A~~ If the licensee fails to submit the renewal application and renewal fee prior to the expiration date on the current license, a $50 penalty shall be assessed for renewal in the grace period, a period up until January 1 when the license lapses if not renewed.

17.7(4) No change.

ITEM 7. Amend rule 653—17.8(147,272C) as follows:

653—17.8(147,272C) Reinstatement of an inactive license.

17.8(1) *Reinstatement requirements.* Licensees who allow their licenses to go inactive by failing to renew may apply for reinstatement of a license. Pursuant to Iowa Code section 147.11, applicants for reinstatement shall:

a. Submit upon forms provided by the board a completed application for reinstatement of a license to practice acupuncture ~~that includes~~. The application shall include the following information:

(1) The applicant's full legal name, date and place of birth, home address, mailing address, and principal business address.

(2) ~~Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories.~~ Every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.

(3) ~~Full disclosure of any disciplinary action taken against the applicant by, but not limited to, a regulatory authority, educational institution, or health facility in any jurisdiction of the United States, other nations or territories.~~ Full disclosure of the applicant's involvement in civil litigation related to the practice of acupuncture in any jurisdiction of the United States, other nations or territories. Copies of the legal documents may be requested if needed during the review process.

(4) ~~A practice history for the period of the lapsed license.~~ A statement disclosing and explaining any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, acupuncture or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.

(5) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.

(6) Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

(7) A chronology accounting for all time periods from the date of initial licensure.

(8) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside.

b. ~~Pay $400.~~ Submit a completed fingerprint packet to facilitate a national criminal history background check. The $45 fee identified in 653—paragraph 8.2(2)*"e"* for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

c. ~~Provide evidence of successful completion of 60 PDA points.~~ Pay the reinstatement fee of $400 plus the $45 fee identified in 653—paragraph 8.2(2)*"e"* for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

d. ~~Provide an official statement from NCCAOM that the applicant holds current active status as a diplomate of NCCAOM. After June 1, 2004, provide an official statement from NCCAOM that the applicant holds active status as a diplomate in acupuncture or oriental medicine.~~ Provide evidence of successful completion of 60 PDA points within the previous two years.

e. Provide an official statement from NCCAOM that the applicant holds current active status as a diplomate of NCCAOM. After June 1, 2004, provide an official statement from NCCAOM that the applicant holds active status as a diplomate in acupuncture or oriental medicine.

~~*e.*~~ *f.* Meet any new requirements instituted since the license lapsed.

17.8(2) *Reinstatement restrictions.* Pursuant to Iowa Code section 272C.3(2)*"d,"* the committee may require ~~a licensee who fails to renew for a period of three years from the expiration date~~ an applicant who has not engaged in active practice in the past three years in any jurisdiction of the United States to meet any or all of the following requirements prior to reinstatement of an inactive license:

~~*a.* Provide a written statement explaining the reasons for failing to renew;~~

~~*b.*~~ *a.* Successfully complete continuing education or retraining programs in areas directly related to the safe and healthful practice of acupuncture deemed appropriate by the board or committee;

b. Successfully pass a competency evaluation approved by the board;

c. ~~Appear before the committee or board for an interview.~~ Successfully pass an examination approved by the board; or

d. Successfully complete a reentry to practice program or monitoring program approved by the board.

ITEM 8. Renumber subrules **17.10(1)** to **17.10(5)** as **17.10(2)** to **17.10(6)**.

ITEM 9. Adopt the following **new** subrule 17.10(1):

17.10(1) *Diagnostic and treatment modalities.* Diagnostic and treatment modalities used by licensees under this chapter may include one or more of the following acupunctural services:

a. The stimulation or piercing of the skin with an acupuncture needle for any of the following purposes:

(1) To evoke a therapeutic physiological response, either locally or distally to the area of insertion or stimulation.

(2) To relieve pain or treat the neuromusculoskeletal system.

(3) To stimulate ashi acupuncture points to relieve pain and dysfunction.

(4) To promote, maintain, and restore health and to prevent disease.

(5) To stimulate the body according to auricular, hand, nose, face, foot or scalp acupuncture therapy.

(6) To use acupuncture needles with or without the use of herbs, electric current, or application of heat.

b. The use of oriental medical diagnosis and treatment, including:

(1) Moxibustion, cupping, thermal methods, magnets, gua sha scraping techniques, acupatches, herbal poultices, hot and cold packs, electromagnetic wave therapy, light and color therapy, sound therapy, or therapy lasers.

(2) Massage, acupressure, reflexology, shiatsu and tui na massage, or manual stimulation, including stimulation by an instrument or mechanical device that does not pierce the skin.

(3) Herbal medicine and dietary supplements, including those of plant, mineral, animal, and nutraceutical origin.

c. Any other adjunctive service or procedure that is clinically appropriate based on the licensee's training as approved by NCCAOM or ACAOM.

ITEM 10. Amend renumbered subrule 17.10(6) as follows:

17.10(6) *Delegation of responsibilities* ~~*prohibited*~~. ~~The~~ A licensee shall perform all aspects of acupuncture treatment ~~on~~ that involve penetration of the skin of a patient. ~~Delegation of responsibility for acupuncture treatment is strictly prohibited~~ The licensee may delegate other aspects of treatment to staff and patients who are properly trained by the licensee. It is permissible for appropriately trained staff and patients to remove acupuncture needles from the patient's body. The licensee is responsible for establishing and maintaining written training standards for staff.

MEDICINE BOARD[653](cont'd)

ITEM 11. Adopt the following **new** subrules 17.10(7) and 17.10(8):

17.10(7) *Change of full legal name.* A licensee shall notify the board of any change in the licensee's full legal name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

17.10(8) *Deceased.* A licensee's file shall be closed and labeled "deceased" when the board receives a copy of the licensee's death certificate.

ARC 2831C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 456A.38, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 21, "Agricultural Lease Program," Iowa Administrative Code.

The purpose of this proposed rule making is to adopt rules for the administration of the Lease to Beginning Farmers Program. This program gives certified beginning farmers the opportunity to obtain agricultural leases on lands managed by the Department of Natural Resources (Department) before those leases are made available to the general public. This program has been in effect since 2013, when authority for this program was established by 2013 Iowa Acts, House File 457, and signed by Governor Branstad on April 24, 2013. Over the past three years, the Department has entered into approximately 150 leases with beginning farmers. These amendments mirror the requirements of Iowa Code section 456A.38, the implementing legislation for this program, and are being incorporated into the Department's existing agricultural lease requirements.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 20, 2017. Such written materials should be directed to Todd Rozendaal, Land and Waters Bureau, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; via fax at (515)725-8458; or via e-mail at todd.rozendaal@dnr.iowa.gov.

There will be a public hearing on January 11, 2017, at 2 p.m. in the Wallace State Office Building, Conference Room 5W, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to state their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

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

These amendments are intended to implement Iowa Code section 456A.38.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **571—21.2(456A)**:

"Agricultural land" means land suitable for use in farming.

"Authority" means the Iowa finance authority created in Iowa Code section 16.1A.

"Beginning farmer" means an individual, partnership, family farm corporation, or family farm limited liability company, with a low or moderate net worth that engages in farming or wishes to engage in farming.

"Farming" means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural

crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by rule by the authority.

"Program" means the lease to beginning farmers program as provided in Iowa Code section 456A.38.

ITEM 2. Rescind rule 571—21.4(456A) and adopt the following **new** rule in lieu thereof:

571—21.4(456A) Lease to beginning farmers program. The department shall annually lease agricultural land that it holds or manages as wildlife habitat in each county to beginning farmers seeking to participate in the program. The department is not required to lease agricultural land under the program that it would not otherwise lease for farming.

21.4(1) *Establishing annual lease payments.* The department shall establish annual lease payments for available agricultural land under the program by using the following criteria:

a. Market factors.

b. Prior leases for the same or comparable agricultural land.

c. The cost of the establishment or maintenance of soil conservation practices, if applicable.

21.4(2) *Eligibility to participate.* A beginning farmer is eligible to participate in the program following certification as a beginning farmer by the authority based on the following criteria:

a. The beginning farmer is a resident of the state of Iowa.

b. The beginning farmer has sufficient education, training, or experience in the type of farming required under the lease agreement.

c. The agricultural land and agricultural improvements shall only be used for farming by the beginning farmer, the beginning farmer's spouse, or the beginning farmer's minor children.

d. Other criteria as the authority prescribes by rule.

21.4(3) *Selection of beginning farmer.* The department shall execute a lease with a beginning farmer selected to participate in the program after such person has been certified by the authority. If two or more beginning farmers seek to execute a lease under the program for the same agricultural land, the department shall select the beginning farmer by drawing lots. At the end of the lease term, a beginning farmer who leased agricultural land under the program is eligible to be selected again to lease the same agricultural land. However, the department shall provide preference to an available beginning farmer who has not previously participated in the program.

21.4(4) *Terms of the lease.* The department shall establish terms and conditions in the lease for beginning farmers participating in the program. The lease executed by the department under the program shall at least include all of the following:

a. The number of acres leased. The department shall not lease more than 240 acres of agricultural land to a beginning farmer for the production of crops. However, this restriction does not apply to agricultural land leased for grazing livestock or land leased by a beginning farmer under rule 571—21.5(456A).

b. The term of the lease. The term may be based on the use of the agricultural land. A lease shall not be for more than seven years. A beginning farmer shall not sublease the agricultural land.

c. The required and permitted uses of the agricultural land during the term of the lease. The department may require the establishment of a conservation system, crop rotation, or cover crop, if appropriate. The department may require that a beginning farmer adopt generally accepted farming or soil conservation practices, so long as such practices are compatible with the department's policies related to resource management and outdoor recreation.

ITEM 3. Adopt the following **new** rule 571—21.5(456A):

571—21.5(456A) Alternative lease procedures. In the event that no beginning farmer seeks to participate in the program, or no beginning farmer is found qualified to participate in the program for a given lease, the following procedures shall be followed by the department in administering the agricultural lease program.

21.5(1) *Advertising for bids.* A notice advertising for bids shall be published in at least two local newspapers a minimum of two weeks prior to the date of the bid opening.

21.5(2) *Prebid informational meeting.* A prebid informational meeting may be held when the land manager determines that a meeting is in the state's best interest. Notice of a prebid informational meeting shall be included in the advertisement for bids and in the written instructions to bidders. The meeting shall be held no later than one week prior to the bid opening. If a prebid meeting is required, bidders must attend to qualify to submit a bid.

21.5(3) *Form of bid.* Written sealed bids shall be utilized.

21.5(4) *Public bid opening.* All sealed bids shall be publicly opened as stated in the notice for bids. The results of the bids shall be made available to any interested party.

21.5(5) *Awarding of lease.* The amount of the bid, past experience with the bidder, the bidder's ability to comply with the terms of the lease, and the bidder's ability to perform the required farming practices shall be considered. The department reserves the right to waive technicalities and reject any or all bids not in the best interest of the state of Iowa.

21.5(6) *Negotiated leases.* The land manager may negotiate a lease with any prospective operator, subject to approval of the director, in any of the following instances:

a. No bids are received.

b. Gross annual rent is $5,000 or less.

c. Where land acquired by the department is subject to an existing tenancy.

d. To synchronize the lease period of newly leased areas with other leases in the same management unit.

e. Where a proposed lease includes only land not accessible to equipment necessary to perform the required farming operations, except over privately owned land, provided the prospective operator possesses legal access to the leased land over said privately owned land.

f. Where the director authorizes a lease as a condition of a land purchase or trade.

ITEM 4. Adopt the following **new** rule 571—21.6(456A):

571—21.6(456A) Terms applicable to all agricultural leases. The following terms and conditions apply to all department agricultural leases entered into pursuant to rule 571—21.4(456A) or 571—21.5(456A).

21.6(1) *Final approval of award.* All awards of leases shall be approved by the director. Additionally, awards of all leases on sovereign land shall be subject to approval by the state executive council on recommendation of the natural resource commission.

21.6(2) *Payment of cash rent.* The operator shall pay a minimum of 10 percent of the total gross rent at the time of the signing of the lease and the balance for each crop year on or before December 1, or the operator shall pay 50 percent of the total annual rent each April 1 and the balance for each crop year on or before December 1. The appropriate minimum payment shall be determined by the land manager.

21.6(3) *Payment of crop share rent.* The operator shall pay the total annual rent on December 1 or at the time of harvest, whichever is later.

21.6(4) *Standard termination.* Leases shall be terminated in accordance with Iowa Code chapter 562. If the department requires leased land for other conservation purposes, the operator shall relinquish all rights under the existing lease, upon demand by the director, at the end of the current crop year consistent with Iowa Code chapter 562.

21.6(5) *Termination for cause.* If the operator fails to comply with any of the terms of the lease, the department may serve notice on the operator demanding redress within a specified period of time. If compliance is not made within the specified period, the department may proceed to collect any moneys which may be due and payable during the crop year in which the lease is terminated and may void the remainder of the lease. Further, the department shall have a landlord's lien as set out by Iowa Code chapter 570.

21.6(6) *Previous agreements.* The department shall recognize legal agreements regarding agricultural leases which are in effect at the time the department acquires jurisdiction to the land covered by those legal agreements.

21.6(7) *Amendment to lease.* Amendments to any lease shall be evidenced by written instruments attached to and made a part of the lease. Final approval of amendments shall be made by the director.

ITEM 5. Amend **571—Chapter 21**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 461A.25, 456A.24(2), ~~and~~ 456A.24(5), and 456A.38.

ARC 2859C

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 2, "Pharmacist Licenses," Iowa Administrative Code.

The proposed amendment was approved at the November 2, 2016, regular meeting of the Board of Pharmacy.

The proposed amendment decreases the waiting period for retaking the North American Pharmacist Licensure Examination (NAPLEX) from 91 days to 45 days, with a limit of three attempts to pass the NAPLEX within a 12-month period. Due to this decrease in the waiting period, no waivers or exceptions to the 45-day waiting period will be accepted or honored because reducing the waiting period to less than 45 days would pose a threat to the integrity of the NAPLEX. This proposed amendment is the result of program changes implemented by the National Association of Boards of Pharmacy, which maintains and administers the national pharmacist licensure examinations.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34. However, in order to protect the integrity of the examinations, no waivers or exceptions to the waiting periods will be accepted or honored.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on January 10, 2017. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

After analysis and review of this rule making, no substantial impact on jobs has been found. However, reducing the waiting period between the failure to pass the NAPLEX and the opportunity to retake the examination may result in pharmacist licensure applicants' faster entry into the practice work force.

This amendment is intended to implement Iowa Code sections 147.34 and 147.36.

The following amendment is proposed.

Amend rule 657—2.6(147) as follows:

657—2.6(147) Reexamination applications and fees. A candidate who fails to pass either the NAPLEX or the MPJE, Iowa Edition, once shall be allowed to schedule a time to retake the examination as provided in this rule. To ensure the integrity of the examinations, no waiver or variance of the specified waiting period between reexaminations will be granted.

2.6(1) *NAPLEX.* A candidate who fails to pass the NAPLEX once shall be allowed to schedule a time to retake the examination no less than ~~91~~ 45 days following administration of the failed examination. The candidate may be approved to retake the NAPLEX no more than three times in a 12-month period.

2.6(2) *MPJE, Iowa Edition.* A candidate who fails to pass the MPJE, Iowa Edition, once shall be allowed to schedule a time to retake the examination no less than 30 days following administration of the failed examination.

PHARMACY BOARD[657](cont'd)

2.6(3) *Reexamination after two or more attempts.* A candidate who fails to pass either examination following a second or subsequent examination may petition the board for permission to take the examination again. Determination of a candidate's eligibility to take an examination more than two times shall be at the discretion of the board.

2.6(4) *Applications and fees.* Each applicant for reexamination shall file an application on forms provided by the board. ~~Processing fees~~ A processing fee of $36 ~~each~~ will be charged ~~to take~~ for each NAPLEX or MPJE, Iowa Edition, reexamination and shall be paid to the board as provided in subrule 2.3(1). In addition, candidates will be required to complete the appropriate examination registration application as provided in rule 657—2.2(155A) and to pay to NABP the registration and administration fees for each examination as provided in subrule 2.3(2). All applications, registration forms, and fees shall be submitted as provided in subrules 2.3(2) and 2.3(3).

ARC 2858C

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 10, "Controlled Substances," and Chapter 100, "Iowa Real-Time Electronic Pseudoephedrine Tracking System," Iowa Administrative Code.

The proposed amendments were approved at the November 2, 2016, regular meeting of the Board of Pharmacy.

The proposed amendments are the result of a general review of administrative rules pursuant to Iowa Code subsection 17A.7(2), in collaboration with the Governor's Office of Drug Control Policy. These amendments remove references to the pseudoephedrine advisory council, which was repealed by 2013 Iowa Acts, chapter 68, section 2, and allow a pharmacy technician to approve a purchase under the direct supervision of a pharmacist. Also, the amended definition of "dispenser" in Item 3 includes a cross reference to Chapter 13. The Board intends to adopt the new Chapter 13 in a future rule making.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 10, 2017. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by e-mail to terry.witkowski@iowa.gov.

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

These amendments are intended to implement Iowa Code sections 124.212, 124.212A, 124.212B, 124.213, and 17A.7(2).

The following amendments are proposed.

ITEM 1. Amend rule 657—10.32(124,155A) as follows:

657—10.32(124,155A) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine without a prescription. A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by a pharmacist, pharmacist-intern, or pharmacy technician to a purchaser at retail pursuant to the conditions of this rule.

10.32(1) *Who may dispense.* Dispensing shall be by a licensed Iowa pharmacist, ~~or~~ by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor, or by a registered pharmacy technician under the direct supervision of a pharmacist, except as authorized in 657—Chapter 100. This subrule does not prohibit, after the pharmacist, pharmacist-intern, or pharmacy technician has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by ~~a nonpharmacist~~ another pharmacy employee.

10.32(2) to **10.32(4)** No change.

10.32(5) *Identification.* The pharmacist, pharmacist-intern, or pharmacy technician shall require every purchaser under this rule to present a current government-issued photo identification, including proof of age when appropriate. The pharmacist, pharmacist-intern, or pharmacy technician shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

10.32(6) *Record.* Purchase records shall be recorded in the real-time electronic pseudoephedrine tracking system (PTS) established and administered by the governor's office of drug control policy pursuant to 657—Chapter 100. If the real-time electronic repository is unavailable for use, the purchase record shall be recorded in an alternate format and submitted to the PTS as provided in 657—subrule 100.3(4).

a. *Alternate record contents.* The alternate record shall contain the following:

(1) The name, address, and signature of the purchaser.

(2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.

(3) The date and time of the purchase.

(4) The name or unique identification of the pharmacist, ~~or~~ pharmacist-intern, or pharmacy technician who approved the dispensing of the product.

b. and *c.* No change.

10.32(7) No change.

ITEM 2. Amend rule 657—100.1(124) as follows:

657—100.1(124) Purpose and scope. ~~2009~~ Iowa Code ~~Supplement~~ section 124.212B directs the governor's office of drug control policy to establish a real-time electronic repository to monitor and control the sale of Schedule V products that are not listed in another controlled substance schedule and that contain any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine. All pharmacies dispensing such products without a prescription shall electronically report all such sales to the repository. The real-time electronic repository shall be under the control of and administered by the governor's office of drug control policy. Both the governor's office of drug control policy and the board of pharmacy are directed to adopt rules relating to the real-time electronic repository and have jointly adopted these rules. These rules establish the pseudoephedrine tracking system (PTS).

ITEM 3. Amend rule 657—100.2(124) as follows:

657—100.2(124) Definitions. As used in this chapter:

"Attempted purchase" means a proposed transaction for the dispensing of a product that is entered by a dispenser into the electronic pseudoephedrine tracking system, which transaction is not completed because the system recommends that the transaction be denied pursuant to the quantity limits established in ~~2009~~ Iowa Code ~~Supplement~~ section 124.213.

"Board" means the board of pharmacy.

~~*"Council"* means the pseudoephedrine advisory council established pursuant to Iowa Code section 124.212C.~~

PHARMACY BOARD[657](cont'd)

"Dispenser" means a licensed Iowa pharmacist, ~~or~~ a registered pharmacist-intern under the direct supervision of a pharmacist preceptor, or a registered pharmacy technician under the direct supervision of a pharmacist, except as authorized in 657—Chapter 13.

"Law enforcement officer" means all of the following:

1. State police officer.
2. City or county police officer.
3. Sheriff or deputy sheriff.
4. State or public university safety and security officer.
5. Department of natural resources officer.
6. Certified or full-time peace officer of this or another state.
7. Federal peace officer.
8. Criminal analyst assigned to a law enforcement agency.
9. Probation or parole officer.

"Office" means the governor's office of drug control policy.

"Product" means a Schedule V drug product that is not listed in another controlled substance schedule and that contains any detectible amount of pseudoephedrine, its salts, or optical isomers, or salts of optical isomers; ephedrine; or phenylpropanolamine.

"Pseudoephedrine tracking system" or *"PTS"* means the real-time electronic repository established to monitor and control the sale of products and administered by the governor's office of drug control policy.

"Purchaser" means an individual 18 years of age or older who purchases or attempts to purchase a product.

ITEM 4. Amend rule 657—100.3(124) as follows:

657—100.3(124) Electronic pseudoephedrine tracking system (PTS). Unless granted an exemption by the office pursuant to these rules, all pharmacies dispensing products as defined in rule 657—100.2(124) without a prescription are required to participate in the PTS pursuant to ~~2009~~ Iowa Code ~~Supplement~~ section 124.212B. ~~The office has established a council to provide input and advise the office regarding the implementation, maintenance, and administration of the PTS. The council also assists the office in developing guidelines to ensure patient confidentiality and the integrity of the relationship established by the patient and the patient's health care provider.~~

100.3(1) *Reporting elements.* The record of a completed purchase or attempted purchase of a product without a prescription shall contain the following:

a. to *e.* No change.

f. The name or unique identification of the pharmacist, ~~or~~ pharmacist-intern, or pharmacy technician who approved the dispensing of the product.

100.3(2) No change.

100.3(3) *Denial of transactions and overrides.*

a. No change.

b. The PTS shall provide an override feature for use by a dispenser to allow completion of the sale. For security purposes and to ensure the integrity of the PTS, use of the override feature shall be restricted to authorized dispensers and may not be delegated to a pharmacy technician trainee or a pharmacy support person. A dispenser utilizing the override feature shall document the reason that, in the professional judgment of the dispenser, it is necessary to override the recommendation of the PTS to deny the transaction.

100.3(4) No change.

ITEM 5. Amend subrule 100.4(4) as follows:

100.4(4) *Patients.* A patient may request and receive information regarding products reported to have been purchased by the patient.

a. A patient may submit a signed, written request for records of the patient's purchases and attempted purchases during a specified period of time. The request shall identify the patient by name,

including any aliases used by the patient, and shall include the patient's date of birth and gender. The request shall also include any address where the patient resided during the time period of the request and the patient's current address and daytime telephone number. A patient may personally deliver the request to the PTS administrator or authorized staff member of the office located at ~~Wallace State Office Building, 502 E. 9th Street, First Floor~~ Oran Pape State Office Building, 215 East 7th Street, Fifth Floor, Des Moines, Iowa 50319. The patient shall be required to present current government-issued photo identification at the time of delivery of the request. A copy of the patient's identification shall be maintained in the records of the PTS.

b. No change.

ITEM 6. Amend rule 657—100.5(124) as follows:

657—100.5(124) Violations. Violations of provisions of these rules or ~~2009~~ Iowa Code ~~Supplement~~ section 124.212A, 124.212B, or 124.213 may subject the violator to criminal prosecution.

ITEM 7. Amend **657—Chapter 100**, implementation sentence, as follows:

These rules are intended to implement ~~2009~~ Iowa Code ~~Supplement~~ sections 124.212, 124.212A, 124.212B, and 124.213.

ARC 2857C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 147.76, 151.11 and 272C.3, the Board of Chiropractic hereby gives Notice of Intended Action to amend Chapter 41, "Licensure of Chiropractic Physicians," Iowa Administrative Code.

The proposed amendment provides clarification in the licensing process and updates legal citations and references to the Board's Web site.

Any interested person may make written comments on the proposed amendment no later than December 27, 2016, addressed to Susan Reynolds, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail susan.reynolds@idph.state.ia.us.

A public hearing will be held on January 6, 2017, from 9 to 9:30 a.m. in Conference Room 526, Fifth Floor, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

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

This amendment is intended to implement Iowa Code chapters 147, 151 and 272C.

The following amendment is proposed.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Amend **645—Chapter 41** as follows:

CHAPTER 41
LICENSURE OF CHIROPRACTIC PHYSICIANS

645—41.1(151) Definitions. The following definitions shall be applicable to the rules of the Iowa board of chiropractic:

"Active license" means a license that is current and has not expired.

"Board" means the Iowa board of chiropractic.

"Council on Chiropractic Education" or *"CCE"* means the organization that establishes the Educational Standards of Chiropractic Colleges and Bylaws. A copy of the standards may be requested from the Council on Chiropractic Education. CCE's address and Web site may be obtained from the board's Web site at ~~http://www.idph.state.ia.us/licensure~~ http://www.idph.iowa.gov/licensure.

"Department" means the Iowa department of public health.

"Grace period" means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"License" means license to practice chiropractic in Iowa.

"Licensee" means any person licensed to practice as a chiropractic physician in Iowa.

"License expiration date" means June 30 of even-numbered years.

"Licensure by endorsement" means the issuance of an Iowa license to practice chiropractic to an applicant who is or has been licensed in another state and meets the criteria for licensure in this state.

"Mandatory training" means training on identifying and reporting child abuse or dependent adult abuse required of chiropractic physicians who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

"NBCE" means the National Board of Chiropractic Examiners. The mailing address and Web site address may be obtained from the board's Web site at ~~http://www.idph.state.ia.us/licensure~~ http://www.idph.iowa.gov/licensure.

"Reactivate" or *"reactivation"* means the process as outlined in rule 645—41.14(17A,147,272C) by which an inactive license is restored to active status.

"Reciprocal license" means a license issued pursuant to the ~~issuance of~~ process outlined in rule 645—4.7(147) by which an Iowa license to practice chiropractic is issued to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of chiropractic to license persons who have the same or similar qualifications to those required in Iowa.

"Reinstatement" means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

"SPEC" means Special Purposes Examination for Chiropractic, which is an examination provided by the NBCE that is designed specifically for utilization by state or foreign licensing agencies.

645—41.2(151) Requirements for licensure.

41.2(1) ~~The following criteria shall apply to licensure~~ Every applicant for licensure to practice chiropractic shall do all of the following:

a. ~~An applicant shall complete~~ Complete a board-approved application form. If the application is not completed according to the instructions, the application will not be reviewed by the board. Application forms may be obtained from the board's Web site (~~http://www.idph.state.ia.us/licensure~~ http://www.idph.iowa.gov/licensure) or directly from the Board of Chiropractic, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

~~*b.* An applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.~~

~~*c.*~~ *b.* ~~An applicant shall submit~~ Submit the appropriate fee to the Iowa Board of Chiropractic as stated in 645—subrule 5.4(1). The fee is nonrefundable.

~~*d.*~~ *c.* ~~No applicant shall be considered for licensure until~~ Submit official copies of academic transcripts ~~are received by~~ to the board directly from a chiropractic school accredited by the CCE and approved by the board. The transcript must display the date of graduation and the degree conferred.

~~*e.*~~ *d.* ~~An applicant shall submit~~ Submit an official certificate of completion of 120 hours of physiotherapy from a board-approved chiropractic college. The physiotherapy course must include a practicum component.

~~*f.*~~ *e.* ~~An applicant shall pass~~ Pass all parts of the NBCE examination as outlined in rule 645—41.3(151).

~~*g.*~~ *f.* ~~An applicant shall submit~~ Submit a copy of the chiropractic diploma (no larger than 8½″ × 11″) from a chiropractic school accredited by the CCE and approved by the board.

41.2(2) Licensees who were issued their licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

41.2(3) Incomplete applications that have been on file in the board office for more than two years shall be:

a. Considered invalid and shall be destroyed; or

b. Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

41.2(4) Persons licensed to practice chiropractic shall keep their license publicly displayed in the primary place of practice.

41.2(5) Licensees are required to notify the board of chiropractic of changes in residence or place of practice within 30 days after the change of address occurs.

645—41.3(151) Examination requirements.

41.3(1) Applicants shall submit the application for the NBCE examination and the fee directly to the NBCE.

41.3(2) The following criteria shall apply for the NBCE:

a. Prior to July 1, 1973, applicants shall provide proof of being issued a basic science certificate.

b. After July 1, 1973, applicants shall provide proof of successful completion of the required examination from the ~~National Board of Chiropractic Examiners~~ NBCE. The required examination shall meet the following criteria:

(1) Examinations completed after July 1, 1973, shall be defined as the successful completion of Parts I and II of the NBCE examination.

(2) Examinations completed after August 1, 1976, shall be defined as the successful completion of Parts I, II and Physiotherapy of the NBCE examination.

(3) Examinations completed after January 1, 1987, shall be defined as the successful completion of Parts I, II, III and Physiotherapy of the NBCE examination.

(4) Examinations completed after January 1, 1996, shall be defined as satisfactory completion of Parts I, II, III, IV and Physiotherapy of the NBCE examination.

645—41.4(151) Educational qualifications.

41.4(1) An applicant for licensure to practice as a chiropractic physician shall present an official transcript verifying graduation from a CCE-accredited and board-approved college of chiropractic.

41.4(2) Foreign-trained chiropractic physicians shall:

a. Provide an equivalency evaluation of their educational credentials by the International ~~Educational~~ Education Research ~~Foundations~~ Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, California 90231-3665~~,~~; telephone (310)258-9451~~,~~; Web site www.ierf.org or E-mail at info@ierf.org. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a chiropractic program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

645—41.5(151) Temporary certificate.

41.5(1) The board may issue a temporary certificate to practice chiropractic if the issuance is in the public interest. A temporary certificate may be issued at the discretion of the board to an applicant who demonstrates a need for the temporary certificate and meets the professional qualifications for licensure.

41.5(2) Demonstrated need. An applicant must establish that a need exists for the issuance of a temporary ~~license~~ certificate and that the need serves the public interest. An applicant must submit information explaining the demonstrated need, the scope of practice requested by the applicant, and why a temporary certificate should be granted. An applicant may only meet the demonstrated need requirement by proving that the need meets one of the following conditions:

a. The applicant will provide chiropractic services in connection with a special activity, event or program conducted in this state;

b. The applicant will provide chiropractic services in connection with a state emergency as proclaimed by the governor; ~~or~~

c. The applicant previously held an unrestricted license to practice chiropractic in this state and will provide gratuitous chiropractic services as a voluntary public service; or

d. The applicant will provide chiropractic services in connection with an urgent need.

41.5(3) Professional qualifications. The applicant shall:

a. Submit the board-approved application form. Applications may be obtained from the board's Web site (~~http://www.idph.state.ia.us/licensure~~ http://www.idph.iowa.gov/licensure) or directly from the Board of Chiropractic, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. Provide verification of current active licensure in the United States sent directly to the board office from the state in which the applicant is licensed.

c. Submit proof of two years of full-time chiropractic practice within the immediately preceding two years.

d. Provide a copy of a chiropractic diploma (no larger than 8½″ × 11″) from a chiropractic school accredited by the CCE and approved by the board and submit an official certificate of completion of 120 hours of physiotherapy from a board-approved chiropractic college. The physiotherapy course must include a practicum component.

~~*e.* Submit the temporary certificate fee.~~

~~*f.* Submit information explaining the demonstrated need, the scope of practice requested by the applicant, and why a temporary certificate should be granted.~~

41.5(4) If the application is approved by the board, and the applicant submits the temporary certificate fee pursuant to 645—subrule 5.4(2), a temporary certificate shall be issued authorizing the applicant to practice chiropractic for one year to fulfill the demonstrated need for temporary licensure, as stated on the application and described in subrule 41.5(2).

41.5(5) An applicant or temporary certificate holder who has been denied a temporary certificate may appeal the denial pursuant to rule ~~645—41.11(17A,151,272C)~~ 645—4.10(17A,147,272C). A temporary certificate holder is subject to discipline for any grounds for which licensee discipline may be imposed.

41.5(6) A temporary ~~license~~ certificate holder who meets all licensure conditions as specified in rule 645—41.2(151) may obtain a permanent license in lieu of the temporary certificate. To obtain a permanent license, the applicant shall submit any additional documentation required for permanent licensure that was not submitted as a part of the temporary certificate application. The applicant may receive fee credit toward the permanent licensure fee equivalent to the fee paid for the temporary ~~permit~~ certificate if the application for the permanent license and all required documentation are received by the board prior to the expiration of the temporary ~~permit~~ certificate.

645—41.6(151) Licensure by endorsement.

41.6(1) An applicant who has been licensed to practice chiropractic under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office.

41.6(2) The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

a. Submits to the board a completed application;

b. Pays the licensure fee;

c. Provides a notarized copy of the diploma (no larger than 8½″ × 11″) along with an official copy of the transcript from a CCE-accredited and board-approved chiropractic school sent directly from the school to the board office;

d. Shows evidence of successful completion of the NCBE examination ~~of the National Board of Chiropractic Examiners~~ as outlined in rule 645—41.3(151);

e. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

(1) Licensee's name;

(2) Date of initial licensure;

(3) Current licensure status; and

(4) Any disciplinary action taken against the license; and

f. Holds or has held a current license and provides evidence of one of the following requirements:

(1) Completion of 60 hours of board-approved continuing education during the immediately preceding two-year period as long as the applicant had an active practice within the last five years; or

(2) Practice as a licensed chiropractic physician for a minimum of one year during the immediately preceding two-year period; or

(3) The equivalent of one year as a full-time faculty member teaching chiropractic in ~~an accredited~~ a CCE-accredited chiropractic college for at least one of the immediately preceding two years; or

(4) Graduation from a board-approved chiropractic college within the immediately preceding two years from the date the application is received in the board office.

g. If the applicant does not meet the requirements of paragraph 41.6(2)*"f,"* the applicant shall submit the following:

(1) Evidence of satisfactory completion of 60 hours of board-approved continuing education during the immediately preceding two-year period; and

(2) Evidence of successful completion of the SPEC examination within one year prior to receipt of the application in the board office.

645—41.7(151) Licensure by reciprocal agreement. Rescinded IAB 8/13/08, effective 9/17/08.

645—41.8(151) License renewal.

41.8(1) The biennial license renewal period for a license to practice as a chiropractic physician shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The

licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

41.8(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

41.8(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—44.2(272C) and the mandatory reporting requirements of subrule 41.8(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

41.8(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 41.8(4)*"e."*

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 41.8(4)*"e."*

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels, or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years of condition(s) for waiver of this requirement as identified in paragraph 41.8(4)*"e."*

Training may be completed through separate courses as identified in paragraphs 41.8(4)*"a"* and *"b"* or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs 41.8(4)*"a"* to *"c,"* including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in rule 645—~~Chapter 44~~ 4.14(272C).

f. The board may select licensees for audit of compliance with the requirements in paragraphs 41.8(4)*"a"* to *"e."*

41.8(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

41.8(6) A person licensed to practice as a chiropractic physician shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

41.8(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule ~~46.1(4)~~ 5.4(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

41.8(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a chiropractor in Iowa until the license is reactivated. A licensee who practices as a chiropractor in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—41.9(272C) Exemptions for inactive practitioners. Rescinded IAB 8/3/05, effective 9/7/05.

645—41.10(272C) Lapsed licenses. Rescinded IAB 8/3/05, effective 9/7/05.

645—41.11(147) Duplicate certificate or wallet card. Rescinded IAB 8/13/08, effective 9/17/08.

645—41.12(147) Reissued certificate or wallet card. Rescinded IAB 8/13/08, effective 9/17/08.

645—41.13(17A,151,272C) License denial. Rescinded IAB 8/13/08, effective 9/17/08.

645—41.14(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

41.14(1) Submit a reactivation application on a form provided by the board.

41.14(2) Pay the reactivation fee ~~that is due~~ as specified in 645—~~Chapter 46~~ subrule 5.4(5).

41.14(3) Provide verification of current competence to practice as a chiropractic physician by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 60 hours of continuing education that comply with standards defined in rule 645—44.3(151,272C) within two years of the application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 60 hours of continuing education that comply with standards defined in rule 645—44.3(151,272C) within two years of application for reactivation; and

(3) Verification of passing the ~~Special Purpose Examination for Chiropractic (SPEC)~~ SPEC if the applicant does not have a current license and has not been in active practice in the United States during the past five years.

645—41.15(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in

accordance with rule 645—11.31(272C) and thereafter must apply for and be granted reactivation of the license in accordance with rule 645—41.14(17A,147,272C) prior to practicing as a chiropractic physician in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 151 and 272C.

ARC 2832C

PROFESSIONAL LICENSURE DIVISION[645]

Amended Notice of Intended Action

Pursuant to the authority of Iowa Code section 148C.3, the Board of Physician Assistants hereby gives Notice of Intended Action to amend Chapter 327, "Practice of Physician Assistants," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2417C** on February 17, 2016. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2531C** on May 11, 2016. The Board of Physician Assistants received comments and feedback on its first Amended Notice of Intended Action, which led the Board to file this subsequent Amended Notice of Intended Action. As authorized by 2015 Iowa Acts, Senate File 505, division XXXI, section 113, this second Amended Notice of Intended Action establishes a definition of supervision for physician assistant practice within physician/physician assistant care teams.

After receipt of public comments following the publication of **ARC 2531C** on May 11, 2016, the Board of Physician Assistants concluded it is unable to move forward with adopting the minimum standards as proposed in its first Amended Notice. Feedback received by the Board led to concerns about the impact of the proposed rule on access to care for Iowans.

In addition, the Board reviewed policy from national physician and physician assistant organizations including the American Academy of Family Physicians, American College of Physicians, American Osteopathic Association, Federation of State Medical Boards, American Academy of Physician Assistants, and numerous other national physician organizations for specific guidance for physician/physician assistant collaborative practice.

The Board used these principles which incorporate policies of the organizations above:

> Physicians and physician assistants (PAs) working together in a team-oriented collaborative practice provide a proven model for delivering high-quality, cost-effective patient care. Effective teams are best defined by physicians and PAs at the practice level to maximize skills of the providers and meet patient needs. In each practice setting, there should be joint communication and decision-making to best meet the health care needs of patients. Further, health information technology provides a vital link to ensure effective and timely communication between physicians and PAs and enhance patient care.
>
> Each physician/PA medical practice should determine appropriate clinical roles within the medical team, enabling each clinician to work at the fullest extent of their education and expertise. Flexibility in state regulations enables physicians to delegate appropriate duties to PAs based on their own assessment of each PA's knowledge, skills, and abilities within their scope of practice.

The Board of Physician Assistants intends to continue to work with the Board of Medicine to jointly adopt this definition of supervision by rule as required by the 2015 legislation.

Any interested person may make written comments on the proposed amendments no later than December 27, 2016, addressed to Susan Reynolds, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail susan.reynolds@idph.iowa.gov.

A public hearing will be held on January 6, 2017, from 8 to 9 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

After analysis and review of this rule making, the Board of Physician Assistants concludes that the proposed rule will have no impact on jobs.

These amendments are intended to implement Iowa Code chapters 147, 148, 148C, and 272C and 2015 Iowa Acts, Senate File 505, division XXXI, section 113.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 645—327.8(147,148,148C,86GA,SF505):

645—327.8(147,148,148C,86GA,SF505) Definition of physician supervision of a physician assistant. This rule establishing a definition of physician supervision of a physician assistant in the state of Iowa is intended to be jointly adopted by the board of medicine and the board of physician assistants in accordance with 2015 Iowa Acts, Senate File 505, division XXXI, section 113.

327.8(1) *Definition of supervision.* Supervision means an ongoing process by which a supervising physician and physician assistant jointly ensure that the medical services provided by the physician assistant are appropriate. A supervising physician retains ultimate responsibility for patient care. A physician need not be physically present at each activity of the physician assistant or be specifically consulted before each delegated task is performed. Supervision shall not be construed as requiring the physical presence of the supervising physician at the place where such services are rendered except insofar as the physical presence is expressly required by Iowa Code chapter 148C.

327.8(2) *Additional elements of supervision.*

a. Supervision must be tailored to the individual practice setting and take into account the experience of both the physician and physician assistant.

b. Individual practice requirements must guide how to best use health information technology to enhance patient care by ensuring effective and timely communication between physician and physician assistant.

c. The supervising physician and physician assistant must determine appropriate methods of evaluation for each practice. This evaluation may include, but is not limited to, review of delegated services, periodic chart review, and existing evaluation tools as determined by the practice.

d. Both the supervising physician and physician assistant must review all of the requirements of physician assistant licensure, practice, supervision and delegation of medical services as set forth in the Iowa Code.

ITEM 2. Amend **645—Chapter 327**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 147.107 and chapters 148C and 272C and 2015 Iowa Acts, Senate File 505, division XXXI, section 113.

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2016 by each taxpayer to determine the tax due for each taxpayer in the 2017-2018 fiscal year.

REVENUE DEPARTMENT(cont'd)

2016 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00005331
3201	Algona Municipal Utilities	0.00025144
3205	Alta Municipal Power Plant	0.00008290
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00000000
3207	Ames Municipal Electric System	0.00000094
3071	Anita Municipal Utilities	0.00000000
3227	Anthon Municipal Electric Utility	0.00010389
3209	Atlantic Municipal Utilities	0.00024840
3073	Auburn Municipal Utility	0.00000000
3074	Aurelia Mun. Electric Utility	0.00007766
3211	Bancroft Municipal Utilities	0.00087760
3213	Bellevue Municipal Utilities	0.00008622
3228	Bigelow Municipal Electric Utility	0.00225048
3229	Bloomfield Municipal Electric Utility	0.00003481
3075	Breda Mun. Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00162223
3216	Buffalo Municipal Electric System	0.00000215
3217	Burt Municipal Electric Utility	0.00000190
3077	Callender Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00139918
3221	Cedar Falls Municipal Elec. Utility	0.00030357
3068	City of Afton	0.00000000
3072	City of Aplington	0.00000000
3082	City of Dike	0.00000000
3088	City of Estherville	0.00000000
3089	City of Fairbank	0.00000000
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	0.00000539
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000
3108	City of Lehigh	0.00000000
3113	City of Marathon	0.00000000
3311	City of Pella	0.00007414
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00000000
3139	City of Westfield	0.00000000
3143	City of Woolstock	0.00000000
3236	Coggon Municipal Light Plant	0.00004608
3237	Coon Rapids Municipal Utilities	0.00054180
3242	Corning Municipal Utilities	0.00031761

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00000384
3081	Dayton Light & Power	0.00000000
3244	Denison Municipal Utilities	0.00001027
3245	Denver Municipal Electric Utility	0.00006206
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00000000
3085	Earlville Municipal Utilities	0.00130143
3087	Ellsworth Municipal Utilities	0.00000000
3091	Fonda Municipal Electric	0.00000000
3252	Fontanelle Municipal Utilities	0.00033407
3092	Forest City Municipal Utilities	0.00000000
3231	Glidden Municipal Electric Utility	0.00000214
3093	Gowrie Municipal Utilities	0.00148389
3256	Graettinger Municipal Light Plant	0.00028010
3094	Grafton Municipal Utilities	0.00000000
3258	Grand Junction Municipal Utilities	0.00000456
3095	Greenfield Municipal Utilities	0.00114365
3096	Grundy Center Light & Power	0.00022173
3232	Guttenberg Municipal Electric	0.00002873
3263	Harlan Municipal Utilities	0.00137185
3097	Hartley Municipal Utilities	0.00000000
3098	Hawarden Municipal Utility	0.00000000
3099	Hinton Municipal Electric/Water	0.00006822
3267	Hopkinton Municipal Utilities	0.00000909
3100	Hudson Municipal Utilities	0.00000000
3101	Independence Light & Power	0.00000000
3271	Indianola Municipal Utilities	0.00000742
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	0.00000000
3104	Lake Mills Municipal Utilities	0.00000000
3105	Lake Park Municipal Utilities	0.00000000
3233	Lake View Municipal Utilities	0.00015764
3274	Lamoni Municipal Utilities	0.00135315
3276	LaPorte City Utilities	0.00000998
3277	Laurens Municipal Utilities	0.00029015
3109	Lenox Mun. Light & Power	0.00045704
3110	Livermore Municipal Utilities	0.00000000
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	0.00011092
3112	Manning Municipal Electric	0.00022981
3284	Mapleton Municipal Utilities	0.00008732
3285	Maquoketa Municipal Electric	0.00004721
3288	McGregor Municipal Utilities	0.00000695

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3291	Milford Municipal Utilities	0.00017981
3114	Montezuma Municipal Light & Power	0.00000000
3115	Mount Pleasant Municipal Utilities	0.00000000
3293	Muscatine Municipal Utilities	0.00009555
3116	Neola Light & Water System	0.00000000
3297	New Hampton Municipal Light Plant	0.00009962
3298	New London Municipal Utility	0.00052973
3304	Ogden Municipal Utilities	0.00006019
3234	Onawa Municipal Utilities	0.00009815
3117	Orange City Municipal Utilities	0.00000000
3118	Orient Municipal Utilities	0.00000000
3307	Osage Municipal Utilities	0.00004946
3309	Panora Municipal Electric Utility	0.00006632
3119	Paton Municipal Utilities	0.00000000
3120	Paullina Municipal Utilities	0.00000000
3121	Pocahontas Municipal Utilities	0.00000000
3122	Preston Municipal Utilities	0.00000000
3315	Primghar Municipal Light Plant	0.00001643
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	0.00000000
3318	Rock Rapids Municipal Utilities	0.00000479
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00000000
3128	Sanborn Municipal Light & Plant	0.00000000
3130	Shelby Municipal Utilities	0.00000000
3131	Sibley Municipal Utilities	0.00000000
3321	Sioux Center Municipal Utilities	0.00000087
3323	Southern Minnesota Mun. Power	0.00000000
3324	Spencer Municipal Utilities	0.00013490
3132	Stanhope Municipal Utilities	0.00000000
3360	Stanton Municipal Utilities	0.00000000
3326	State Center Municipal Light Plant	0.00029879
3327	Story City Municipal Electric Utility	0.00011022
3134	Stratford Municipal Utilities	0.00000000
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00128625
3328	Sumner Municipal Light Plant	0.00020357
3330	Tipton Municipal Utilities	0.00143611
3332	Traer Municipal Utilities	0.00066520
3337	Villisca Municipal Power Plant	0.00022186
3137	Vinton Municipal Utilities	0.00000000
3138	Wall Lake Municipal Utilities	0.00000000
3338	Waverly Light & Power	0.00072786
3342	Webster City Municipal Utilities	0.00043808

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3345	West Bend Municipal Power Plant	0.00082391
3346	West Liberty Municipal Electric Util.	0.00000641
3347	West Point Municipal Utility System	0.00012951
3140	Whittemore Municipal Utilities	0.00000000
3141	Wilton Municipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	0.00133211
3142	Woodbine Municipal Utilities	0.00000000

CO. #	IOU's — ELECTRIC	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00055662
7248	Eldridge Electric & Water Utilities	0.00054889
7354	Geneseo Municipal Utilities	0.00000000
7270	IES Utilities	0.00237888
7272	Interstate Power	0.00103630
7289	MidAmerican Energy	0.00264702
7296	Nebraska Public Power District	0.00000000
7302	Northwestern Corporation	0.00000000
7305	Omaha Public Power District	0.00133761
7334	Union Electric	0.00000000

CO. #	REC's	DELIVERY TAX RATE
4319	Access Energy Coop	0.00075412
4203	Allamakee Clayton Electric Coop	0.00093586
4208	Atchison-Holt Electric Coop	0.00085628
4214	Boone Valley Electric Coop	0.00085075
4218	Butler County REC	0.00068865
4219	Calhoun County Electric Coop	0.00123234
4220	Cass Electric Coop	0.00004089
4224	Central Iowa Power Coop	0.00000000
4225	Chariton Valley Electric Coop	0.00102029
4235	Clarke Electric Coop	0.00252219
4287	Consumers Energy	0.00197219
4240	Corn Belt Power Coop	0.00000000
4246	East-Central Iowa REC	0.00193233
4247	Eastern Iowa Light & Power	0.00068026
4250	Farmers Electric Coop - Greenfield	0.00292299
4249	Farmers Electric Coop - Kalona	0.00050512
4251	Federated Rural Electric	0.00032175
4253	Franklin Rural Electric Coop	0.00080840
4254	Freeborn-Mower Cooperative	0.00132999

REVENUE DEPARTMENT(cont'd)

CO. #	REC's	DELIVERY TAX RATE
4255	Glidden Rural Electric Coop	0.00055807
4259	Grundy County REC	0.00086958
4260	Grundy Electric Cooperative	0.00050220
4261	Guthrie County REC	0.00121604
4262	Hancock Co. REC	0.00103984
4265	Harrison County REC	0.00072127
4266	Hawkeye REC	0.00051726
4223	Heartland Power Coop	0.00033977
4268	Humboldt County REC	0.00095243
4273	Iowa Lakes Electric Coop	0.00061700
4279	Linn County REC	0.00142321
4280	Lyon Rural Electric Coop	0.00055902
4286	Maquoketa Valley Electric Coop	0.00221262
4290	Midland Power Cooperative	0.00116065
4299	Nishnabotna Valley REC	0.00059726
4300	North West Rural Electric Coop	0.00034671
4301	Northwest Iowa Power Coop	0.00000000
4308	Osceola Electric Coop	0.00033499
4310	Pella Cooperative Electric	0.00194961
4313	Pleasant Hill Community Line	0.00023453
4316	Rideta Electric Coop	0.00274284
4320	Sac County Rural Electric Coop	0.00069402
4322	Southern Iowa Electric Coop	0.00134566
4379	Southwest Iowa Service Coop	0.00284449
4329	T.I.P. Rural Electric Coop	0.00203782
4333	Tri County Electric Coop	0.00122351
4336	United Electric Coop	0.00112324
4348	Western Iowa Power Coop	0.00103103
4352	Woodbury County REC	0.00104762
4353	Wright County REC	0.00051745

2016 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5021	Bedford Municipal Gas	0.00000000
5215	Brighton Gas	0.00677346
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5026	City of Clearfield	0.00000000
5028	City of Everly	0.00000000

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00006100
5241	Corning Municipal Gas	0.00000627
5027	Emmetsburg Municipal Gas	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000
5275	Lamoni Municipal Gas	0.00078798
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5281	Manilla Municipal Gas	0.00047428
5283	Manning Municipal Gas	0.00015233
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000
5306	Osage Municipal Gas	0.00003126
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000
5055	Remsen Municipal Gas	0.00000000
5317	Rock Rapids Municipal Gas	0.00013422
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00000000
5058	Sac City Municipal Gas	0.00000000
5059	Sanborn Municipal Gas	0.00000000
5060	Sioux Center Municipal Gas	0.00000000
5061	Tipton Municipal Gas	0.00000000
5063	Waukee Municipal Gas	0.00000000
5340	Wayland Municipal Gas	0.00025660
5064	Wellman Municipal Gas	0.00000000
5344	West Bend Municipal Gas	0.00001907
5065	Whittemore Municipal Gas	0.00000000
5349	Winfield Municipal Gas	0.00060614
5066	Woodbine Gas	0.00000000

REVENUE DEPARTMENT(cont'd)

CO. #	IOU's — GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.02359319
5270	IES Utilities	0.00677129
5272	Interstate Power	0.00252602
5289	MidAmerican Energy	0.00913634
5312	Peoples Natural Gas	0.00640722
5335	United Cities Gas	0.00647536

2016 MUNICIPAL ELECTRIC TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
3226	Akron Municipal Utilities	0.02028395
3201	Algona Municipal Utilities	0.00309498
3205	Alta Municipal Power Plant	0.00298103
3069	Alta Vista Municipal Utilities	*
3070	Alton Municipal Light & Power	0.00206942
3207	Ames Municipal Electric System	*
3071	Anita Municipal Utilities	*
3227	Anthon Municipal Electric Utility	*
3209	Atlantic Municipal Utilities	0.00370958
3073	Auburn Municipal Utility	0.00663878
3074	Aurelia Municipal Electric Utility	0.00132300
3211	Bancroft Municipal Utilities	*
3213	Bellevue Municipal Utilities	*
3229	Bloomfield Municipal Electric Utility	*
3075	Breda Municipal Electric System	*
3076	Brooklyn Municipal Utilities	*
3216	Buffalo Municipal Electric System	*
3217	Burt Municipal Electric Utility	0.00255724
3077	Callender Electric	*
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	*
3221	Cedar Falls Mun. Electric Utility	0.00352391
3068	City of Afton	0.00422339
3072	City of Aplington	*
3082	City of Dike	*
3088	City of Estherville	0.01782700
3089	City of Fairbank	*
3090	City of Farnhamville	*
3230	City of Fredericksburg	*
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00352086
3108	City of Lehigh	*

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3113	City of Marathon	*
3311	City of Pella	0.00329972
3125	City of Renwick	*
3129	City of Sergeant Bluff	*
3139	City of Westfield	*
3143	City of Woolstock	*
3236	Coggon Municipal Light Plant	*
3237	Coon Rapids Municipal Utilities	0.00479026
3242	Corning Municipal Utilities	*
3080	Corwith Municipal Utilities	*
3243	Danville Municipal Electric Utility	*
3081	Dayton Light & Power	*
3244	Denison Municipal Utilities	0.00178894
3245	Denver Municipal Electric Utility	*
3083	Durant Municipal Electric Plant	*
3084	Dysart Municipal Utilities	0.01900190
3085	Earlville Municipal Utilities	*
3086	Eldridge Electric & Water Utility	*
3087	Ellsworth Municipal Utilities	*
3091	Fonda Municipal Electric	0.00871641
3252	Fontanelle Municipal Utilities	*
3092	Forest City Municipal Utilities	*
3231	Glidden Municipal Electric Utility	0.01681298
3093	Gowrie Municipal Utilities	*
3256	Graettinger Municipal Light Plant	*
3094	Grafton Municipal Utilities	*
3258	Grand Junction Municipal Utilities	*
3095	Greenfield Municipal Utilities	0.00270013
3096	Grundy Center Light & Power	0.00142115
3232	Guttenberg Municipal Electric	0.01047799
3263	Harlan Municipal Utilities	0.00259336
3097	Hartley Municipal Utilities	0.01048531
3098	Hawarden Municipal Utility	*
3099	Hinton Municipal Electric/Water	0.00105157
3267	Hopkinton Municipal Utilities	*
3100	Hudson Municipal Utilities	0.00000000
3101	Independence Light & Power	0.00217034
3271	Indianola Municipal Utilities	*
3102	Keosauqua Light & Power	*
3103	Kimballton Municipal Utilities	*
3104	Lake Mills Municipal Utilities	0.00925666
3105	Lake Park Municipal Utilities	0.00339841
3233	Lake View Municipal Utilities	*
3274	Lamoni Municipal Utilities	*

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3276	LaPorte City Utilities	0.00340175
3277	Laurens Municipal Utilities	0.00358429
3109	Lenox Municipal Light & Power	0.00000000
3110	Livermore Municipal Utilities	0.01325534
3111	Long Grove Mun. Elec./Water	*
3282	Manilla Municipal Elec. Utilities	*
3112	Manning Municipal Electric	*
3284	Mapleton Municipal Utilities	*
3285	Maquoketa Municipal Electric	0.00258525
3288	McGregor Municipal Utilities	0.00214153
3291	Milford Municipal Utilities	0.00000000
3114	Montezuma Municipal Light & Power	*
3115	Mount Pleasant Municipal Utilities	0.00143636
3293	Muscatine Municipal Utilities	0.00000000
3116	Neola Light & Water System	*
3297	New Hampton Municipal Light Plant	0.00278429
3298	New London Municipal Utility	0.00525598
3304	Ogden Municipal Utilities	0.00274036
3234	Onawa Municipal Utilities	0.00370174
3117	Orange City Municipal Utilities	*
3118	Orient Municipal Utilities	*
3307	Osage Municipal Utilities	0.00193584
3309	Panora Municipal Electric Utility	*
3119	Paton Municipal Utilities	*
3120	Paullina Municipal Utilities	0.01716116
3121	Pocahontas Municipal Utilities	*
3122	Preston Municipal Utilities	*
3315	Primghar Municipal Light Plant	*
3123	Readlyn Municipal Utilities	*
3124	Remsen Municipal Utilities	*
3318	Rock Rapids Municipal Utilities	0.00457124
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.02610435
3128	Sanborn Municipal Light & Plant	*
3130	Shelby Municipal Utilities	*
3131	Sibley Municipal Utilities	*
3321	Sioux Center Municipal Utilities	0.00382084
3324	Spencer Municipal Utilities	0.00442538
3132	Stanhope Municipal Utilities	*
3360	Stanton Municipal Utilities	0.00492148
3326	State Center Municipal Light Plant	*
3327	Story City Municipal Electric Utility	*
3134	Stratford Municipal Utilities	0.01161635
3135	Strawberry Point Electric Utility	0.00000000

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3136	Stuart Municipal Utilities	0.00592060
3328	Sumner Municipal Light Plant	*
3330	Tipton Municipal Utilities	*
3332	Traer Municipal Utilities	0.00799521
3337	Villisca Municipal Power Plant	*
3137	Vinton Municipal Utilities	0.00159895
3138	Wall Lake Municipal Utilities	*
3338	Waverly Light & Power	0.00656107
3342	Webster City Municipal Utilities	0.00639283
3345	West Bend Municipal Power Plant	0.00199932
3346	West Liberty Municipal Electric Util.	*
3347	West Point Municipal Utility System	*
3140	Whittemore Municipal Utilities	*
3141	Wilton Municipal Light & Power	*
3351	Winterset Municipal Utilities	*
3142	Woodbine Municipal Utilities	*
3143	Woolstock Municipal Utilities	0.00000000

*No rate provided to the Department by the Municipal

2016 MUNICIPAL NATURAL GAS TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
5401	Alton Municipal Gas	0.00000000
5021	Bedford Municipal Gas	*
5215	Brighton Gas	0.00000000
5023	Brooklyn Municipal Gas	*
5024	Cascade Municipal Gas	*
5025	Cedar Falls Municipal Gas	0.01940632
5022	City of Bloomfield	*
5026	City of Clearfield	*
5028	City of Everly	*
5029	City of Fairbank	*
5238	Coon Rapids Municipal Gas	0.00804107
5241	Corning Municipal Gas	*
5027	Emmetsburg Municipal Gas	*
5030	Gilmore City Municipal Gas	*
5031	Graettinger Municipal Gas	0.54802211
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.84262059
5034	Hartley Municipal Gas	0.06872436
5035	Hawarden Municipal Gas	*
5036	Lake Park Municipal Gas	0.00856653

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
5275	Lamoni Municipal Gas	*
5037	Lenox Municipal Gas	*
5038	Lineville City Natural Gas	*
5039	Lorimor Municipal Gas	*
5281	Manilla Municipal Gas	*
5283	Manning Municipal Gas	0.05786958
5402	Mapleton Municipal Gas	*
5040	Montezuma Natural Gas	*
5041	Morning Sun Municipal Gas	*
5042	Moulton Municipal Gas	*
5369	Orange City Municipal Gas	*
5306	Osage Municipal Gas	0.01004361
5043	Prescott Municipal Gas	*
5044	Preston Municipal Gas	*
5055	Remsen Municipal Gas	*
5317	Rock Rapids Municipal Gas	0.01286986
5056	Rolfe Municipal Gas	*
5057	Sabula Municipal Gas	0.17056777
5058	Sac City Municipal Gas	*
5059	Sanborn Municipal Gas	*
5060	Sioux Center Municipal Gas	0.01046762
5061	Tipton Municipal Gas	*
5067	Wall Lake Municipal Gas	*
5063	Waukee Municipal Gas	*
5340	Wayland Municipal Gas	0.04620497
5064	Wellman Municipal Gas	0.07705041
5344	West Bend Municipal Gas	0.02750460
5065	Whittemore Municipal Gas	*
5349	Winfield Municipal Gas	*
5066	Woodbine Gas	*

*No rate provided to the Department by the Municipal

Notice of Rate-Regulated Water Utilities Delivery Tax Rate

Pursuant to the authority of Iowa Code section 437B.3, the Director of Revenue hereby gives notice of the rate-regulated water utility delivery tax rate. This rate will be used in conjunction with the total gallons of water delivered to consumers in calendar year 2016 by each taxpayer for replacement taxes payable in the 2017-2018 fiscal year.

2016 RATE-REGULATED WATER UTILITIES DELIVERY TAX RATE BY SERVICE AREA

CO. #	RATE-REGULATED WATER	DELIVERY TAX RATE
6020	Iowa American Water	0.00056296

ARC 2856C

SECRETARY OF STATE[721]

Notice of Intended Action

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

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

Pursuant to the authority of 2016 Iowa Acts, House File 2273, and Iowa Code section 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 4, "Forms," and to adopt a new Chapter 12, "Disaster Recovery for Out-of-State Entities," Iowa Administrative Code.

These proposed amendments create a new chapter and a new form to implement 2016 Iowa Acts, Senate File 2306, "Facilitating Business Rapid Response to State-Declared Disasters Act."

Public comments must be received on or before December 27, 2016. Written suggestions or comments should be directed to Eric Gookin, Election Administrator, Office of the Secretary of State, First Floor, Lucas State office Building, Des Moines, Iowa 50319. Persons who want to convey views orally should contact the Secretary of State's office by telephone at (515)281-7550 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building.

Requests for a public hearing must be received by December 27, 2016.

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

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

These amendments are intended to implement Iowa Code section 29C.3 and 2016 Iowa Acts, Senate File 2306.

The following amendments are proposed.

ITEM 1. Amend subrule **4.2(2)** by inserting the following at the end thereof:

Form Number	Description
BC-25	Disaster Recovery Registration

ITEM 2. Adopt the following **new** 721—Chapter 12:

CHAPTER 12
DISASTER RECOVERY FOR OUT-OF-STATE ENTITIES

721—12.1(29C) Definitions. For purposes of this chapter, the definitions from 2016 Iowa Acts, Senate File 2306, section 2, are adopted by reference.

721—12.2(29C) Notification and insurance verification. Within 15 days of entering the state in response to a disaster in accordance with 2016 Iowa Acts, Senate File 2306, an entity shall file with the secretary of state the following information, from the secretary of state's prescribed form for out-of-state corporations for disaster recovery.

1. Name.
2. State of domicile.
3. Principal business address.
4. Federal employer identification number.
5. The date the entity entered the state.
6. Contact information.
7. Certificate of worker compensation insurance.
8. Certificate of liability insurance.

SECRETARY OF STATE[721](cont'd)

9. A signed statement that the out-of-state business is in the state for the purpose of responding to a declared state disaster or emergency.

721—12.3(29C) Transmittal of notification. Once the form from rule 721—12.2(29C) is processed, the secretary of state shall transmit the information to the Iowa department of revenue and the Iowa homeland security and emergency management department. The secretary of state shall provide the information to other state and local government agencies at their request.

ARC 2830C

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby gives Notice of Intended Action to amend Chapter 12, "Claims for Indigent Defense Services," Iowa Administrative Code.

This proposed amendment will allow an attorney in an adult criminal case to submit a claim for attorney fees within 45 days after the date of the expiration of the time for appeal from the judgment of conviction. This amendment is intended to allow the attorney a fairer opportunity to timely submit a fee claim after all required services have been performed.

Any interested person may make written suggestions or comments on the proposed amendment on or before January 3, 2017. Such written comments should be sent to Kurt Swaim, First Assistant State Public Defender, Fourth Floor, Lucas State Office Building, 321 E. Locust Street, Des Moines, Iowa 50319; by fax to (515)281-7289; or by e-mail to kswaim@spd.state.ia.us.

A public hearing will be held on January 3, 2017, at 10 a.m. in Conference Room 424, Fourth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine themselves to the subject of the proposed amendment.

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

The agency does not believe that the proposed amendment poses a financial hardship on any regulated entity or individual.

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

This amendment is intended to implement Iowa Code chapters 13B and 815.

The following amendment is proposed.

Amend paragraph **12.2(3)"a"** as follows:

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 ~~or sentenced~~, the date of the expiration of the time for appeal from a judgment of conviction, the date 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 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. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. 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.

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, 2015 — December 31, 2015	4.00%
January 1, 2016 — January 31, 2016	4.25%
February 1, 2016 — February 29, 2016	4.25%
March 1, 2016 — March 31, 2016	4.00%
April 1, 2016 — April 30, 2016	3.75%
May 1, 2016 — May 31, 2016	4.00%
June 1, 2016 — June 30, 2016	3.75%
July 1, 2016 — July 31, 2016	3.75%
August 1, 2016 — August 31, 2016	3.75%
September 1, 2016 — September 30, 2016	3.50%
October 1, 2016 — October 31, 2016	3.50%
November 1, 2016 — November 30, 2016	3.75%
December 1, 2016 — December 31, 2016	3.75%

ARC 2848C

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2016 Iowa Acts, House File 2460, section 27, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," Iowa Administrative Code.

These changes are being made to bring administrative rules into compliance with 2015 Iowa Acts, chapter 137, section 149, section (1)(q), as amended by 2016 Iowa Acts, House File 2460, section 27, which requires the Department of Human Services to increase the contractual managed care rate floors and the fee-for-service rates and payment limits by 1 percent over the rates in effect April 1, 2016, for providers of home- and community-based service (HCBS) waiver services for which the managed care rate floor is based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014.

The outdated language regarding encumbering a portion of the cost of home and vehicle modification over 12 months is also being removed as these paragraphs were to be stricken in a prior rule making that removed the cost of home and vehicle modification from the monthly cap under the waiver program.

These amendments increase fee-for-service upper payment limits and reimbursement rates by 1 percent over the rates in effect June 30, 2016, for providers of HCBS waiver services for which the managed care rate floor is based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014.

These amendments also increase managed care, the contractual reimbursement rate floor based on the average aggregate reimbursement rate for the fiscal year beginning July 1, 2014, by 1 percent over the rate floor in effect on April 1, 2016.

The caps on the total monthly cost of HCBS waiver services for members under each waiver and the annual respite limit for the intellectual disability (ID) waiver are also being increased by 1 percent. The increases in the caps are put in place so members may receive the same services after the rate increases.

Finally, these amendments correct the annual limit for specialized medical equipment in Chapter 78 to align with the limit listed in subrule 79.1(2).

The Council on Human Services adopted these amendments on November 9, 2016.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments are mandated by 2016 Iowa Acts, House File 2460, section 27, which permits the Department to adopt emergency rules for this purpose.

Pursuant to Iowa Code section 17A.5(2)"b"(1)(b), the Department also finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective November 15, 2016, because the amendments confer a benefit on the public. Providers will receive rate increases to the upper rate limit and the cap on the monthly cost of waiver services.

These amendments are also published herein under Notice of Intended Action as **ARC 2849C** to allow for public comment.

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

These amendments may increase private sector wages for employees providing home- and community-based services under HCBS waiver programs.

These amendments are intended to implement Iowa Code section 249A.4 and 2016 Iowa Acts, House File 2460, section 27.

The Administrative Rules Review Committee reviewed these amendments on November 14, 2016.

These amendments became effective November 15, 2016.

The following amendments are adopted.

ITEM 1. Amend subparagraph **78.27(10)"e"(2)** as follows:

(2) In absence of a monthly cap on the cost of waiver services, the total monthly cost of all supported employment services may not exceed ~~$3,029.00~~ $3,059.29 per month.

ITEM 2. Amend paragraph **78.34(9)"g"** as follows:

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

~~(1)~~ Payment of up to $6,366.64 per year may be made to certified providers upon satisfactory completion of the service.

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

ITEM 3. Amend paragraph **78.41(2)"i"** as follows:

i. Payment for respite services shall not exceed ~~$7,262~~ $7,334.62 per the member's waiver year.

ITEM 4. Amend paragraph **78.43(5)"g"** as follows:

g. Service payment shall be made to the enrolled home or vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home or vehicle modification provider following completion of the approved modifications. Payment of up to $6,366.64 per year may be made to certified providers upon satisfactory completion of the service. ~~The case manager or service worker may encumber a portion of the cost of a modification every month within the monthly dollar cap allowed for the member until the entire cost of the modification is encumbered within a consecutive 12-month period.~~

ITEM 5. Amend paragraph **78.43(8)"c"** as follows:

c. Payment of up to ~~$6,060~~ $6,366.64 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service. Each month within the 12-month period, the service worker shall encumber an amount within the monthly dollar cap allowed for the member until the amount of the equipment cost is reached.

ITEM 6. Amend paragraph **78.46(2)"g"** as follows:

g. Service payment shall be made to the enrolled home or vehicle modification provider. If applicable, payment will be forwarded to the subcontracting agency by the enrolled home or vehicle modification provider following completion of the approved modifications. Payment of up to $6,366.64 per year may be made to certified providers upon satisfactory completion of the service. ~~The case manager or service worker shall encumber a portion of the cost of a modification every month within the monthly dollar cap allowed for the member until the entire cost of the modification is encumbered within a consecutive 12-month period.~~

ITEM 7. Amend paragraph **78.46(4)"c"** as follows:

c. Payment of up to ~~$6,060~~ $6,366.64 per year may be made to enrolled specialized medical equipment providers upon satisfactory receipt of the service. ~~Each month within the 12-month period, the service worker shall encumber an amount within the monthly dollar cap allowed for the member until the amount of the equipment cost is reached.~~

ITEM 8. Amend subrule **79.1(2)**, provider category "HCBS waiver service providers," as follows:

Provider category	Basis of reimbursement	Upper limit
HCBS waiver service providers, including:		Except as noted, limits apply to all waivers that cover the named provider.
1. Adult day care	Fee schedule	Effective ~~7/1/13~~ 7/1/16, for AIDS/HIV, brain injury, elderly, and ill and handicapped waivers: Provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute, half-day, full-day, or extended-day rate. If no ~~6/30/13~~ 6/30/16 rate: Veterans Administration

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
		contract rate or ~~$1.45~~ $1.47 per 15-minute unit, ~~$23.24~~ $23.47 per half day, ~~$46.26~~ $46.72 per full day, or ~~$69.37~~ $70.06 per extended day if no Veterans Administration contract. Effective ~~7/1/13~~ 7/1/16, for intellectual disability waiver: County contract rate or, in the absence of a contract rate, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute, half-day, full-day, or extended-day rate. If no ~~6/30/13~~ 6/30/16 rate, ~~$1.94~~ $1.96 per 15-minute unit, ~~$30.96~~ $31.27 per half day, ~~$61.80~~ $70.06 per full day, or ~~$78.80~~ $79.59 per extended day.
2. No change.		
3. Home health aides	Retrospective cost-related	For AIDS/HIV, elderly, and health and disability waivers effective ~~7/1/13~~ 7/1/16: Lesser of maximum Medicare rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1% or maximum Medicaid rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%. For intellectual disability waiver effective ~~7/1/13~~ 7/1/16: Lesser of maximum Medicare rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1% or maximum Medicaid rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to an hourly rate.
4. No change.		
5. Nursing care	For elderly and intellectual disability waivers: Fee schedule as determined by Medicare.	For elderly waiver effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%. If no ~~6/30/13~~ 6/30/16 rate: ~~$87.12~~ $87.99 per visit. For intellectual disability waiver effective ~~7/1/13~~ 7/1/16: Lesser of maximum Medicare rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1% or maximum Medicaid rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to an hourly rate.
	For AIDS/HIV and health and disability waivers: Agency's financial and statistical cost report and Medicare percentage rate per visit.	For AIDS/HIV and health and disability waivers effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%. If no ~~6/30/13~~ 6/30/16 rate: ~~$87.12~~ $87.99 per visit.
6. Respite care when provided by:		

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Provider category	Basis of reimbursement	Upper limit
Home health agency:		
Specialized respite	Cost-based rate for nursing services provided by a home health agency	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: Lesser of maximum Medicare rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate, or maximum Medicaid rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate, not to exceed ~~$311.97~~ $315.09 per day.
Basic individual respite	Cost-based rate for home health aide services provided by a home health agency	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: Lesser of maximum Medicare rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate, or maximum Medicaid rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate, not to exceed ~~$311.97~~ $315.09 per day.
Group respite	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed ~~$311.97~~ $315.09 per day.
Home care agency:		
Specialized respite	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$8.87~~ $8.96 per 15-minute unit, not to exceed ~~$311.97~~ $315.09 per day.
Basic individual respite	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$4.73~~ $4.78 per 15-minute unit, not to exceed ~~$311.97~~ $315.09 per day.
Group respite	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed ~~$311.97~~ $315.09 per day.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
Nonfacility care:		
Specialized respite	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$8.87~~ $8.96 per 15-minute unit, not to exceed ~~$311.97~~ $315.09 per day.
Basic individual respite	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$4.73~~ $4.78 per 15-minute unit, not to exceed ~~$311.97~~ $315.09 per day.
Group respite	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed ~~$311.97~~ $315.09 per day.
Facility care:		
Hospital or nursing facility providing skilled care	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed the facility's daily Medicaid rate for skilled nursing level of care.
Nursing facility	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed the facility's daily Medicaid rate.
Camps	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed ~~$311.97~~ $315.09 per day.
Adult day care	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed rate for regular adult day care services.

Provider category	Basis of reimbursement	Upper limit
Intermediate care facility for persons with an intellectual disability	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed the facility's daily Medicaid rate.
Residential care facilities for persons with an intellectual disability	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed contractual daily rate.
Foster group care	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed daily rate for child welfare services.
Child care facilities	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit, not to exceed contractual daily rate.
7. to 9. No change.		
10. Mental health outreach providers	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%. If no ~~6/30/13~~ 6/30/16 rate: On-site Medicaid reimbursement rate for center or provider. Maximum of 1,440 units per year.
11. No change.		
12. Nutritional counseling	Fee schedule	Effective ~~7/1/13~~ 7/1/16 for non-county contract: Provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$8.67~~ $8.76 per 15-minute unit.
13. No change.		
14. Senior companion	Fee schedule	Effective ~~7/1/13~~ 7/1/16 for non-county contract: Provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$1.87~~ $1.89 per 15-minute unit.
15. Consumer-directed attendant care provided by:		

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
Agency (other than an elderly waiver assisted living program)	Fee agreed upon by member and provider	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$5.30~~ $5.35 per 15-minute unit, not to exceed ~~$122.62~~ $123.85 per day.
Assisted living program (for elderly waiver only)	Fee agreed upon by member and provider	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$5.30~~ $5.35 per 15-minute unit, not to exceed ~~$122.62~~ $123.85 per day.
Individual	Fee agreed upon by member and provider	Effective ~~7/1/13~~ 7/1/16, ~~$3.54~~ $3.58 per 15-minute unit, not to exceed ~~$82.53~~ $83.36 per day. When an individual who serves as a member's legal representative provides services to the member as allowed by 79.9(7)*"b,"* the payment rate must be based on the skill level of the legal representative and may not exceed the median statewide reimbursement rate for the service unless the higher rate receives prior approval from the department.
16. Counseling:		
Individual	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$11.34~~ $11.45 per 15-minute unit.
Group	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$11.33~~ $11.44 per 15-minute unit. Rate is divided by six, or, if the number of persons who comprise the group exceeds six, the actual number of persons who comprise the group.
17. Case management	Fee for service with cost settlement. See 79.1(1)*"d."*	For brain injury and elderly waivers: Retrospective cost-settled rate.
18. Supported community living	Retrospectively limited prospective rates. See 79.1(15)	For intellectual disability and brain injury waiver effective ~~7/1/13~~ 7/1/16: ~~$9.19~~ $9.28 per 15-minute unit, not to exceed the maximum daily ICF/ID rate per day plus ~~3%~~ 3.927%.
19. Supported employment:		

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
Individual supported employment	Fee schedule	Fee schedule in effect ~~May 4, 2016~~ 7/1/16. Total monthly cost for all supported employment services not to exceed ~~$3,029.00~~ $3,059.29 per month.
Long-term job coaching	Fee schedule	Fee schedule in effect ~~May 4, 2016~~ 7/1/16. Total monthly cost for all supported employment services not to exceed ~~$3,029.00~~ $3,059.29 per month.
Small-group supported employment (2 to 8 individuals)	Fee schedule	Fee schedule in effect ~~May 4, 2016~~ 7/1/16. Maximum 160 units per week. Total monthly cost for all supported employment services not to exceed ~~$3,029.00~~ $3,059.29 per month.
20. No change.		
21. Behavioral programming	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%. If no ~~6/30/13~~ 6/30/16 rate: ~~$11.34~~ $11.45 per 15 minutes.
22. Family counseling and training	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$11.33~~ $11.44 per 15-minute unit.
23. Prevocational services, including career exploration	Fee schedule	Fee schedule in effect ~~May 4, 2016~~ 7/1/16.
24. Interim medical monitoring and treatment:		
Home health agency (provided by home health aide)	Cost-based rate for home health aide services provided by a home health agency	Effective ~~7/1/13~~ 7/1/16: Lesser of maximum Medicare rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate, or maximum Medicaid rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate.
Home health agency (provided by nurse)	Cost-based rate for nursing services provided by a home health agency	Effective ~~7/1/13~~ 7/1/16: Lesser of maximum Medicare rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate, or maximum Medicaid rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate.
Child development home or center	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.45~~ $3.49 per 15-minute unit.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
Supported community living provider	Retrospectively limited prospective rate. See 79.1(15)	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$9.19~~ $9.28 per 15-minute unit, not to exceed the maximum ICF/ID rate per day plus ~~3%~~ 3.927%.
25. Residential-based supported community living	Retrospectively limited prospective rates. See 79.1(15)	Effective ~~7/1/13~~ 7/1/16: Not to exceed the maximum ICF/ID rate per day plus ~~3%~~ 3.927%.
26. Day habilitation	Fee schedule	Effective ~~7/1/13~~ 7/1/16: ~~County contract rate converted to a 15-minute or daily rate or, in the absence of a contract rate, provider's~~ Provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute or daily rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$3.47~~ $3.51 per 15-minute unit or ~~$67.55~~ $68.23 per day.
27. No change.		
28. Family and community support services	Retrospectively limited prospective rates. See 79.1(15)	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$9.19~~ $9.28 per 15-minute unit.
29. In-home family therapy	Fee schedule	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%, converted to a 15-minute rate. If no ~~6/30/13~~ 6/30/16 rate: ~~$24.60~~ $24.85 per 15-minute unit.
30. No change.		
31. Independent support broker	Rate negotiated by member	Effective ~~7/1/13~~ 7/1/16, provider's rate in effect ~~6/30/13~~ 6/30/16 plus ~~3%~~ 1%. If no ~~6/30/13~~ 6/30/16 rate: ~~$15.91~~ $16.07 per hour.
32. to 34. No change.		
35. Assisted living on-call service providers (elderly waiver only)	Fee agreed upon by member and provider.	~~$25.75~~ $26.08 per day.

ITEM 9. Amend paragraph **79.1(15)"f"** as follows:

f. Retrospective adjustments.

(1) No change.

(2) ~~Revenues~~ For services provided from July 1, 2015, through June 30, 2016, revenues exceeding adjusted actual costs by more than 4.5 percent shall be remitted to the department. Payment will be due upon notice of the new rates and retrospective rate adjustment.

(3) ~~Providers~~ For services provided from July 1, 2015, through June 30, 2016, providers who do not reimburse revenues exceeding 104.5 percent of actual costs 30 days after notice is given by the department will have the revenues over 104.5 percent of the actual costs deducted from future payments.

(4) For services provided on or after July 1, 2016, revenues exceeding adjusted actual costs by more than 5.5 percent shall be remitted to the department. Payment will be due upon notice of the new rates and retrospective rate adjustment.

(5) For services provided on or after July 1, 2016, providers who do not reimburse revenues exceeding 105.5 percent of actual costs 30 days after notice is given by the department will have the revenues over 105.5 percent of the actual costs deducted from future payments.

ITEM 10. Amend paragraph **83.2(2)"b"** as follows:

b. Except as provided below, the total monthly cost of the health and disability waiver services, excluding the cost of home and vehicle modification services, shall not exceed the established aggregate monthly cost for level of care as follows:

Skilled level of care	Nursing level of care	ICF/ID
~~$2,765~~ $2,792.65	~~$950~~ $950.28	~~$3,365~~ $3,742.93

~~(1)~~ For members eligible for SSI who remain eligible for health and disability waiver services until the age of 25 because they are receiving health and disability waiver services upon reaching the age of 21, these amounts shall be increased by the cost of services for which the member would be eligible under 441—subrule 78.9(10) if still under 21 years of age.

~~(2) If more than $505 is paid for home and vehicle modification services, the service worker or targeted case manager shall encumber up to $505 per month within the monthly dollar cap allowed for the member until the total amount of the modification is reached within a 12-month period.~~

ITEM 11. Amend subparagraph **83.22(2)"c"(2)** as follows:

(2) Services must be the least costly available to meet the service needs of the member. The total monthly cost of the elderly waiver services exclusive of case management services shall not exceed the established monthly cost of the level of care. Aggregate monthly costs, excluding the cost of case management and home and vehicle modifications, are limited as follows:

Skilled level of care	Nursing level of care
~~$2,765~~ $2,792.65	~~$1,339~~ $1,365.78

ITEM 12. Amend paragraph **83.42(2)"b"** as follows:

b. The total monthly cost of the AIDS/HIV waiver services shall not exceed the established aggregate monthly cost for level of care. The monthly cost of AIDS/HIV waiver services cannot exceed the established limit of ~~$1,840~~ $1,876.80.

ITEM 13. Amend paragraph **83.82(2)"d"** as follows:

d. The total cost of brain injury waiver services, excluding the cost of case management and home and vehicle modifications, shall not exceed ~~$2,954~~ $3,013.08 per month.

ITEM 14. Amend paragraph **83.102(2)"b"** as follows:

b. The total cost of physical disability waiver services, excluding the cost of home and vehicle modifications, shall not exceed ~~$692~~ $705.84 per month.

ITEM 15. Amend paragraph **83.122(6)"b"** as follows:

b. The total cost of children's mental health waiver services needed to meet the member's needs, excluding the cost of environmental modifications, adaptive devices and therapeutic resources, may not exceed ~~$1,967~~ $2,006.34 per month.

[Filed Emergency 11/14/16, effective 11/15/16]
[Published 12/7/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/7/16.

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HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2015 Iowa Acts, chapter 137, section 149(1)(f)(1), as amended by 2016 Iowa Acts, House File 2460, section 27, the Department hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment increases the home health low utilization payment adjustment (LUPA) rates by 2.93 percent. This is estimated to be the maximum possible increase within the $1 million of state funding appropriated for this purpose, as required by 2015 Iowa Acts, chapter 137, section 149(1)(f)(1), as amended by 2016 Iowa Acts, House File 2460, section 27.

The Council on Human Services adopted this amendment on November 9, 2016.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because the aforementioned legislative act directs the Department to increase rates to the extent possible within the $1 million of state funding appropriated for that purpose.

Pursuant to Iowa Code sections 17A.5(2)"b"(1)(a) and (b), the Department also finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective November 15, 2016, because legislation permits emergency rule making and the rule confers a benefit on the public as the amendment increases reimbursement rates for home health agency services based on Medicare low utilization payment adjustment (LUPA) rates.

This amendment is also published herein under Notice of Intended Action as **ARC 2847C** to allow for public comment.

This amendment does not provide for waivers in specified situations since the increases are required by state law.

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

This amendment is intended to implement Iowa Code section 249A.4 and 2015 Iowa Acts, chapter 137, section 149(1)(f)(1), as amended by 2016 Iowa Acts, House File 2460, section 27.

The Administrative Rules Review Committee reviewed this amendment on November 14, 2016.

This amendment became effective November 15, 2016.

The following amendment is adopted.

Amend subrule **79.1(2)**, provider category "Home health agencies," as follows:

Provider category	Basis of reimbursement	Upper limit
Home health agencies		
1. Skilled nursing, physical therapy, occupational therapy, speech therapy, home health aide, and medical social services; home health care for maternity patients and children	Fee schedule. See 79.1(26). For members living in a nursing facility, see 441—paragraph 81.6(11)*"r."*	~~Effective 7/1/13: Medicare LUPA rates in effect on July 1, 2013, updated July 1 every two years.~~ Effective 7/1/16: Medicare LUPA rates in effect on 6/30/16 plus a 2.93% increase.
2. Private-duty nursing and personal cares for members aged 20 or under	Retrospective cost-related. See 79.1(27)	Effective 7/1/13: Actual and allowable cost not to exceed a maximum of 133% of statewide average.
3. Administration of vaccines	Physician fee schedule	Physician fee schedule rate.

[Filed Emergency 11/14/16, effective 11/15/16]

[Published 12/7/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/7/16.

ARC 2861C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 15, "Use of Online Learning and Telecommunications for Instruction by Schools," Iowa Administrative Code.

Chapter 15 was promulgated to implement Iowa Code section 256.42, Iowa learning online initiative, and became effective January 16, 2013. Iowa Code section 256.42(7) was amended by 2016 Iowa Acts, Senate File 2200, during the 2016 session of the General Assembly. This amendment implements the changes to Iowa Code section 256.42(7).

2016 Iowa Acts, Senate File 2200, permits a school district or school to seek from the Department of Education a one-year waiver from the educational standards for high school programs in order for the school district or school to provide instruction for an offer-and-teach subject through an online course that is not available through the Iowa learning online (ILO) initiative pursuant to Iowa Code section 256.42. To qualify for such a waiver, the course content must be provided through an online learning platform by an Iowa licensed teacher with online learning experience and must be aligned with Iowa content standards. The course must be the sole course provided by the school district or school per semester under such a waiver.

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

Notice of Intended Action was published in the October 12, 2016, Iowa Administrative Bulletin as **ARC 2760C**. Public comments were allowed until 4:30 p.m. on November 1, 2016. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice of Intended Action.

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

This amendment is intended to implement Iowa Code section 256.42(7) as amended by 2016 Iowa Acts, Senate File 2200.

This amendment will become effective January 11, 2017.

The following amendment is adopted.

Amend rule 281—15.11(256) as follows:

281—15.11(256) Inappropriate applications of ILO coursework; criteria for ~~waiver~~ waivers.

15.11(1) *General.* ILO courses are not to be used by a participating school district or accredited nonpublic school as a long-term substitute for any course required to be offered and taught under 281—Chapter 12.

15.11(2) *Waiver of subrule 15.11(1): ILO coursework.* The department may grant for one year a waiver from the requirement to offer and teach a specific subject if the school district or accredited nonpublic school documents all of the following:

~~1.~~ *a.* The subject and grading period or periods for which waiver is requested.

~~2.~~ *b.* Reasons why the school district or accredited nonpublic school does not have a teacher employed who is appropriately licensed and endorsed for the educational level and content area being taught.

~~3.~~ *c.* The steps taken by the school district or accredited nonpublic school to employ a teacher who is appropriately licensed and endorsed for the educational level and content area being taught.

~~4.~~ *d.* Approval of the request by the local school board.

15.11(3) *Additional waiver of subrule 15.11(1): Coursework not available through ILO.* In addition to the requirements of rule 281—15.7(256), the specified subject may alternatively be provided by the school district or school if all of the following requirements are met:

a. The course content is provided through an online learning platform by an Iowa licensed teacher with online learning experience.

b. The course content provided is aligned with school district or school standards and satisfies the requirements of rule 281—15.13(256).

c. The course is not offered by ILO pursuant to this chapter, or the course offered by ILO lacks the capacity to accommodate additional students.

d. The course is the sole course per semester that the school district or school is providing instead of ILO pursuant to this rule.

[Filed 11/16/16, effective 1/11/17]
[Published 12/7/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/7/16.

ARC 2844C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 56, "Iowa Vocational Rehabilitation Services," Iowa Administrative Code.

Chapter 56 provides for the services leading to competitive integrated employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259 and relevant federal statutes and regulations.

Many of these amendments are for the purpose of nonsubstantive cleanup and primarily reflect actual practice and will not alter the services provided to clients of the Division of Vocational Rehabilitation Services. Other changes are called for by the Workforce Innovation and Opportunity Act of 2014. The amendments of substance are as follows:

Item 1 clarifies the type of employment sought.

Item 3 adds definitions of "Applicant," "Appropriate modes of communication," "Assessment for determining eligibility or in the development of an IPE," "Benefits planning," "Community rehabilitation program," "Comparable services and benefits," "Competitive integrated work setting," "Designated state unit," "Extended services," "Family," "Institution of higher education," "Intensive services," "Job retention eligible candidate," "Personal assistance services," "Plan for natural supports," "Postemployment services," "Potentially eligible," "Preemployment transition services," "Self-employment services," "Student with a disability," "Transportation," "Vocational rehabilitation services," "Waiting list," "Workforce investment activities," and "Youth with a disability." Other definitions are amended.

Items 6 through 35 rescind and adopt new rules related to vocational rehabilitation services.

Item 36 rescinds rules 281—56.36(259) through 281—56.42(259).

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

Notice of Intended Action was published in the October 12, 2016, Iowa Administrative Bulletin as **ARC 2763C**. Public comments were allowed until 4:30 p.m. on November 1, 2016. A public hearing was held on that date. No one attended the public hearing. No written comments regarding these rules were received. These rules are nearly identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code chapter 259.

These amendments will become effective January 11, 2017.

The following amendments are adopted.

ITEM 1. Amend rule 281—56.1(259) as follows:

281—56.1(259) Responsibility of division. The division is responsible for providing services leading to competitive integrated employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301, et seq.), and the corresponding federal regulations.

ITEM 2. Amend rule 281—56.2(259) as follows:

281—56.2(259) Nondiscrimination. The division shall not discriminate on the basis of age, race, creed, color, ~~sex~~ gender, sexual orientation, gender identity, national origin, religion, duration of residency, or disability in the determination of a person's eligibility for rehabilitation services and in the provision of necessary rehabilitation services.

ITEM 3. Amend rule 281—56.3(259) as follows:

281—56.3(259) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

"Act" means the federal Rehabilitation Act of 1973~~,~~ as amended and codified at 29 U.S.C. Section 701, et seq.

"Aggregate data" means information about one or more aspects of division job candidates, or from some specific subgroup of division job candidates, but from which personally identifiable information on any individual cannot be discerned.

"Applicant" means an individual who submits an application for vocational rehabilitation services; has completed a common intake application through a one-stop center requesting vocational rehabilitation services; has otherwise requested services from the designated state unit; or has provided information necessary to initiate an assessment to determine eligibility and priority for services; and is available to complete the assessment process.

"Appropriate modes of communication" means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated.

"Assessment for determining eligibility or in the development of an IPE" means a review of existing data and, to the extent necessary, the provision of appropriate assessment activities to obtain additional information to make a determination and to assign the priority for services assignment or development of an IPE.

"Assistive technology device" has the meaning given such term in Section 3 of the Assistive Technology Act of 1998 and means any item, piece of equipment or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" has the meaning given such term in Section 3 of the Assistive Technology Act of 1998 and means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

1. Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
2. Aiding an individual with a disability in purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Providing training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with disabilities.

"Benefits planning" means those counseling and planning services and supports needed for individuals who, due to their disabilities, are beneficiaries of social security or supplemental security income to enhance the financial ability of the individual to participate in work, plan for or avoid an overpayment, and address their unique disability needs on a job producing a product such as an impairment-related work expense (IRWE) or a program for achieving self-support (PASS).

"Case record" means the file of personally identifiable information, whether written or electronic in form, on an individual that is collected to carry out the purposes of the division as defined in the Act and the Social Security Act. This information remains a part of the case record and is subject to these rules even when temporarily physically removed, either in whole or in part, from the file folder in which it is normally kept.

"Community rehabilitation program" means any program or service, be it private for profit or nonprofit, that is an approved vendor of the Iowa department of human services' rehabilitation Medicaid providers and that demonstrates certification of quality services from nationally recognized bodies of oversight.

"Comparable services and benefits" means services and benefits that are provided or paid for in whole or in part by other federal, state, or local public agencies, by health insurance or by employee benefits; are available to the individual at the time needed to ensure the individual's progress toward achieving an employment outcome in accordance with the individual's IPE; and commensurate to the services that the individual would otherwise receive from the DSU. For purposes of this definition, comparable benefits do not include educational awards and scholarships based on merit.

"Competitive integrated employment" means work in the competitive labor market that ~~is~~:

1. Is performed on a full-time or part-time basis, including self-employment, in an integrated setting and for which the job candidate is compensated at ~~or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.~~ a rate that:

- Shall not be less than the higher of the rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938 or the rate specified in the applicable state or local minimum wage law;
- Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and
- Is eligible for the level of benefits provided to other employees;

2. Is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

3. As appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities who have similar positions.

"Competitive integrated work setting," with respect to the provision of services, means a setting, typically found in the community, in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, and said interaction is consistent with the quality of interaction that would normally occur in the performance of work by the nondisabled coworkers.

"Customized employment" means ~~a flexible process designed to personalize the employment relationship between a job candidate and an employer in a way that meets the needs of both~~ competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability; is designed to meet the specific abilities of the individual with a disability and the business needs of the employer; and is carried out through flexible strategies. ~~Customized employment is based on an individualized match between the strengths, conditions, and interests of a job candidate and the identified business needs of an employer. Customized employment utilizes an individualized approach to employment planning and job development, one person at a time, one employer at a time.~~

"Department" means the department of education.

"Designated representative" means anyone the job candidate designates to represent the job candidate's interests before and within the division. The term does not necessarily mean a legal representative. The designated representative may be a parent, guardian, friend, attorney, or other designated person.

"Designated state unit" or *"DSU"* means the division of vocational rehabilitation services.

"Division" means the division of vocational rehabilitation services of the department of education.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; or any other type of employment, including self-employment, telecommuting, ~~homemaking, other unpaid work within the individual's family,~~ or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including satisfying the vocational outcome of customized employment.

"Extended services" means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are:

1. Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment;
2. Organized or made available singly or in combination with other services for job maintenance;
3. Based on a determination of the needs of an eligible individual, as specified in the IPE;
4. Provided by an appropriate source after an individual has made the transition from support provided by the DSU; and
5. Provided to a youth with a most significant disability for no more than 48 months by the DSU when no other resource is available and not beyond the graduation date when the agreement with the department of human services applies, and until such time that the long-term funding is available.

"Family" means any individual who lives with the individual with a disability and has a vested interest in the welfare of that individual whether by marriage, birth, or choice. A family member is an individual who either (1) is a relative or guardian of an applicant or job candidate; or (2) lives in the same household as an applicant or job candidate and has a substantial interest in the well-being of the applicant or job candidate.

"Home modification" means the alteration of an already existing living unit to make it accessible or more accessible by a person with a disability who is involved with the independent living program or as necessary to achieve stable employment as part of an ~~individual~~ individualized plan for employment. The structural integrity and maintenance of the home is the responsibility of the owner. Home modifications are not provided to homes that are not structurally sound.

"Impartial hearing officer" or *"IHO"* means a person who is not an employee of the division; is not a member of the state rehabilitation advisory council; has not been involved previously in the vocational rehabilitation of the applicant or job candidate; has knowledge of the delivery of vocational rehabilitation services, the state plan and the federal and state rules and regulations governing the provision of such services; has received training in the performance of the duties of a hearing officer; and has no personal or financial interest that would be in conflict with the person's objectivity.

"Independent living services" or *"IL services"* means those items and services provided to individuals who have a significant physical, mental, or cognitive impairment and whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited, and for whom the delivery of IL services will improve their ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

"~~Individual~~ Individualized plan for employment" or *"IPE"* means a plan that specifies the services needed by an eligible individual and the ~~involvement of~~ responsibilities of the individual with a disability and other payers and must include the financial obligation of the individual with a disability, the progress measurements, the expected employment outcome and the timeline for achievement of the expected employment outcome and all provisions required by federal regulations.

"Individual with a most significant disability" means an individual who is seriously limited in three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome ~~and includes an individual who, because of a disability, has been separated from employment or is in danger of becoming separated from employment~~.

"Individual with a significant disability" means an individual who has a significant physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome or who is a recipient of SSD/SSI due to the individual's disability.

"Institution of higher education" has the meaning given the term in Section 102(a) of the Higher Education Act of 1965.

~~*"Integrated work setting,"* with respect to the provision of services, means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals other than nondisabled individuals who are providing services to those applicants or eligible individuals.~~

~~With respect to an employment outcome, "integrated work setting" means a setting typically found in the community in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.~~

"Intensive services" means services only available and provided under an IPE. Intensive services do not include ancillary services, such as maintenance, transportation, benefits planning, reader, interpretation taker services, etc.

"Job candidate" means an applicant or eligible individual applying for or receiving benefits or services from any part of the division and shall include former job candidates of the division whose files or records are retained by the division.

"Job retention eligible candidate" means an individual who is at immediate risk of losing the individual's job and requires vocational rehabilitation services in order to maintain employment and thereby move directly into active status and bypass the waiting list only for those services that will allow the individual to maintain employment. After having received said service(s) or good(s), the job retention eligible individual will return to the waiting list until that point where the individual's priority of service is being served.

"Maintenance" means monetary support provided to a job candidate for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the job candidate and that are necessitated by the job candidate's participation in the program.

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

"Menu of services" means the services provided by community partners to assist an individual with a disability in achieving an employment outcome. The services are selected and jointly agreed to by the counselor and job candidate of the division. Payments for services are made based on a fee structure that is published and updated annually, and there is no financial assessment toward the costs of these purchased services from a community rehabilitation program. ~~and includes~~ The services include the following:

1. Assessment through discovery, community work-site assessment, comprehensive vocational evaluation, ~~facility work-site assessment,~~ career exploration, or job shadowing assessment to identify a realistic vocational goal that is compatible with the individual's needs, preferences, abilities, disability, and informed choice;

2. Placement services selected by the counselor, job candidate and interested partners to prepare for and obtain employment. Placement services include the following:

- Vocational preparation, performed in a competitive integrated work environment, that enhances and improves the job candidate's ability to perform specific work, learn the necessary skills to do a specific job, minimize negative work habits and behaviors that have impeded job retention, develop skills in finding a job, and learn how to navigate transportation systems to and from work;
- Work adjustment training, performed in a competitive integrated work environment, that remedies negative work habits and behaviors, improves work tolerance, and develops strategies to improve a job candidate's ability to maintain employment;
- Job-seeking skills training that teaches the job candidate strategies necessary to find employment at the level required by the job candidate's needs;

- Job development and job follow-up that places the job candidate on a job in the community working for a business, maintains contact with the employer on the job candidate's progress, is jointly funded through the Medicaid waiver program when appropriate, and is purchased only when used in conjunction with another required service;
- Employer development that, through a job analysis, identifies for businesses the job tasks and customized training plan for the job for which the job candidate will be trained, is authorized only as a stand-alone service when the Medicaid waiver funds the job development and is purchased only when used in conjunction with another required service;
- Supported job coaching that assists the job candidate in learning job-specific skills and work habits and behaviors while employed on the job and that continues as needed after the division file is closed;
- Selected job coaching that assists the job candidate in learning job-specific skills and work habits and behaviors while employed on the job and that is purchased only when approved by the area office supervisor.

"Ongoing support services" means services that are written in the IPE; are needed to support and maintain individuals with the most significant disabilities in supported employment; are provided, at a minimum, twice monthly to make an assessment regarding the employment situation at the work site and coordinate provision of specific intensive services needed to maintain stability; are provided by skilled job trainers who accompany the individual for intensive job skill training at the work site; include social skills training, assessment and evaluation of progress, job development and retention, placement services, and follow-up services with the business and the individual's representatives; and facilitate development of natural supports or any other service(s) needed to maintain employment. ~~Such services shall be specified in the IPE and include, at a minimum, twice-monthly monitoring at the work site to assess employment stability, unless it is determined in the IPE that off-site monitoring is more appropriate.~~

"Personal assistance services" means a range of services provided by one or more persons and designed to assist an individual with a disability to perform, on or off the job, daily living activities that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

"Physical or mental impairment" means an impairment for which services are paid according to the department of human services' Medicaid or Medicare fee schedule and includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine; or
2. Any mental or psychological disorder such as an intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities~~.~~; or
3. Any impairment for which an individual has a documented history of receiving special education services in both elementary and secondary school.

"Physical or mental restoration services" means:

1. Corrective surgery or therapeutic treatment that is allowed under Medicaid or Medicare and is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;
2. Diagnosis ~~of~~ and treatment ~~for mental or emotional disorders~~ of a physical, mental, or cognitive disorder by qualified personnel in accordance with state licensure laws~~;~~ and Medicaid requirements to include:

~~3.~~ • Dentistry;

~~4.~~ • Nursing services;

~~5.~~ • Necessary hospitalization (either inpatient or outpatient) in connection with surgery or treatment and clinical services;

~~6.~~ • Drugs and supplies;

~~7.~~ • Prosthetic and orthotic devices;

~~8.~~ • Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws;

~~9.~~ • Podiatry;

~~10.~~ • Physical therapy;

~~11.~~ • Occupational therapy;

~~12.~~ • Speech and hearing therapy;

~~13.~~ • Mental health services;

~~14. Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;~~

~~15.~~ • Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

~~16.~~ • Other medical or medically related rehabilitation services.

"Plan for natural supports" means a plan, designed prior to the implementation of the supported employment program, that describes the natural supports to be used on the job; the training provided to the supervisor and mentor on the job site; the technology used in the performance of the work; the rehabilitation strategies and trainings that will be taught to the mentor in order to support and direct the job candidate on the job; the supports to be provided outside of work for the job candidate to be successful; and the methods by which the employer can connect with the job candidate's job coach and training program when the need arises.

"Postemployment services" means services that are intended to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet the rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, are limited in scope and duration.

"Potentially eligible" means students who may be in special education served under an individual education plan (IEP) or are considered to have a disability according to Section 504 of the Rehabilitation Act of 1998 and the Americans with Disabilities Act of 1992. These individuals may receive preemployment transition services but are not considered eligible for intensive services nor have they applied for services when they are potentially eligible.

"Preemployment transition services" means services provided in accordance with Section 113 of the Workforce Innovation and Opportunity Act to all students with disabilities who are in need of services and are eligible or potentially eligible for services. These services focus students and youth with disabilities on preparing for, securing, and retaining competitive integrated employment by using a variety of work-based learning strategies and work-readiness strategies combined with counseling and guidance as well as self-advocacy development. Preemployment transition services include the following:

1. Job exploration counseling;

2. Work-based learning experiences, which may include in-school or after-school opportunities, or experience outside the traditional school setting (including internships) that is provided in an integrated environment to the maximum extent possible;

3. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

4. Workplace-readiness training to develop social skills and independent living;

5. Instruction in self-advocacy, which may include peer mentoring;

6. Authorized activities to improve transition from secondary to postsecondary activities and employment outcomes; and

7. Coordinated and authorized activities to work with teachers, employers, and others interested in the transition of the student to enhance effective transition of the student with a disability from secondary to postsecondary activities and employment.

~~*"Progressive employment"* means a coordinated set of experiences that may begin with volunteering and gradually progress to competitive employment for individuals for whom employment has not otherwise occurred.~~

~~*"Rehabilitation engineering"* means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.~~

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services. For purposes of the rehabilitation services bureau of the DSU, the purposeful inclusion of rehabilitation technology in an IPE is for the purposes of preparing for, obtaining, maintaining, or advancing in employment.

"Residency requirement" ~~is a condition of eligibility and~~ is met by an individual who resides in the state of Iowa and is present and available for participation in a rehabilitation plan leading to competitive integrated employment.

"Satisfactory employment" means stable employment consistent with an individual's IPE and acceptable to both the individual and the employer.

"Self-employment services" means services specifically for the eligible individual who has an idea for ownership of a for-profit business, and includes technical assistance in developing proprietary skills and knowledge as well as financial assistance for business start-up that does not exceed $10,000 and requires a dollar-for-dollar match from the job candidate seeking self-employment.

"Status" means the existing condition or position of a case. The specific case statuses are as follows:

02-0 Referral/Applicant (individual requests services and signs the rights and responsibilities form);

04-0 Accepted for services (eligible), but does not meet waiting list categories being served;

~~06-0 Trial work experiences/extended evaluation (individual's abilities, capabilities, and capacities are explored);~~

08-0 Closed before acceptance (eligibility criteria cannot be met or case is closed for some other reason);

10-__ Accepted for services (eligible); substatus:

~~10-0~~ 10-1 Eligible individuals in secondary education;

12-0 IPE developed, awaiting start of services;

14-0 Counseling and guidance only (counselor works with job candidate directly to reach goals through counseling and placement);

16-0 Physical and mental restoration (when such services are the most significant services called for on the IPE);

18-__ Training (when training is the most significant service called for on the IPE); substatuses are:

18-1 Training in a workshop/facility;

18-2 On-the-job training;

18-3 Vocational-technical training;

18-4 Academic training;

18-5 ~~Correspondence~~ High school training;

18-6 Supported employment;

18-7 Other types of training not covered above (including nonsupported employment job coaching);

20-0 Ready for employment (IPE has been completed to extent possible);

22-0 Employed;

24-0 Service interrupted (IPE can no longer be continued for some reason, and no new IPE is readily obvious);

26-0 Closed rehabilitated (can only occur from Status 22-0 when job candidate has been employed in the job of closure for a minimum of 90 days);

28-0 Closed after IPE initiated (suitable employment cannot be achieved, or employment resulted without benefit of services from the division);

30-0 Closed before IPE initiated (can only occur from either Status 10-__ or 12-0 when a suitable ~~individual~~ individualized plan for employment cannot be developed or achieved or when employment resulted without benefit of services from the division);

32-0 Postemployment services;

33-__ Closed after postemployment services; substatuses are:

33-1 Individual is returned to suitable employment, or employment is otherwise stabilized;

33-2 Case reopened for comprehensive vocational rehabilitation services;

33-3 Situation has deteriorated to the point that further services would be of no benefit to individual;

38-0 Closed from Status 04-0 (individual does not meet one of the waiting list categories, and the individual no longer wants to remain on the waiting list or fails to respond when contacted because individual's name is at top of waiting list).

"Student with a disability" means an individual with a disability who is not younger than the age of 14 and is not older than the age of 21; and is eligible for, and receiving, special education or related services under the Individuals with Disabilities Education Act; or is an individual with a disability for purposes of Section 504 and meets the age requirements.

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining competitive integrated employment consistent with the individual's abilities and capacities.

"Supported employment" means~~:~~

~~1. Competitive~~ competitive integrated employment, including customized employment, or employment in an integrated work setting~~, or employment in integrated work settings in which individuals are working toward competitive employment,~~ in which individuals are working on a short-term basis toward competitive integrated employment. Such employment is individualized and customized consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the ~~individuals, with~~ individual for whom ongoing support services for individuals with the most significant disabilities~~:~~ is necessary.

~~● For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and~~

~~● Who, because of the nature and severity of their disabilities, need intensive supported employment services from the division and extended services after transition to perform this work; or~~

~~2. Transitional employment, as defined herein, for individuals with the most significant disabilities due to mental illness.~~

"Supported employment services" means ongoing support services, ~~and other appropriate services~~ including customized employment, that are needed to support and maintain an individual with a most significant disability in supported employment, ~~that~~ are provided by the division and documented~~:~~ for no more than 24 months, except that period may be extended if necessary in order to achieve the employment outcome as identified in the IPE, are provided singly or in combination with other services, and are organized and made available in such a way as to assist an eligible individual to achieve an employment outcome within a 24-month period of time, which may be extended based on the needs of the individual.

~~1. For a period of time consistent with federal regulations unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and~~

~~2. Following successful case closure, as postemployment services that are unavailable from an extended service provider and that are necessary for the individual to maintain or regain the job placement or to advance in employment.~~

~~*"Transitional employment,"* as used in the definition of supported employment, means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.~~

"Transition services" means a coordinated set of activities provided to a student and designed within an outcome-oriented process that promotes movement from school to postschool activities. Postschool activities include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's IPE.

"Transportation" means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service.

~~*"Trial work experiences"* means an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations in an integrated work setting in order to determine whether there is clear and convincing evidence that the individual is too severely disabled to benefit from the division's services.~~

"Vocational rehabilitation services" means those services identified under an IPE and provided to individuals who have applied for and been determined eligible for services by the DSU to enable individuals with disabilities, including individuals with the most significant disabilities, to pursue meaningful careers by securing gainful competitive integrated employment commensurate with their abilities and capabilities.

"Waiting list" means the listings of eligible individuals for vocational rehabilitation services who are not in a category being served, otherwise known as "order of selection" under the Workforce Innovation and Opportunity Act of 2014.

"Workforce investment activities" means the provision of workforce development activities that creates linkages and systemic improvements so that individuals with disabilities are ensured an effective and meaningful participation in workforce innovation and opportunity activities.

"Youth with a disability" means an individual with a disability who is not younger than 14 years of age and not older than 24 years of age.

ITEM 4. Amend rule 281—56.4(259) as follows:

281—56.4(259) Individuals who are recipients of SSD/SSI. Recipients of social security disability payments or supplemental security income payments are presumed eligible as being significantly disabled and are eligible for vocational rehabilitation services if such recipients demonstrate eligibility under ~~rules~~ subrule 56.6(6) and rule 281—56.8(259) ~~and 281—56.13(259)~~. Recipients who demonstrate eligibility under ~~rules~~ subrule 56.6(6) and rule 281—56.8(259) ~~and 281—56.13(259)~~ must also demonstrate need in the employment plan under rule ~~281—56.14(259)~~ 281—56.9(259). Nothing in this rule automatically entitles a recipient of social security disability payments or supplemental security income payments to any good or service provided by the division. Qualified division personnel will identify and document the individual as a recipient of social security benefits based on disability, and the determination of impediments to employment and need for services will be documented by the qualified rehabilitation counselor.

ITEM 5. Amend rule 281—56.5(259) as follows:

281—56.5(259) Eligibility for vocational rehabilitation services.

56.5(1) Eligibility for vocational rehabilitation services shall be determined upon the basis of the following:

~~**56.5(1)**~~ *a.* A determination by a qualified ~~personnel~~ rehabilitation counselor that the applicant has a physical or mental impairment;

~~**56.5(2)**~~ *b.* A determination by a qualified ~~personnel~~ rehabilitation counselor that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;

~~**56.5(3)**~~ *c.* A determination by a qualified vocational rehabilitation counselor that the applicant requires vocational rehabilitation services due to the applicant's disability to prepare for, secure, retain, ~~or~~ regain, or advance in employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

56.5(2) A presumption exists that the applicant can benefit, in terms of an employment outcome, from the provision of vocational rehabilitation services. ~~This presumption may be overcome by the division if, based on clear and convincing evidence, the division determines that the applicant is incapable of benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the severity of the applicant's disability;~~

~~**56.5(4)** A determination that the individual meets the residency requirement at the time of application.~~

56.5(3) Standards for ineligibility. If the DSU determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an IPE is no longer eligible for services, the DSU must:

a. Make the determination only after full consultation with the individual impacted or, as appropriate, the individual's representative;

b. Inform the individual in writing, supplemented with appropriate modes of communication;

c. Provide to the individual the individual's appeal or mediation rights;

d. Provide the individual information on the Iowa client assistance program (ICAP);

e. Refer the individual to other appropriate programs; and

f. Review the decision semiannually the first year, and annually thereafter, when the decision to close the file is based on findings that the individual who received services under an IPE is incapable of achieving competitive integrated employment at the time of closure.

ITEM 6. Rescind rule 281—56.6(259) and adopt the following **new** rule in lieu thereof:

281—56.6(259) Other eligibility and service determinations.

56.6(1) *Achievement of an employment outcome.* Any eligible individual, including an individual who is presumed eligible, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The DSU is responsible for informing individuals, through the application process for services, that individuals who receive services from the DSU must intend to achieve an employment outcome. The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome.

56.6(2) *Options for IPE development.*

a. The DSU will provide information on the available options for developing the individualized plan for employment (IPE), including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the IPE:

(1) Without assistance from the DSU or any other entity; or

(2) With assistance from:

1. A qualified vocational rehabilitation counselor employed by the DSU;
2. A qualified vocational rehabilitation counselor not employed by the DSU;
3. A representative of DSU under the guidance of a DSU vocational rehabilitation counselor;

4. A disability advocacy organization, such as the Iowa client assistance program (ICAP) or Disability Rights Iowa, or any other advocacy organization of the individual's choosing; or

5. A representative through another source that is already working with the individual, such as the individual's case manager.

b. The IPE is not approved or put into practice until it is discussed and reviewed with, revised if applicable, and approved by the vocational rehabilitation counselor employed by DSU.

c. The IPE implementation date begins on the date of the DSU counselor's signature.

d. There is no compensation for any expenses incurred while the IPE is developed with any entity not employed by the DSU.

e. If the job candidate is not on the DSU waiting list and requires some assessment services to develop the IPE, the job candidate must discuss the needs in advance with the DSU counselor and obtain prior approval if financial assistance is needed from the DSU to pay for the assessment service.

f. If the job candidate requires information from a benefits planner, the DSU can provide or arrange that assistance at any time during the development or implementation of the plan, when the job candidate is off the waiting list.

56.6(3) *Scope of services.* Vocational services for eligible individuals not on a waiting list are services described in an individualized plan for employment and are necessary to assist the eligible individual in preparing for, obtaining, retaining, regaining, or advancing in employment if the failure to advance is due to the disability, consistent with informed choice. The services include:

a. Assessment for determining eligibility and services needed for an eligible individual to achieve competitive integrated employment including, if necessary, an assessment in rehabilitation technology;

b. Counseling and guidance, which is career counseling to provide information and support services to assist the eligible individual in making informed choices about the individual's future work or career goals;

c. Referral and other services to secure needed services from other agencies and through agreements with other organizations and agencies;

d. Job-related services to facilitate the preparation for, obtaining of, and retaining of employment to include job search, job development, job placement assistance, job retention services, follow-up services and follow-along if necessary and required under the IPE;

e. Vocational and other training services that assist the eligible individual in preparing for work or an occupation identified on the IPE and include the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services may be paid for with funds by the DSU unless maximum efforts have been made by the DSU and the individual to secure grant assistance, in whole or in part, or assistance from other sources to pay for such training;

f. Training and training materials as provided according to the fee schedule and the following provisions:

(1) The training and books and supplies that are necessary for the job candidate's satisfactory occupational adjustment.

(2) The job candidate has the mental and physical capacity to acquire a skill that the job candidate can perform in an occupation commensurate with the job candidate's abilities and limitations.

(3) The job candidate is not otherwise precluded by law from employment in the job candidate's field of training.

(4) If the costs exceed the fee schedule established for in-state training, individuals deciding to attend a training program outside the state of Iowa may do so at their own expense;

g. Physical and mental treatment may be provided to the extent that financial support is not readily available from another source, such as health insurance of the individual or a comparable service or benefit, and said treatment is essential to the progression of the individual to achieve the competitive integrated employment outcome according to the following provisions:

(1) The service is necessary for the job candidate's satisfactory occupational adjustment.

(2) The condition causing disability is relatively stable or slowly progressive.

(3) The condition is of a nature that treatment may be expected to remove, arrest, or substantially reduce the disability within a reasonable length of time.

(4) The prognosis for life and employability is favorable.

56.6(4) *Specific services requiring financial assessment.* Financial need must be established prior to provision of certain services at the division's expense and is evidenced by documents of financial income. Applicants are eligible for physical restoration, occupational licenses, customary occupational tools and equipment, training materials, maintenance and transportation (except transportation for diagnosis, guidance or placement) only on the basis of financial need and when services are not otherwise immediately available or comparable benefits and services are not available. Recipients of SSD/SSI due to their disability who are independent are not subject to a financial needs test for any services but must demonstrate eligibility under subrule 56.6(6) and rule 281—56.8(259), as well as demonstrate need in the IPE under rule 281—56.9(259).

a. For the determination of financial need, the job candidate or, in the case of a minor, the minor's parent or guardian, or family in which the individual resides, is required to provide documentation regarding all family income from any source that may be applied toward the cost of rehabilitation services, except the rehabilitation services of diagnosis, counseling, training and placement, which are provided without regard to financial need; however, the division shall not pay for more than the balance of the cost of the service minus comparable services and benefits and the individual's documented contribution. A comparable services and benefits search is required for some services. When an individual refuses to supply documentation of family income, the individual assumes 100 percent of the responsibility for the costs of rehabilitation.

b. The division shall observe the following policies in making a determination of financial need based upon the findings:

(1) All services requiring the determination of financial need are provided on the basis of supplementing the resources of the job candidate or of those responsible for the job candidate.

(2) A supervisor may grant an exception in cases where the applicant's disability caused or is directly related to financial need and where all other sources of money have been exhausted by the applicant or the parents or guardians of a minor applicant.

(3) Consideration shall be given to the job candidate's responsibility for the immediate needs and maintenance of the job candidate's dependents, and the job candidate shall be expected to reserve sufficient funds to meet the job candidate's family obligations and to provide for the family's future care, education and medical expenses.

(4) Income up to a reasonable amount should be considered and determined based on the federal poverty guidelines associated with family size, income, and exclusions.

(5) General assistance from state or federal sources is disregarded as a resource unless the assistance is a grant award for postsecondary training.

(6) Grants and scholarships based on merit, while not required to be searched for as a comparable benefit, may be considered as part of the determination of financial support of a plan when a request beyond the basic support for college is requested. Public grants and institutional grants or scholarships not based on merit are considered a comparable benefit.

56.6(5) *Areas in which exceptions shall not be granted.* Pursuant to federal law, an exception shall not be granted for any of the following requirements:

a. The eligibility requirements in rule 281—56.5(259) (i.e., presence of disability, substantial impediment to employment, need for vocational rehabilitation services).

b. The required contents of the IPE and plan of natural supports.

c. Identification of a long-term follow-up provider in supported employment cases.

d. Being in employment and in Status 22-0 consistent with federal regulations prior to Status 26-0 closure.

e. Time frames, such as the federal requirement that eligibility be determined within 60 days of an individual's application for services unless the individual has agreed to an extension.

f. Intensive services may be provided only to eligible individuals who are not on a waiting list, except for assessments which will help the division appropriately determine on which waiting list an individual belongs.

56.6(6) *Waiting list.* As required by the Act and 34 CFR Section 361.36, if the division cannot serve all eligible individuals who apply, the division shall develop and maintain a waiting list for services based on significance of disability.

a. The three categories of waiting lists are as follows, listed in order of priority to be served:

(1) Individuals with most significant disabilities;

(2) Individuals with significant disabilities; and

(3) Other individuals.

b. An individual's order of selection is determined by the waiting list and the date on which the individual applied for services from the division. All waiting lists are statewide in scope; no regional lists are to be maintained.

c. Assessment of the significance of an applicant's disability is done during the process of determining eligibility but may continue after the individual has been placed on a waiting list.

56.6(7) *Individuals who are blind.* Pursuant to rule 111—10.4(216B), individuals who meet the department for the blind's definition of "blind" are to be served primarily by the department for the blind. Individuals with multiple disabilities who also are blind may receive technical assistance and consultation services while the department for the blind provides their rehabilitation plan. Joint cases are served in the Iowa self-employment program and other contracts developed by the DSU.

56.6(8) *Students in high school.* The division may serve students in high school who may legally work in competitive integrated environments. If an applicant is in high school and is determined to be eligible for vocational rehabilitation services, such services begin before the student exits the secondary school system. The services shall not supplant services for which the secondary school is responsible and are delivered according to the memorandum of understanding in effect with the department of education.

a. When the DSU determines that a student is eligible for services, the student's place on the waiting list under subrule 56.6(6) shall be determined. If the waiting list category appropriate for the student is a category currently being served, the case record moves to a planning status and the student will work with a counselor, or other DSU representative, to develop an IPE. The student may also work with other representatives of the student's choosing to assist with the development of the IPE; however, said plan is not in effect until approved and signed by the rehabilitation counselor of record. Otherwise, the case is placed in Status 04-0, and the student's name is added to the waiting list for that category, based on the student's date of application. The IPE must be in place as required by federal regulations, unless the student has agreed to an extension or is on a waiting list. The IPE shall be developed in accordance with the standard established by the division and within the time frames established by federal regulations.

b. The counselor assigned by the division to work with the student may participate in the student's individualized education program meetings to provide consultation and technical assistance if the student is on the waiting list for services and received preemployment transition services prior to the decision on eligibility. Once a student is removed from the waiting list, the counselor may also provide vocational counseling and planning for the student and coordinate services with transition planning teams. When such services do not supplant services for which the secondary school is responsible, the division may begin to provide services specifically related to employment, such as supported employment. As needed for the student's progression toward employment, a student who is in high school or in an alternative high school and has not yet met high school graduation requirements after four years of secondary enrollment may continue to receive services that do not supplant the responsibilities of the high school. A student who is in the student's final year of high school and has made satisfactory progress and has demonstrated job-specific skills to work in the student's trained profession may receive assistance in purchasing tools to be used on the job for which the student studied.

ITEM 7. Rescind rule 281—56.7(259) and adopt the following **new** rule in lieu thereof:

DIVISION IV

CASE MANAGEMENT

281—56.7(259) Case finding and intake. The DSU seeks to locate all disabled individuals of employable age who desire to be employed full- or part-time and may be eligible for vocational

rehabilitation services. To that end, referrals are accepted from all sources, and the DSU has established working relationships with public and private agencies in the areas of health, welfare, compensation, education, employment, rehabilitation, and other related services.

56.7(1) All new cases, whether referred to a local worker or to the division, are checked for previous information and are acknowledged promptly by letter or a personal call. Individuals with the most significant disabilities who are working at subminimum wage in a non-integrated setting are provided information about competitive integrated employment and support from the DSU, once known to the DSU, by qualified personnel and partners with the goal of assisting said individuals to pursue competitive integrated employment.

56.7(2) Referral for services from other programs. The DSU will refer applicants or eligible individuals to appropriate programs and service providers best suited to address the specific rehabilitation, independent living and employment needs of the individual with a disability. The DSU will also inform individuals with disabilities concerning the availability of employment options and vocational rehabilitation services to assist the individuals to achieve an appropriate employment outcome. The DSU will inform individuals who are in an extended employment setting that vocational rehabilitation services may be provided to them for purposes of training or to otherwise prepare them for employment using appropriate services to achieve employment in an integrated setting. The DSU will inform those who decide against pursuit of employment that services may be requested at a later date if, at that time, they choose to pursue an employment outcome. The DSU will refer the individual to a benefits planner in order that the individual will learn about work incentives. An appropriate referral is generally to federal or state programs, and to other programs carried out by other workforce development systems, that are best suited to address the specific employment needs. The DSU will provide the individual:

a. A notice of the referral;

b. Information identifying a specific point of contact at the agency to which the individual is referred;

c. Information and advice on the referral regarding the most suitable services to assist the individual.

ITEM 8. Rescind rule 281—56.8(259) and adopt the following **new** rule in lieu thereof:

281—56.8(259) Case diagnosis used in case recording. The diagnosis of an individual with a disability is conducted by qualified personnel under state licensure laws, and the division personnel use that information as part of the eligibility requirements. The eligibility of the individual constitutes a comprehensive study of the individual, including a medical as well as a vocational impediment of the individual. Each case diagnosis is based on pertinent information, including the individual's health and physical status, intelligence, educational background and achievements, vocational aptitudes and interests, employment experience and opportunities, and personal and social adjustments. This information then is used to assess the significant impediments posed by the diagnosis toward employment to determine and identify the comprehensive services needed to prepare for, obtain, maintain, or advance in competitive integrated employment.

56.8(1) *Medical diagnosis.* As a basis for determination of eligibility and formulation of the individual's rehabilitation plan, the division secures competent medical diagnosis. When necessary, the diagnosis is, if at all practicable and appropriate, secured from recognized specialists in specific fields indicated by the general medical diagnosis. Whenever possible, the diagnosis is accompanied by recommendations as to the means and methods of restoration and by a statement of any physical or mental limitations that may exist.

56.8(2) *Current medical reports.* The division accepts a medical report in lieu of securing a new examination when the report can be relied upon to provide a sound basis for diagnosis of the physical or mental condition of the individual; is from providers or sources as listed in the case service manual; and is from an accredited or certified medical or treatment institution recognized by the state of Iowa or licensed by the department of public health or department of human services in any other state.

56.8(3) *Current health assessment.* The division requires that a current health assessment questionnaire is completed and placed in the record at the time of application if the individual with a disability does not have medical records within the last three years.

56.8(4) *Vocational impediment.* The methods of determining vocational impediments include counseling interviews with the job candidate; reports from medical, psychological, or psychiatric providers; and reports from schools, employers, social agencies, and others.

56.8(5) *Recording case data.* The division maintains a record for each case. The case record contains pertinent case information including, as a minimum, the basis for determination of eligibility, the basis justifying the plan of services and the reason for closing the case, together with a justification of the closure. A case record may not be destroyed until four years after the case has been closed. A case record documenting participation in a transitional alliance program shall be maintained until the job candidate reaches age 25 or later.

56.8(6) *Achievement of an employment outcome.* Any eligible individual, including an individual who is presumed eligible, must intend to achieve an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The DSU is responsible for informing individuals, through the application process for services, that individuals who receive services from the DSU must intend to achieve an employment outcome. The individual's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome.

ITEM 9. Rescind rule 281—56.9(259) and adopt the following **new** rule in lieu thereof:

281—56.9(259) Individualized plan for employment (IPE).

56.9(1) *Content.* The IPE contains the job candidate's expected competitive integrated employment goal, the specific vocational rehabilitation services needed to reach that goal, the entity or entities that will provide those services, the method by which satisfactory progress will be evaluated, and the methods available for procuring the services. The IPE shall be developed consistent with federal regulations. The IPE must contain the specific employment outcome that is chosen by the eligible individual, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. In the case of an eligible individual who is a student in transition, the description may be a description of the student's projected postschool employment outcome in the most competitive integrated setting and the vocational rehabilitation services needed to achieve it including, as appropriate, assistive technology, personal assistance services, and the specific transition services and supports needed to achieve the projected postschool employment outcome. The IPE must contain the financial responsibility of the eligible individual as well as the methods used to evaluate progress and all corresponding responsibilities of those involved. The IPE also must contain information on how the eligible individual may access services from the Iowa client assistance program (ICAP), as well as appeal and mediation rights.

56.9(2) *Job candidate's participation and approval.* The IPE is formulated with the job candidate's participation and approval and provides for all rehabilitation services that are recognized to be necessary to fully accomplish the job candidate's vocational rehabilitation whether or not services are at the expense of the division. The IPE and progress are developed and monitored with the individual and as such must be conducted with the eligible individual. Family members may represent the individual when the individual is hospitalized and the case is interrupted until discharge, at which time the case will resume and participation requirements apply.

56.9(3) *Conditions for development of the IPE.* The basic conditions to be considered during the development of the IPE are:

a. The belief of the division that when concluded the IPE shall satisfactorily aid in the individual's achievement of competitive integrated employment; and

b. That all services are provided, unless amended and determined unnecessary. The division exercises its discretion in relation to the termination or revision of the individual's IPE when, for any reason, it becomes evident that the IPE cannot be completed.

56.9(4) *Cooperation by the job candidate.* The division requires good conduct, regular attendance and cooperation of all individuals engaged in the IPE's implementation. The division makes the following provisions for ensuring trainee cooperation: instruction through communication in the job candidate's preferred method of communication; at the beginning of the program, advising each trainee about what is expected of the trainee and that services shall continue only if the trainee's progress, attitude and conduct are satisfactory; requiring periodic progress, grade and attendance reports from the training agency; calling the trainee's attention to evidence of unsatisfactory progress or attendance before such conditions become serious; providing encouragement to the trainee to promote good work habits; and maintaining good relationships with the training agency; and other methods agreed to and determined appropriate by the qualified rehabilitation counselor, the job candidate, and representative, if applicable.

56.9(5) *Ticket to work.* The job candidate's signature on the IPE verifies the ticket assignment to the division unless otherwise directed by the job candidate.

56.9(6) *Amending the IPE.* Amendment of the IPE may be done by the individual with a disability in collaboration with a representative of the division or a qualified rehabilitation counselor or other options as described in the definition. If there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the service providers of the services, the changes shall not take effect until the amendment is signed by the individual with a disability or, as appropriate, the individual's representative, and by a qualified rehabilitation counselor employed by the division.

ITEM 10. Rescind rule 281—56.10(259) and adopt the following **new** rule in lieu thereof:

DIVISION V

SERVICES

281—56.10(259) Scope of services. All necessary vocational rehabilitation services, including counseling, physical restoration, training, and placement, are made available to eligible individuals to the extent necessary to achieve their goal to be competitively employed in an integrated work setting and must be included in the IPE and agreed to by the eligible individual's counselor before the service is delivered. The division cooperates with federal and other state agencies providing vocational rehabilitation or similar services, and written agreements providing for interagency cooperation may be entered into as required by the Act at the discretion of the division. In selected instances, the division assumes responsibility for providing short periods of medical care for acute conditions arising in the course of the job candidate's rehabilitation, which if not cared for would constitute a hazard to the achievement of the rehabilitation objective unless comparable services or benefits are available to the individual. Worker's compensation assumes all medical expenses for adult job candidates that are the direct result of an injury while participating in an unpaid work experience developed by division staff and implemented under an IPE. Such injuries of students are the responsibility of the local education agency when provided under an individual education plan.

ITEM 11. Rescind rule 281—56.11(259) and adopt the following **new** rule in lieu thereof:

281—56.11(259) Training.

56.11(1) *Duration of training.* Rehabilitation training is provided according to the actual needs of the individual. It is designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

56.11(2) *Types of training.* The types of training programs available are as follows:

a. Postsecondary training, which is training in the arts and sciences for which postsecondary credit is given and which is generally considered to be applicable toward an associate's degree, bachelor's degree, or advanced degree. All job candidates are required to file the Free Application for Federal Student Aid (FAFSA).

b. Vocational training, which includes any organized form of instruction that provides the knowledge and skills essential for performing in a vocational-technical area. Such knowledge and skills

may be acquired through training in an institution, on the job, by correspondence, by tutors, through a selection from the menu of services, by apprenticeship, or through a combination of any or all of these methods.

c. Work adjustment training, which includes any training given for any one or a combination of the following reasons:

(1) To assist individuals with disabilities, if needed, to acquire personal habits, attitudes and skills that will enable them to function effectively.

(2) To develop or increase work tolerance prior to engaging in vocational training or in employment.

(3) To develop work habits and to orient the individual to the world of work.

(4) To provide skills or techniques for the specific purpose of enabling the individual to compensate, through assistive technology, assistive technology devices, or prosthetics, for the loss of the use of a member of the body or the loss of a functional capacity.

d. Job coaching, which includes, but is not limited to, intensive work site training necessary to teach a job candidate both the job duties and job-related responsibilities.

e. Supported employment, which means competitive work in an integrated work setting with ongoing support services for individuals with the most significant disabilities for whom competitive integrated employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment is limited in accordance with federal regulations.

f. OJT, which means training on the job either as an employee or trainee of the business.

56.11(3) *Scope of training.* The division may provide training services as long as those services are part of a job candidate's IPE. Training facilities shall be selected to meet the job candidate's health, disability, and program needs. Training facilities within the state are preferred when they are comparable; those outside Iowa shall not be used unless approved for use by the vocational rehabilitation agency in the state in which the facility is located. The rate that is paid for a program outside the state remains the same as if the individual studied in the state and is in accordance with the appropriate fee schedule.

56.11(4) *Financial assistance for postsecondary training.* Calculations of financial assistance for postsecondary training are determined annually. In order for the division to continue to assist the greatest practical number of eligible job candidates, assistance shall be no less than 40 percent and no more than 70 percent of the cost of attending the least expensive in-state public institution for a course of instruction leading to an undergraduate degree. In all cases, the postsecondary institution in which the student is enrolled must be accredited by an entity recognized by the federal Department of Education as having authority to accredit postsecondary institutions.

a. Tuition and fee-based general assistance.

(1) Second year or less status. A student is considered to be in second year or less status when the student has earned fewer than 60 semester or 90 quarter credit hours in the student's present area of study or discipline; when the student is enrolled in a community college or other two-year postsecondary institution; or when the student is enrolled in a program whose terminal degree is an associate's degree but the student has not yet attained the associate's degree. For an eligible student in second year or less status, the division shall develop the fee schedule based on the least expensive per-credit-hour tuition charged by an Iowa community college. An eligible individual who changes the individual's goal after studying more than two years, but the new goal is a technical degree, is considered to be at the less-than-two-year status.

(2) Third or fourth year status. A student is considered to be in third or fourth year status if the student has earned at least 60 semester or 90 quarter credit hours or has achieved an associate's degree in the student's present area of study or discipline but has not yet earned a postsecondary baccalaureate degree. For an eligible student in third or fourth year status, the division will develop the fee schedule based on the least expensive Iowa regents institution. Students in third or fourth year status who take graduate courses are only eligible to receive the established assistance rate for third or fourth year status.

(3) Medical school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a medical doctor (MD) or doctor of osteopathy (DO) degree is eligible for assistance under this paragraph. For a student who is an MD or DO candidate, the division shall pay

according to the fee schedule based on the college of medicine of the University of Iowa. Students pursuing any other graduate degree in a medical arts program may be eligible for assistance under subparagraph 56.11(4)*"a"*(5). Chiropractic school is covered under subparagraph 56.11(4)*"a"*(5).

(4) Law school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a doctor of jurisprudence (JD) degree is eligible for assistance under this paragraph. For a student who is a JD candidate, the division shall pay according to the fee schedule based on the college of law of the University of Iowa. Students pursuing any other graduate degree from a law school may be eligible for assistance under subparagraph 56.11(4)*"a"*(5).

(5) Graduate or postgraduate school. Notwithstanding subparagraphs 56.11(4)*"a"*(3) and (4), for a student enrolled in a graduate or postgraduate school, the division shall pay according to the fee schedule established by the division based on the least expensive comparable graduate school at an Iowa regents institution.

(6) Distance learning (online courses). For a student enrolled in a distance learning course, the division shall pay the lesser of one of the following:

1. The actual cost of the course if the cost is less than the two-year rate on the DSU fee schedule; or

2. The rate established for a student at the student's academic level.

(7) Continuing education and non-financial aid supported programs and courses. The division shall pay the lesser of one of the following:

1. For continuing education students or a student at the four-year level attending classes at a two-year college, the actual cost of the course if the cost is less than the two-year rate on the DSU fee schedule, or

2. The rate established for a student in second year or less status if the cost of the program or course is more than the two-year rate.

(8) Out-of-state postsecondary institutions. For an eligible student who attends a postsecondary institution located outside Iowa, the division shall pay at the same rates set in this subrule.

b. Support services for postsecondary training. Unless approved as an exception by the supervisor, the amounts authorized for the items listed herein cannot exceed the amounts that would otherwise be spent on tuition and fees.

(1) Transportation shall be provided only when and to the extent that the cost is caused by participation in a program of vocational rehabilitation services.

(2) Maintenance shall be provided only to support participation in a program of vocational rehabilitation services when the job candidate has an extra expense beyond the job candidate's living expenses.

(3) Books, computers, and supplies may be provided in lieu of tuition and fees, but the amount provided therefor shall be based on the established rate on tuition and fees.

(4) Tutoring shall be provided only for courses that are part of the actual degree requirements and only when this service is not available or the legal responsibility of the training institution attended by the job candidate. Tutoring for program entrance examinations, such as the GRE, LSAT, or MCAT, is not allowed without an exception approved by the supervisor and are time limited and must be taught by qualified organizations.

(5) Unless approved as an exception, tools and equipment required for participation in a training program shall be provided in lieu of the tuition and fee amount, not to exceed the established fee rate.

(6) Unless approved as an exception, supplies for a course without which the course cannot be successfully completed shall be provided in lieu of the tuition and fee amount, not to exceed the established fee rate.

(7) Fees for certification tests that are part of a course shall be paid according to the tuition and fees standard. For certifications and licensure fees that are not part of a course, the DSU shall use the financial needs assessment form to determine the level of DSU participation, but the tests must be required by the occupation in which the job candidate plans to work as documented in the IPE.

56.11(5) *Guidance for postsecondary training.* General guidance regarding postsecondary training is available from the division's policy manual.

ITEM 12. Rescind rule 281—56.12(259) and adopt the following **new** rule in lieu thereof:

281—56.12(259) Maintenance. The costs of maintenance shall not exceed the amount of increased expenses that the rehabilitation causes for the job candidate or the job candidate's family. Maintenance is not intended to provide relief from poverty or abject living conditions. Guidance regarding the financial support of maintenance is available from the division's policy manual.

ITEM 13. Rescind rule 281—56.13(259) and adopt the following **new** rule in lieu thereof:

281—56.13(259) Transportation. When necessary to enable an applicant or a job candidate to participate in or receive the benefits of other vocational rehabilitation services, travel and related expenses, including expenses for training in the use of public transportation vehicles and systems, may be provided by the division. Transportation services may include the use of private or commercial conveyances (such as private automobile or van, public taxi, bus, ambulance, train, or plane) or the use of public transportation and coordination with a regional transit agency. The division shall not purchase a vehicle for a job candidate unless it is needed for self-employment, and there is no other option available to the individual. The division shall not rent a vehicle unless it is necessary for a job candidate's relocation. The division shall not pay for maintenance or repair of vehicles unless written approval of the supervisor allows for an exception.

ITEM 14. Rescind rule 281—56.14(259) and adopt the following **new** rule in lieu thereof:

281—56.14(259) Rehabilitation technology.

56.14(1) Rehabilitation technology services are available at any point in the rehabilitation process, except to those job candidates on the waiting list. Such services include, as appropriate, an evaluation of the ability of the individual to benefit from rehabilitation technology services. Areas in which rehabilitation technology services may be of assistance include seating and positioning, augmentative communication, computer access, environmental controls, mobility equipment, and modification of the job site or home. The rehabilitation technology is that which is required by the disability. It is not considered to be a device, such as a computer, that is required to work by any individual regardless of disability as that is the responsibility of the individual or the business. The software to make the computer accessible is the rehabilitation technology, and the computer is the conduit used in all occupations.

56.14(2) Unless a written exception is approved by a supervisor, the following division contribution limits apply:

a. The division shall pay for no more than the established rate in division policy.

b. The division shall not pay anything toward the modification of a second living unit.

ITEM 15. Rescind rule 281—56.15(259) and adopt the following **new** rule in lieu thereof:

281—56.15(259) Placement. The division not only prepares individuals with disabilities for jobs and trains them in techniques in securing their own jobs, but also accomplishes the actual placement, directly or indirectly through a service from the menu of services, of all eligible individuals with disabilities who receive rehabilitation services. Placement activities are based upon adequate evaluation and preparation of the job candidate and ordinarily include some combination of the following: evaluation of the job candidate's job readiness; development and execution of a plan for job-seeking activities; instruction in making job applications; conduct and appearance during interviews; employer contacts; registration with the state workforce development center; job analysis and modification; job coaching; employer or supervisor consultation, advisement and training; time-limited job coaching; postplacement follow-up; and relocation costs. Satisfactory employment is the objective of all division services of preparation, and placement services are an important, integral part of the overall vocational rehabilitation program. As such, in addition to the services listed herein, placement services may include the need for transportation and subsistence allowances and the purchase and acquisition of appropriate clothing, tools, equipment, and occupational licenses.

ITEM 16. Rescind rule 281—56.16(259) and adopt the following **new** rule in lieu thereof:

281—56.16(259) Miscellaneous or auxiliary services.

56.16(1) *Family member services.* If necessary to enable an applicant or job candidate to achieve an employment outcome as defined in these rules, the division may provide any service to a family member that the division is legally able to provide to a job candidate, as long as the purpose of the service is to assess the ability of the job candidate to benefit from a program of vocational rehabilitation, prepare for, enter, and be successful in employment, or participate in a program of independent living services. Excluded are programs designed to prepare a family member to enter employment that will allow the family member to make money to support the applicant or job candidate.

56.16(2) *Interpreter and note taker services.* If deemed necessary by the division to enable a job candidate to engage in all parts of the vocational rehabilitation or independent living program process, interpreter services or note taker services shall be provided to the job candidate, unless provision of such services is the statutory responsibility of an institution or organization.

a. Interpreter services are those special communications services provided by persons qualified by training and experience to facilitate communication between division personnel and persons who are deaf or hard of hearing. Persons receiving services include deaf and hard-of-hearing persons who communicate using signs and finger spelling, as well as lip reading, writing, gestures, pictures, and other methods. Persons not fluent in the English language who could benefit from having any part of the vocational rehabilitation process translated into their major language are included. The division shall purchase sign language interpreter services, including transliterating services, from appropriately licensed interpreters only.

b. Note taker services are services provided to make written notes and summaries of orally presented material. The notes may be made from a live presentation, such as a classroom lecture, or from materials that have been taped. These services are only purchased when the law states that the presenter or institution is not statutorily responsible.

56.16(3) *Other goods and services.* Other goods and services include anything that is legal and necessary to the completion of the job candidate's IPE or independent living (IL) services plan. Under no circumstances may real estate be purchased or built with division funds. Services designed to decrease the need for future IL services can only be provided directly to IL job candidates.

ITEM 17. Rescind rule 281—56.17(259) and adopt the following **new** rule in lieu thereof:

281—56.17(259) Facilities.

56.17(1) *Types of facilities.* It is the policy of the division to utilize any type of public or private facility that is equipped to render the required services from the menu of services of diagnosis, physical restoration, training, and placement. Facilities include public and private schools; colleges and universities; correspondence schools; agencies for personal adjustment training; business and industrial establishments for employment training; psychometric service agencies; physicians' and dentists' offices; hospitals; sanatoria and clinics; audiometric service centers; rehabilitation centers; the offices of occupational, physical and work therapists or agencies providing these services; convalescent homes; prosthetic appliance dealerships; and other similar facilities that are adequately equipped to contribute to the rehabilitation of individuals with disabilities.

56.17(2) *Standards for facilities providing specialized training or other services.* The division selects its training agencies on the basis of their ability to supply the quality of training desired. The general practice of the division is to utilize the facilities of accredited or approved colleges, universities, community rehabilitation programs, and trade and commercial schools for residence and correspondence training. The general practice of the division is to utilize community partners to deliver items from the menu of services based on the partners' ability to supply the quality of training desired and to achieve expected outcomes resulting in job placements for job candidates of the division.

56.17(3) *Facilities providing training.* Facilities selected as locations for employment training must have personnel qualified with respect to personality, knowledge and skills in the technique of instruction, have adequate equipment and instructional materials, and be willing to make definite provisions for a

plan of graduated progress in the job to be learned according to an efficiently organized and supervised instructional schedule.

56.17(4) *Facilities providing personal adjustment training.* In addition to other standards set for tutorial and customized training, an important basis for selection of facilities for personal adjustment training is a sympathetic understanding of the personal adjustment needs of the individual and their importance to the job candidate's total rehabilitation.

ITEM 18. Rescind rule 281—56.18(259) and adopt the following **new** rule in lieu thereof:

281—56.18(259) Exceptions to payment for services. As required by the Act and 34 CFR Section 361.50(c), the division shall have a method of allowing for exceptions to its rules regarding payment for services.

56.18(1) *Prohibitions.* Pursuant to federal law, the division is subject to the following prohibitions:

a. The fee schedule shall not be designed in a way that effectively denies an individual a necessary service.

b. An absolute limit on what may be provided to an individual may not be established, whether a dollar limit on specific service categories or on the total services provided to an individual may not be established.

56.18(2) *Exception process.* A request for an exception shall originate with the job candidate with assistance from qualified personnel of the division, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

ITEM 19. Rescind rule 281—56.19(259) and adopt the following **new** rule in lieu thereof:

281—56.19(259) Exceptions to duration of services. As required by the Act and 34 CFR Section 361.50(d), the division shall have a method of allowing for exceptions to its rules regarding the duration of services. In order to exceed the duration of service as defined in the IPE, a job candidate must follow through on the agreed-upon IPE and related activities and keep the division informed of the job candidate's progress.

ITEM 20. Adopt the following **new** rule 281—56.20(259):

281—56.20(259) Maximum rates of payment to training facilities. In no case shall the amount paid a training facility exceed the rate published, and in the case of facilities not having published rates, the amount paid the facility shall not exceed the amount paid to the facility by other public agencies for similar services. The division will maintain information necessary to justify the rates of payment made to training facilities.

ITEM 21. Rescind rule 281—56.21(259) and adopt the following **new** rule in lieu thereof:

DIVISION VI
PURCHASING PRINCIPLES

281—56.21(259) Purchasing principles for job candidate-specific purchases.

56.21(1) The division shall follow the administrative rules for purchasing goods and services promulgated by the department of administrative services.

56.21(2) The division shall purchase only those items or models that allow a job candidate to meet the job candidate's vocational objective. The division shall not pay for additional features that exceed the requirements to meet a job candidate's vocational objective or that serve primarily to enhance the job candidate's personal life.

56.21(3) The division shall seek out and purchase the most economical item or model that meets the job candidate's vocational needs.

56.21(4) The division shall encourage all job candidates to develop strategies and savings programs to pay for replacement items/models or upgrades.

56.21(5) Items purchased for a job candidate become the property of the job candidate but may be repossessed by the division, subject to reimbursement to the job candidate for the job candidate's share of the purchase price, if the job candidate does not attain employment prior to case closure.

56.21(6) The division shall inform the job candidate that any change to planned purchases must be discussed and approved jointly before a purchase is made.

56.21(7) The division will not participate in the modification to property not owned by the job candidate or the job candidate's family.

56.21(8) When considering what item or model to purchase for a specific job candidate, the division shall in all cases consider the following factors:

a. Whether the item or model is required for the job candidate to be able to perform the essential functions of the job candidate's job.

b. Whether other parties or entities may be responsible for providing or contributing to the costs of an item.

ITEM 22. Rescind rule 281—56.22(259) and adopt the following **new** rule in lieu thereof:

DIVISION VII

SUPERVISOR REVIEW, MEDIATION, HEARINGS, AND APPEALS

281—56.22(259) Review process. At the time of making application for rehabilitation services, and at other times throughout the rehabilitation process, all applicants and job candidates shall be informed of the right to appeal or mediation and the procedures by which to file. If an applicant or job candidate is dissatisfied with any agency decision that directly affects the applicant or job candidate, the applicant, job candidate, or designated representative may appeal that decision or request mediation. The term "appellant" shall be used to indicate the applicant, job candidate, or designated representative who initiates an appeal. The appellant may initiate the appeal process either by calling a counselor or supervisor or by filing the appropriate division appeal form, available from any counselor or supervisor of the division. If the appeal process or mediation is initiated by telephone, the counselor or supervisor who received the call must complete the appeal form to the best of that person's ability with information from the appellant. The division shall accept as an appeal or request for mediation a written letter, facsimile, or electronic mail that indicates that the applicant or job candidate desires to appeal or seek mediation. An appeal or mediation request must be filed within 90 days of notification of the disputed decision. Once the appeal form or request for mediation has been filed with the division administrator, a hearing shall be held before an impartial hearing officer (IHO) or mediator within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension or one of the parties declines mediation. The appellant may request that the appeal go directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation. The appellant may request assistance with an appeal or mediation from the Iowa client assistance program (ICAP).

ITEM 23. Rescind rule 281—56.23(259) and adopt the following **new** rule in lieu thereof:

281—56.23(259) Supervisor review. As a first step, the appellant shall be advised that a supervisor review of the counselor's decision may be requested by notifying the counselor or supervisor in person, by telephone or by letter of the decision to appeal. If the supervisor has been involved in decisions in the case to the extent that the supervisor cannot render a fair and impartial decision or if the supervisor is not available to complete the review in a timely manner, the appeal and case file shall be forwarded to the bureau chief for review. The appellant is not required to request supervisor review as a prerequisite for appeal before an IHO; however, if a supervisor review is requested, the following steps shall be observed:

56.23(1) Upon receipt of a request for supervisor review, the supervisor shall notify all appropriate parties of the date and nature of the appeal; examine case file documentation; discuss the issues and reasons for the decision with the immediate counselor and other counselors who may have been previously involved with the case or issue; and, if necessary, meet with any or all parties to discuss the dispute.

56.23(2) The supervisor shall have ten working days from receipt of the request for supervisor review to decide the issue and notify the appellant in writing. A copy of the supervisor's decision shall be sent to all appropriate parties.

56.23(3) If the supervisor's decision is adverse to the appellant, the copy of the written decision given to the appellant shall include further appeal procedures, including notification that the appellant has ten days from the date of the letter to file further appeal. Also included shall be notice of the Iowa client assistance program (ICAP), a program within the department of human rights, commission of persons with disabilities. If ICAP determines it appropriate, ICAP provides assistance in the preparation and presentation of the appellant's case.

56.23(4) As an alternative to, but not to the exclusion of, filing for further appeal, the appellant may request mediation of the supervisor's decision, or review by the chief of the rehabilitation services bureau.

ITEM 24. Rescind rule 281—56.24(259) and adopt the following **new** rule in lieu thereof:

281—56.24(259) Mediation. Regardless of whether a supervisor review is requested, an appellant may request resolution of the dispute through the mediation process. Mediation is also available if the appellant is dissatisfied with the supervisor's decision. If mediation is requested by the appellant and agreed to by the division, the following steps shall be observed:

56.24(1) Mediation shall be conducted by a qualified and impartial mediator, as defined in 34 CFR Section 361.5(c)(43), trained in effective mediation techniques and selected randomly by the division from a list maintained by the division.

56.24(2) The mediation shall be conducted in a timely manner at a location convenient to the parties.

56.24(3) Mediation shall not be used to delay the appellant's right to a hearing.

56.24(4) Mediation must be voluntary on the part of the appellant and the division.

56.24(5) Mediation is at no cost to the appellant.

56.24(6) All discussions and other communications that occur during the mediation process are confidential. Any offers of settlement made by either party during the mediation process are inadmissible if further appeal is sought by the appellant.

56.24(7) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the mediator, unless so requested by the appellant.

ITEM 25. Rescind rule 281—56.25(259) and adopt the following **new** rule in lieu thereof:

281—56.25(259) Hearing before impartial hearing officer. Regardless of whether the appellant has used supervisor review or mediation or both, if the appellant requests a hearing before an IHO, the following provisions apply:

56.25(1) The division shall appoint the IHO from the pool of impartial hearing officers with whom the division has contracts. The IHO shall be assigned on a random basis or by agreement between the administrator of the division and the appellant.

56.25(2) The hearing shall be held within 20 days of the receipt of the appointment of the IHO. A written decision shall be rendered and given to the parties by the IHO within 30 days after completion of the hearing. Either or both of these time frames may be extended by mutual agreement of the parties or by a showing of good cause by one party.

56.25(3) The appellant shall be informed that the filing of an appeal confers consent for the release of the case file information to the IHO. The IHO shall have access to the case file or a copy thereof at any time following acceptance of the appointment to hear the case.

56.25(4) Within five working days after appointment, the IHO shall notify both parties in writing of the following:

a. The role of the IHO;

b. The IHO's understanding of the reasons for the appeal and the requested resolution;

c. The date, time, and place for the hearing, which shall be accessible and located as advantageously as possible for both parties but more so for the appellant;

d. The availability of the case file for review and copying in a vocational rehabilitation office prior to the hearing and how to arrange for the same (see also rule 281—56.22(259));

e. That the hearing shall be closed to the public unless the appellant specifically requests an open hearing;

f. That the appellant may present evidence and information personally, may call witnesses, may be represented by counsel or other appropriate advocate at the appellant's expense, and may examine all witnesses and other relevant sources of information and evidence;

g. The availability to the appellant of the Iowa client assistance program (ICAP) for possible assistance;

h. Information about the amount of time it will take to complete the hearing process;

i. The possibility of reimbursement of necessary travel and related expenses; and

j. The availability of interpreter and reader services for appellants not familiar with the English language and those who are deaf and the availability of transportation or attendant services for those appellants requiring such assistance.

56.25(5) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the IHO, unless so requested by the appellant.

56.25(6) The IHO shall provide a full written decision, including the findings of fact and grounds for the decision. The appellant or the division may request administrative review, and the IHO decision is submitted to the administrator of the division. Both parties may provide additional evidence not heard at the hearing for consideration for the administrative review. If no additional evidence is presented, the IHO decision stands. The division reserves the right to submit the IHO decision for administrative review whenever the IHO decision places the division in the position of violating federal law. Unless either party chooses to seek judicial review pursuant to Iowa Code chapter 17A, the decision of the IHO is final. If judicial review is sought after administrative review, the IHO's decision shall be implemented pending outcome of the judicial review.

ITEM 26. Rescind rule 281—56.26(259) and adopt the following **new** rule in lieu thereof:

DIVISION VIII

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

281—56.26(259) Collection and maintenance of records. The division has the authority to collect and maintain records on individuals under the Act, the state plan for vocational rehabilitation services, and the Social Security Act. The acceptance of the provisions and benefits of the Rehabilitation Act, under Iowa Code section 259.1, is conditioned on the requirement that the division maintain the confidentiality of personally identifiable information and its release under certain circumstances as provided by applicable federal laws. These laws include, but are not limited to, the following:

1. The Freedom of Information Act (5 U.S.C. 552, added by P.L. 90-23 and amended by P.L. 93-502 and P.L. 94-409).

2. The Privacy Act of 1974 (5 U.S.C. 552a, added by P.L. 93-579).

3. The Drug Abuse Office and Treatment Act (21 U.S.C. 1175, added by P.L. 92-255) as amended by the Comprehensive Alcohol and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendment of 1974 (42 U.S.C. 4582, added by P.L. 93-282).

4. Section 6103 of the Internal Revenue Code (26 U.S.C. 6103) as amended by the Tax Reform Act of 1976 (P.L. 94-455).

5. The Government in the Sunshine Act (P.L. 94-409).

6. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, added by P.L. 93-568).

Pursuant to Iowa Code section 259.9, the state of Iowa accepts the social security system rules for the disability determination program of the division. Failure to follow the provisions of the Act can result in the loss of federal funds. The state plan provides that all personally identifiable information is confidential and may be released only with the informed written consent of the job candidate or the job candidate's representative, except as permitted by federal law. Any contrary provision in Iowa

Code chapter 22 must be waived in order for the state to receive federal funds, services, and essential information for the administration of vocational rehabilitation services.

ITEM 27. Rescind rule 281—56.27(259) and adopt the following **new** rule in lieu thereof:

281—56.27(259) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information collected, maintained, and retrieved by the agency by personal identifier in record systems as defined herein. The record systems maintained by the division include the following:

56.27(1) *Personnel records.* These records contain information relating to initial application, job performance and evaluation, reprimands, grievances, notes from and reports of investigations of allegations related to improper employee behavior, and reports of hearings and outcomes of reprimands and grievances. Pursuant to Iowa Code section 22.7(11), some of the information in personnel records may be confidential.

56.27(2) *Job candidate case records.* An individual file is maintained for each person who has been referred to or has applied for the services of the division. The file contains a variety of personal information about the job candidate, which is used in the establishment of eligibility and the provision of agency services. All information is personally identifiable and is confidential.

56.27(3) *Job candidate service record computer database.* This database contains personal data items about individual job candidates. Data identifying the job candidate is confidential. Data in the aggregate is not personally identifiable and thus is not confidential.

56.27(4) *Vendor purchase records.* These are records of purchases of goods or services made for the benefit of job candidates. If the record contains the job candidate's name or other personal identifiers, the record is confidential. Lists of non-job candidate vendors, services purchased, and the costs of those services are not confidential when retrieved from a data processing system without personally identifiable information.

56.27(5) *Records and transcripts of hearings or client appeals.* These records contain personally identifiable information about a client's case, appeal from or for some action, and the decision that has been rendered. The personally identifiable information is confidential. Some of the information is maintained in an index provided for in Iowa Code section 17A.3(1)*"d."* Information is available after confidential personally identifiable information is deleted.

56.27(6) *All computer databases of client and applicant names and other identifiers.* The data processing system contains client status records organized by a variety of personal identifiers. These records are confidential as long as any personally identifiable information is present.

56.27(7) *All computer-generated reports that contain personally identifiable information.* The division may choose to draw or generate from a data processing system reports that contain information or an identifier which would allow the identification of an individual client or clients. This material is for internal division use only and is confidential.

ITEM 28. Rescind rule 281—56.28(259) and adopt the following **new** rule in lieu thereof:

281—56.28(259) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the division other than record systems. These records are routinely available to the public, with the exception of parts of the records that contain confidential information. This rule generally describes the nature of the records, the type of information contained therein, and whether the records are confidential in whole or in part.

56.28(1) Rule making. Rule-making records, including public comments on proposed rules, are not confidential.

56.28(2) Council and commission records. Agendas, minutes, and materials presented to any council or commission required under the Act are available to the public with the exception of those records that are exempt from disclosure under Iowa Code section 21.5. Council and commission records are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319.

56.28(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa, 50319. Brochures describing various division programs are also available at local offices of the division.

56.28(4) Statistical reports. Periodic reports of statistical information on expenditures, numbers and types of case closures, and aggregate data on various client characteristics are compiled as needed for agency administration or as required by the federal funding source and are available to the public.

56.28(5) Grants. Records of persons receiving grants from division services are available through the main office of the division. Grant records contain information about grantees and may contain information about employees of a grantee that has been collected pursuant to federal requirements.

56.28(6) Published materials. The division uses many legal and technical publications, which may be inspected by the public upon request. Some of these materials may be protected by copyright law.

56.28(7) Policy manuals. Manuals containing the policies and procedures for programs administered by the division are available in every office of the division. Subscriptions to all or some of the manuals are available at the cost of production and handling. Requests for subscription information should be addressed to Vocational Rehabilitation Services Division, 510 E. 12th Street, Des Moines, Iowa 50319.

56.28(8) Operating expense records. The division maintains records of the expense of operation of the division, including records related to office rent, employee travel expenses, and costs of supplies and postage, all of which are available to the public.

56.28(9) Training records. Lists of training programs, the persons approved to attend, and associated costs are maintained in these records, which are available to the public.

56.28(10) Facility surveys. Records of division reviews of facilities providing services to the division are maintained and used to determine the current acceptable fee schedule. Information about individuals may be included in these records; therefore, parts of the records may be confidential.

56.28(11) All other records that are not exempted from disclosure by law.

ITEM 29. Rescind rule 281—56.29(259) and adopt the following **new** rule in lieu thereof:

DIVISION IX

STATE REHABILITATION COUNCIL

281—56.29(259) State rehabilitation council.

56.29(1) *Composition.* The state rehabilitation council shall be composed of at least 15 members, appointed by the governor. A majority of the council members must be individuals with disabilities who are not employed by the division. The appointing authority must select members of the council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the council. A majority of members must be individuals with disabilities who meet the requirements of 34 CFR Section 361.5(c)(28) and are not employed by the designated state unit. The council members shall include the following:

a. At least one representative of the statewide independent living council, who must be the chairperson or other designee of the statewide independent living council;

b. At least one representative of a parent training and information center established pursuant to Section 682(a) of the Individuals with Disabilities Education Act;

c. At least one representative of the client assistance program established under 34 CFR Part 370, who must be the director or other individual recommended by the client assistance program;

d. At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the council if employed by the division;

e. At least one representative of community rehabilitation program service providers;

f. Four representatives of business, industry, and labor;

g. Representatives of disability groups that include a cross section of:

(1) Individuals with physical, cognitive, sensory, and mental disabilities; and

(2) Representatives of individuals with disabilities who have difficulty representing themselves or are unable, due to their disabilities, to represent themselves;

h. Current or former applicants for, or recipients of, vocational rehabilitation services;

i. At least one representative of the state educational agency responsible for the public education of students with disabilities who are eligible to receive services under the Rehabilitation Act of 1973, as amended, and Part B of the Individuals with Disabilities Education Act;

j. At least one representative of the Iowa workforce development board; and

k. The director of the division, who serves as an ex officio, nonvoting member of the council.

56.29(2) *Chairperson.* The chairperson must be selected by the members of the council from among the voting members of the council.

56.29(3) *Terms.* Each member of the council shall be appointed for a term of no more than three years. Each member of the council, other than the representative of the client assistance program, shall serve for no more than two consecutive full terms. A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed must be appointed for the remainder of the predecessor's term and may serve one additional three-year term. The terms of service of the members initially appointed must be for a varied number of years to ensure that terms expire on a staggered basis.

56.29(4) *Vacancies.* The governor shall fill a vacancy in council membership.

56.29(5) *Functions.* The council must, after consulting with the state workforce development board:

a. Review, analyze, and advise the designated state unit regarding the designated state unit's responsibilities, particularly responsibilities related to:

(1) Eligibility, including order of selection;

(2) The extent, scope, and effectiveness of services provided; and

(3) Functions performed by state agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment outcomes;

b. In partnership with the designated state unit:

(1) Develop, agree to, and review state goals and priorities in accordance with 34 CFR Section 361.29(c); and

(2) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary of Education in accordance with 34 CFR Section 361.29(e);

c. Advise the designated state agency and the designated state unit regarding activities carried out under this part and assist in the preparation of the vocational rehabilitation services portion of the unified or combined state plan and amendments to the plan, applications, reports, needs assessments, and evaluations;

d. To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with:

(1) The functions performed by the designated state agency;

(2) The vocational rehabilitation services provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Rehabilitation Act of 1973, as amended; and

(3) The employment outcomes achieved by eligible individuals receiving services under 34 CFR Part 361, including the availability of health and other employment benefits in connection with those employment outcomes;

e. Prepare and submit to the governor and to the Secretary of Education no later than 90 days after the end of the federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the state and make the report available to the public through appropriate modes of communication;

f. To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the state, including the statewide independent living council, the advisory panel established under Section 612(a)(21) of the Individuals with Disabilities Education Act, the state developmental disabilities planning council, the state mental health planning council, and the state workforce development board, and with the activities of entities carrying out programs under the Assistive Technology Act of 1998;

g. Provide for coordination and the establishment of working relationships between the designated state agency and the statewide independent living council and centers for independent living within the state; and

h. Perform other comparable functions, consistent with the purpose of 34 CFR Part 361, as the council determines to be appropriate, that are comparable to the other functions performed by the council.

56.29(6) *Meetings.* The council must convene at least four meetings a year. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session. The council's meetings are subject to Iowa Code chapter 21, the open meetings law.

56.29(7) *Forums or hearings.* The council shall conduct forums or hearings, as appropriate, that are publicly announced, open, and accessible to the public, including individuals with disabilities.

56.29(8) *Conflict of interest.* No member of the council may cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under state law.

Rule 281—56.29(259) is intended to implement 34 CFR Sections 361.16 and 361.17.

ITEM 30. Rescind rule 281—56.30(259) and adopt the following **new** rule in lieu thereof:

DIVISION X

IOWA SELF-EMPLOYMENT PROGRAM

(A/K/A ENTREPRENEURS WITH DISABILITIES PROGRAM)

281—56.30(259) Purpose. The division of vocational rehabilitation services works in collaboration with the Iowa department for the blind to administer the Iowa self-employment (ISE) program. The purpose of the program is to provide business development funds in the form of technical assistance (up to $10,000) and financial assistance (up to $10,000) to qualified Iowans with disabilities who start, expand, or acquire a business within the state of Iowa. Actual assistance is based on the requirements of the business, not to exceed the technical assistance and financial assistance limits.

ITEM 31. Rescind rule 281—56.31(259) and adopt the following **new** rule in lieu thereof:

281—56.31(259) Program requirements. Clients of the division or the department for the blind may apply for the program. All of the following conditions are also applicable:

1. The division may limit or deny ISE assistance to an applicant who has previously received educational or training equipment from the division through another rehabilitation program when such equipment could be used in the applicant's proposed business.

2. Any equipment purchased for the applicant under this program that is no longer used by the applicant may be returned to the division, at the discretion of the division.

3. An applicant must demonstrate that the applicant has at least 51 percent ownership in a for-profit business that is actively owned, operated, and managed in Iowa.

4. Recommendation for and approval of financial assistance is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.

5. In order to receive financial support from the ISE program, the applicant's business plan feasibility study must result in self-sufficiency for the applicant as measured by earnings that equal or exceed 80 percent of substantial gainful activity.

6. The division cannot support the purchase of real estate or improvements to real estate.

7. The division cannot provide funding to be used as a cash infusion, for personal or business loan repayments, or for personal or business credit card debt.

8. The division may deny ISE assistance to an applicant who desires to start, expand, or acquire any of the following types of businesses:

- A hobby or similar activity that does not produce income at the level required for self-sufficiency;

- A business venture that is speculative in nature or considered high risk by the Better Business Bureau or similar organization;
- A business registered with the federal Internal Revenue Service as a Section 501(c)(3) entity or other entity set up deliberately to be not for profit;
- A business that is not fully compliant with all local, state, and federal zoning requirements and all other applicable local, state, and federal requirements;
- A multitiered marketing business.

ITEM 32. Rescind rule 281—56.32(259) and adopt the following **new** rule in lieu thereof:

281—56.32(259) Application procedure.

56.32(1) *Application.* Application materials for the program are available from the division and the department for the blind.

56.32(2) *Submittal.* Completed applications shall be submitted to a counselor employed by the division or the department for the blind.

56.32(3) *Review.* Applications will be forwarded to a business development specialist employed by the division for review. Approval of technical assistance funding is based upon the results of a business plan feasibility study. If the application is for financial assistance only, a business plan feasibility study will be required at the time of submission of the application. Approval of financial assistance funding is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.

56.32(4) *Funding.* Before the division will provide funding for a small business, the job candidate must complete an in-depth study about the business the job candidate intends to start and must demonstrate that the business is feasible.

56.32(5) *Appeal.* If an application is denied, an applicant may appeal the decision to the division or the department for the blind. An appeal shall be consistent with the appeal processes of the division or the department for the blind.

ITEM 33. Rescind rule 281—56.33(259) and adopt the following **new** rule in lieu thereof:

281—56.33(259) Award of technical assistance funds.

56.33(1) *Awards.* Technical assistance funds may be used for specialized consulting services as determined necessary by the counselor, the business development specialist, and the job candidate. Technical assistance funds may be awarded, based on need, up to a maximum of $10,000 per applicant. Specialized technical assistance may include, but is not limited to, engineering, legal, accounting, and computer services and other consulting services that require specialized education and training.

56.33(2) *Technical assistance.* When technical assistance is needed for specialized services beyond the expertise of the business development specialist, technical assistance will be provided to assist the job candidate.

56.33(3) *Technical assistance contracts.* The division shall negotiate contracts with qualified consultants for delivery of services to an applicant if specialized services are deemed necessary. The contracts shall state hourly fees for services, the type of service to be provided, and a timeline for delivery of services. Authorization of payment will be made by a counselor employed by the division or the department for the blind based upon the negotiated rate as noted in the contract. A copy of each contract shall be filed with the division.

56.33(4) *Consultants.* Applicants will be provided a list of qualified business consultants by the business development specialist if specialized consultation services are necessary. The selection of the consultant(s) shall be the responsibility of the applicant.

56.33(5) *Case management.* The business development specialist or counselor will be available as needed for direct consultation to each applicant to ensure that quality services for business planning are provided in a timely manner.

ITEM 34. Rescind rule 281—56.34(259) and adopt the following **new** rule in lieu thereof:

281—56.34(259) Business plan feasibility study procedure. Information and materials are available from the division and the department for the blind. The job candidate shall submit the job candidate's business plan feasibility study to the job candidate's counselor if the study is completed at the time application is made or to the business development specialist if the business plan feasibility study is completed after application approval. The business development specialist is available to guide and assist in the analysis of the feasibility study.

ITEM 35. Rescind rule 281—56.35(259) and adopt the following **new** rule in lieu thereof:

281—56.35(259) Award of financial assistance funds.

56.35(1) *Awards.* Following the business development specialist's review of the business plan feasibility study, the business development specialist will issue a recommendation to support or not to support the proposed business venture. The counselor shall make a decision regarding approval or denial of the recommendation. If the plan is approved, the job candidate and counselor will review conditions of the financial assistance award and sign the appropriate forms of acknowledgment.

a. Financial assistance funds may be awarded, based on need, up to $10,000 after approval of a business plan feasibility study and evidence of business need or evidence of business progression. Before receiving financial assistance, the job candidate must demonstrate a dollar-for-dollar match based on the amount of funding needed. The match may be provided through approved existing business assets, cash, conventional financing or other approved sources.

b. Financial assistance funds may be approved for, but are not limited to: equipment, tools, printing of marketing materials, advertising, rent (up to six months), direct-mail postage, raw materials, inventory, insurance (up to six months), and other approved start-up, expansion, or acquisition costs.

56.35(2) *Award process.* The amount that may be recommended by the business development specialist and approved by the counselor shall be provided when there is a need. Recipients of financial assistance must demonstrate ongoing cooperation by providing the business development specialist with financial information needed to assess business progress before additional funds are expended.

56.35(3) *Financial assistance contracts.* Contracts for financial assistance funds shall be the responsibility of the division and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy.

56.35(4) *Vendors.* Procurement of goods or services shall follow procedures established by the department of administrative services. The type of goods or services to be obtained, as well as a timeline for delivery of such, shall be stated by the vendor and agreed upon by the division. Authorization for goods or services shall be made by a counselor employed by the division or the department for the blind based upon the negotiated rate and terms as noted in the contract. A copy of each contract shall be filed with the division. Approval for payment of authorized goods or services shall be made by authorized division personnel.

ITEM 36. Rescind rules **281—56.36(259)** to **281—56.42(259)**.

[Filed 11/16/16, effective 1/11/17]
[Published 12/7/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/7/16.

ARC 2862C

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 62, "State Standards for Progression in Reading," Iowa Administrative Code.

Item 1 through Item 9 of these amendments replace the term "have a substantial deficiency in reading" with "being persistently at risk in reading" and define that term, consistent with amendments to Iowa Code section 279.68, as well as make conforming changes in grammar and terminology. Item 1 also includes a requirement that results on an annual standard-based assessment be considered. Item 3 also describes changes to services provided to students who are persistently at risk in reading, as required by recent legislation, as well as define when a student is "at risk in reading." Item 4 also makes conforming changes to the rule on intensive summer literacy programs, including the one-year delay in their required date. Item 5 also defines "dyslexia" and specifically indicates that services shall formally address dyslexia, pursuant to legislative action, as well as codifies department guidance on monitoring and services for students who are at risk in reading. Item 10 updates the implementation sentence for Chapter 62.

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

Notice of Intended Action was published in the October 12, 2016, Iowa Administrative Bulletin as **ARC 2762C**. Public comments were allowed until 4:30 p.m. on November 1, 2016. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code section 256.7(31) as amended by 2016 Iowa Acts, chapter 1123, and Iowa Code section 279.68 as amended by 2014 Iowa Acts, chapter 1077, and by 2016 Iowa Acts, chapter 1123.

These amendments will become effective January 11, 2017.

The following amendments are adopted.

ITEM 1. Amend subrules 62.2(3) and 62.2(4) as follows:

62.2(3) *Progress-monitoring instruments.* For students identified as ~~having a substantial deficiency~~ being persistently at risk in reading, as well as students who are ~~at risk of a substantial deficiency~~ becoming persistently at risk in reading, a school district shall monitor the students' progress in reading with instruments that meet the standards in subrule 62.2(5), in at least a frequency required by the department.

62.2(4) *Statewide or locally determined assessments.* Assessments may be locally determined or statewide, including an annual standard-based assessment, provided that all assessments for purposes of implementing this chapter meet the standards described in subrule 62.2(5).

ITEM 2. Amend subrules 62.3(1) and 62.3(4) as follows:

62.3(1) *Locally determined or statewide assessments.* In evaluating and reevaluating students who are or may be ~~deficient~~ at risk or persistently at risk in reading, school districts shall use assessments that meet the standards referenced in subrule 62.2(5).

62.3(4) *Teacher observation.* A student may initially be identified as ~~having a substantial deficiency~~ being persistently at risk in reading proficiency based on teacher observation. A teacher observation under this subrule shall be based on department-approved observation criteria. Teacher observation shall not be used to determine that a student continues to ~~have a substantial deficiency~~ be persistently at risk in reading.

ITEM 3. Amend rule 281—62.4(256,279) as follows:

281—62.4(256,279) Identification of a student as ~~having a substantial deficiency~~ being persistently at risk in reading. A school district shall follow this rule in determining whether a student in kindergarten through grade three ~~has a substantial deficiency~~ is persistently at risk in reading.

62.4(1) *Definition of "~~substantial deficiency~~ persistently at risk in reading."* A school district shall determine that a student ~~has a "substantial deficiency in reading"~~ is "persistently at risk in reading" if, based on the requirements of this chapter, the ~~student's reading is below a standard set on an approved assessment pursuant to subrule 62.2(6) and the student's progress on a measure that meets the requirements of this chapter is minimal~~ student has not met the grade-level benchmarks on two consecutive screening assessments administered pursuant to this chapter. A student is "at risk in

reading" if the student did not meet the grade-level benchmark for one of the two most recent screening assessments administered pursuant to this chapter.

62.4(2) *Determination of a ~~substantial deficiency~~ persistent risk in reading.*

a. In initially determining whether a student ~~has a substantial deficiency~~ is persistently at risk in reading as defined in subrule 62.4(1), the school district shall consider assessments referred to in rule 281—62.2(256,279) and subrule 62.3(1) or teacher observations that meet the criteria referenced in subrule 62.3(4).

b. In determining whether a student continues to ~~have a substantial deficiency~~ be persistently at risk in reading, a school district shall consider assessments referred to in rule 281—62.2(256,279) and subrule 62.3(1), with specific attention given to progress-monitoring results under subrule 62.2(3).

62.4(3) *Services offered to all students ~~with a substantial deficiency~~ who are persistently at risk in reading.* A school district shall provide intensive reading instruction to any student who ~~exhibits a substantial deficiency~~ is persistently at risk in reading, as defined in subrule 62.4(1). A school district shall continue to provide the student with intensive reading instruction until the student is reading ~~deficiency is remediated~~ at grade level, as determined by the student's consistently proficient performance on valid and reliable measures of reading ability that meet the requirements of rule 281—62.2(256,279). All services provided under this subrule shall comply with rule 281—62.6(256,279).

62.4(4) *Notice to parents.* The parent or guardian of any student in kindergarten through grade three ~~identified as having a substantial deficiency~~ who is persistently at risk in reading, as defined in subrule 62.4(1), shall be notified ~~at least annually~~ regularly in writing and shall be provided all of the following:

~~*a.* That the child has been identified as having a substantial deficiency in reading;~~

~~*b.*~~ *a.* A description of the services currently provided to the child;

~~*c.*~~ *b.* A description of the proposed supplemental instructional services and supports that the school district will provide to the child that are designed to remediate the identified area ~~of~~ or areas in which the student is persistently at risk in reading ~~deficiency~~; ~~and~~

~~*d.*~~ *c.* Strategies for parents and guardians to use in helping the ~~child succeed in reading proficiency~~ student read proficiently, including but not limited to the promotion of parent-guided home reading~~.~~; and

d. Regular updates regarding the student's progress toward reaching or exceeding the targeted level of reading proficiency.

ITEM 4. Amend subrules 62.5(1), 62.5(3) and 62.5(5) as follows:

62.5(1) *General.* Beginning May 1, ~~2017~~ 2018, unless the school district is granted a waiver pursuant to subrule 62.5(5), if a ~~student's reading deficiency is not remediated~~ student is persistently at risk in reading by the end of grade three~~, as demonstrated by scores on a locally determined or statewide assessment as provided in subrule 62.4(2)~~ and is not proficient in reading on a statewide assessment of reading administered pursuant to Iowa Code section 256.7(21), the school district shall notify the student's parent or guardian that the parent or guardian may enroll the student in an intensive summer reading program offered in accordance with this rule.

62.5(3) *Student exempt from or completes program and is not reading ~~proficient~~ proficiently.* If the student is exempt from participating in an intensive summer reading program for good cause pursuant to rule 281—62.8(256,279) or completes the intensive summer reading program but is not reading ~~proficient~~ proficiently upon completion of the program as determined under subrule 62.4(2), the student may be promoted to grade four, but the school district shall continue to provide the student with intensive reading instruction pursuant to subrule 62.4(3) until the student is ~~proficient in reading~~ reading proficiently, as demonstrated by scores on locally determined or statewide assessments pursuant to subrule 62.4(2).

62.5(5) *Waiver of intensive summer reading program.* The department may grant a school district a waiver of the requirement to offer an intensive summer reading program for the summer of ~~2017~~ 2018 only. A school district must demonstrate good cause and that the requested waiver is in keeping with the objectives of Iowa Code section 279.68 and these rules.

ITEM 5. Amend rule 281—62.6(256,279) as follows:

281—62.6(256,279) Successful progression for early readers. Each school district shall provide the following.

62.6(1) *Intensive instructional services.* A school district shall provide students who are ~~identified as having a substantial deficiency~~ persistently at risk in reading under subrule 62.4(2) with intensive instructional services and supports, free of charge, to remediate the ~~identified~~ areas ~~of reading deficiency~~ in which students are not proficient in reading. The intensive instructional services are further described in subrule 62.6(2).

a. Intensive instructional services under this subrule shall include a minimum of 90 minutes daily of scientific research-based reading instruction, which shall be core instruction.

b. In addition to the instruction described in paragraph 62.6(1)*"a,"* a school district shall prescribe other strategies, which may include but are not limited to the following:

(1) Small group instruction.

(2) Reduced teacher-student ratios.

(3) More frequent progress monitoring.

(4) Tutoring or mentoring.

(5) Extended school day, week, or year.

(6) Summer reading programs.

62.6(2) *Reading enhancement and acceleration development initiative.* The intensive instructional services described in subrule 62.6(1) shall be provided to all students in kindergarten through grade three who are identified as ~~having a substantial deficiency~~ being persistently at risk in reading, as determined pursuant to subrule 62.4(2). The services shall meet the following requirements:

a. A school district shall provide intensive instructional services during regular school hours, in addition to the regular reading instruction.

b. A school district shall provide a reading curriculum that meets the standards of subrule 62.6(3).

62.6(3) *Reading curriculum for students ~~with substantial deficiencies~~ who are persistently at risk in reading.* A curriculum that does not meet the standards of this subrule shall not be used to implement this chapter. To implement this subrule, a school district shall provide a curriculum that meets the following guidelines and specifications:

a. Assists students assessed as ~~exhibiting a substantial deficiency~~ persistently at risk in reading to develop the skills to read at grade level. Assistance shall include but not be limited to strategies that formally address dyslexia, when appropriate. For purposes of this paragraph, "dyslexia" means a specific and significant impairment in the development of reading, including but not limited to phonemic awareness, phonics, fluency, vocabulary, and comprehension, that is not solely accounted for by intellectual disability, sensory disability or impairment, or lack of appropriate instruction.

b. Provides skill development in phonemic awareness, phonics, fluency, vocabulary, and comprehension.

c. Is supported by scientifically based research in reading.

d. Is implemented by certified instructional staff with appropriate training and professional development. Such training and professional development shall meet the requirements of rule 281—83.6(284).

e. Is implemented by certified instructional staff with fidelity, which shall meet such standards for fidelity of implementation that the department may adopt.

f. Includes a scientifically based and reliable assessment, which shall meet the requirements of rule 281—62.1(256,279).

g. Provides initial and ongoing analysis of each student's reading progress, which shall meet the requirements of rule 281—62.1(256,279), with notice provided to parents pursuant to subrule 62.6(4).

h. Is implemented during regular school hours.

i. Provides a curriculum in core academic subjects to assist the student in maintaining or meeting proficiency levels for the appropriate grade in all academic subjects.

62.6(4) *Parent notice, involvement and support.* At a minimum and in addition to other requirements of this chapter, school districts shall provide the following to all parents or guardians of students who ~~have been identified as having a substantial deficiency~~ are persistently at risk in reading:

a. At regular intervals, a school district shall apprise the parent or guardian of academic and other progress being made by the student and give the parent or guardian other useful information.

b. In addition to required reading enhancement and acceleration strategies provided to students, a school district shall provide parents or guardians of students who are ~~identified as having a substantial deficiency~~ persistently at risk in reading under subrule 62.4(2) with a plan outlined in a parental contract, including participation in regular parent-guided home reading.

62.6(5) *Report to the department.* Each school district shall report to the department the specific intensive reading interventions and supports implemented by the school district pursuant to this chapter. The department shall annually prescribe the components of required or requested reports.

62.6(6) *Rule of construction: students who are at risk in reading.* Subject to paragraphs 62.6(6)*"a"* and *"b,"* school districts may voluntarily provide additional services and interventions to students who are "at risk in reading" as defined in subrule 62.4(1).

a. School districts must provide progress monitoring to students who are "at risk in reading."

b. If a student who was previously "persistently at risk" and is currently identified as "at risk" and falls below the grade-level benchmark on a locally determined number of progress monitoring probes, the student must be provided services under this rule until the next screening assessment administered pursuant to this chapter.

ITEM 6. Amend subrules 62.7(1) and 62.7(5) as follows:

62.7(1) *General.* In determining whether to promote a student in grade three to grade four, a school district shall place significant weight on any area that is not yet remediated in which the student is persistently at risk in reading ~~deficiency~~, as identified pursuant to subrule 62.4(2) ~~that is not yet remediated~~.

62.7(5) *Plan of action required.* A decision to retain a student in grade three shall be made only after the formulation of a specific plan of action to ~~remedy~~ address the student's reading ~~deficiency~~ skills until the student is reading at grade level.

ITEM 7. Amend rule 281—62.8(256,279) as follows:

281—62.8(256,279) Good-cause exemption. A school district shall exempt students from the retention requirements of rule 281—62.7(256,279) and intensive summer reading program requirements of rule 281—62.5(256,279) for good cause.

62.8(1) *"Good cause" defined.* Good-cause exemptions shall be limited to the following:

a. Limited English proficient students who have had less than two years of instruction in an English language learners program.

b. Students requiring special education whose individualized education program indicates that participation in a locally determined or statewide assessment required by this chapter is not appropriate, consistent with the requirements of rules adopted by the state board of education for the administration of Iowa Code chapter 256B.

c. Students who demonstrate an acceptable level of performance on an alternative performance measure approved pursuant to subrule 62.3(2).

d. Students who demonstrate mastery through a student portfolio under alternative performance measures approved pursuant to subrule 62.3(3).

e. Students who have received intensive remediation in reading for two or more years but who are still ~~demonstrate a deficiency~~ persistently at risk in reading and who were previously retained in kindergarten, grade one, grade two, or grade three. Intensive reading instruction for students so promoted must include an altered instructional day that includes specialized diagnostic information and specific reading strategies for each student. The school district shall assist attendance centers and teachers to implement reading strategies that research has shown to be successful in improving reading among low-performing readers.

62.8(2) *Additional documentation required.* ~~Requests~~ For students described in paragraphs 62.8(1)*"c"* and *"d,"* requests for good-cause exemptions from the retention requirement of subrule 62.5(2) and rule 281—62.7(256,279) ~~for a student described in paragraphs 62.8(1)*"c"* and *"d"*~~ shall include documentation from the student's teacher to the school principal that indicates that the promotion of the student is appropriate and is based upon the student's academic record. Such documentation shall include but not be limited to the individualized education program, if applicable, report card, or student portfolio.

ITEM 8. Amend subrules 62.9(1) and 62.9(3) as follows:

62.9(1) *Reading proficiency addressed in comprehensive school improvement plan.* To ensure all children are reading proficiently by the end of third grade, each school district shall address reading proficiency as part of its comprehensive school improvement plan, drawing upon information about ~~children~~ students from assessments and reassessment conducted pursuant to this chapter and the prevalence of ~~deficiencies~~ areas in which students are persistently at risk in reading, identified by classroom, elementary school, and other student characteristics.

62.9(3) *Attendance centers with lower levels of reading proficiency.* If more than 15 percent of an attendance center's students are not ~~proficient in~~ reading proficiently by the end of third grade, the comprehensive school improvement plan shall include strategies to reduce that percentage, including school and community strategies to raise the percentage of students who are ~~proficient in~~ reading at grade level. Strategies adopted under this subrule shall meet the requirements of this chapter.

ITEM 9. Amend subrule 62.10(1) as follows:

62.10(1) *Services beyond third grade.* Students who are identified as ~~having a substantial deficiency~~ persistently at risk in reading ~~that is not remediated~~ at the end of third grade remain entitled to intensive reading instruction. Nothing in this chapter shall be construed to prevent a school district from offering scientific research-based instruction in reading to students above third grade. Nothing in this chapter shall be construed to prohibit a school district from determining a student above third grade ~~as having a substantial deficiency~~ is persistently at risk in reading or from providing services to a student so identified.

ITEM 10. Amend **281—Chapter 62**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~sections~~ section 256.7(31) as amended by 2016 Iowa Acts, chapter 1123, and section 279.68 as amended by 2014 Iowa Acts, chapter 1077, and 2016 Iowa Acts, chapter 1123.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/7/16.

ARC 2835C

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Department hereby amends Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

These amendments implement 2016 Iowa Acts, House File 2439 and Senate File 2326, which amend Iowa Code chapter 34A. These amendments primarily focus on the distribution of collected wireless E911 surcharge revenues. First, the amount of wireless E911 surcharge revenues passed to the local E911 services board is increased from 46 percent to 60 percent of revenues collected. The method by which these funds are disbursed remains unchanged from current practice. Funds are disbursed based on wireless 911 call volume and square miles of the E911 service area for the associated public safety answering point (PSAP). Second, a one-time payment of $4,383,000 is made to the Public Safety

Department for payment of the 2017 state fiscal year financing agreement entered into by the Treasurer of State for the statewide interoperable communications system as described in Iowa Code section 29C.23 as amended by 2016 Iowa Acts, Senate File 2326. Last, any unspent funds, not to exceed $4,400,000, may be spent in the following order of priority: grants for PSAPs to consolidate physical facilities and technology, funding of public awareness and educational campaigns, and funding to PSAPs for communications equipment related to receiving and dispatching 911 calls as well as costs to access the statewide interoperable communications system.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2740C** on October 12, 2016. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 2741C**. A public hearing was conducted on November 1, 2016. No public comment was received on these amendments. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Department adopted these amendments on November 16, 2016.

These amendments will have a fiscal impact to local E911 service boards. The increase in the wireless E911 surcharge revenue pass-through from 46 percent to 60 percent is projected to increase the annual amount of revenue received by the E911 Service Board from $12,800,000 to $16,800,000. The funds made available to the service boards after all costs have been addressed are limited to $4,400,000 in state fiscal year 2017. In state fiscal year 2016, the fund provided $11,000,000 to local E911 service boards after all costs had been addressed. The $11,000,000 expenditure rate was not anticipated to be continued for an extended period of time as the rate was implemented to spend down the surplus balance.

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

These amendments are intended to implement Iowa Code chapter 34A as amended by 2016 Iowa Acts, House File 2439 and Senate File 2326.

These amendments will become effective January 11, 2017, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule **605—10.2(34A)**, definitions of "Nonrecurring costs" and "Recurring costs," as follows:

"Nonrecurring costs" means one-time charges incurred by a joint E911 service board or operating authority including, but not limited to, expenditures for E911 service plan preparation, ~~surcharge referendum,~~ capital outlay, communications equipment to receive and dispatch emergency calls, installation, and initial license to use subscriber names, addresses and telephone information.

"Recurring costs" means repetitive charges incurred by a joint E911 service board or operating authority including, but not limited to, personnel time directly associated with database management and personnel time directly associated with addressing, lease of access lines, lease of equipment, network access fees, communications equipment to receive and dispatch emergency calls, and applicable maintenance costs.

ITEM 2. Rescind subrule 10.9(3) and adopt the following **new** subrule in lieu thereof:

10.9(3) Moneys in the fund shall be expended and distributed in the following manner and order of priority:

a. An amount as appropriated by the general assembly to the department shall be allocated to the director and program manager for implementation, support, and maintenance of the functions of the director and program manager and to employ the auditor of state to perform an annual audit of the E911 emergency communications fund.

b. The program manager shall allocate to each joint E911 service board and to the department of public safety a minimum of $1,000 per calendar quarter for each public safety answering point (PSAP) within the service area of the department of public safety or joint E911 service board that has submitted an annual written request to the program manager. The written request shall be made with the Request for Wireless E911 Funds form contained in the Wireless NG911 Implementation and Operations Plan. The request is due to the program manager by May 15, or the next business day, of each year.

(1) The amount allocated under paragraph 10.9(3)*"b"* shall be 60 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 board shall be $1,000 per PSAP operated by the respective authority.

(2) Additional funds shall be allocated as follows:

1. Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the service area to the total square miles in this state.

2. Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls taken at the PSAP in the service area to the total number of wireless E911 calls originating in this state.

(3) The funds allocated in paragraph 10.9(3)*"b"* shall be used by the PSAPs for costs related to the receipt and disposition of 911 calls.

c. The program manager shall allocate 10 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC's letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under paragraph 10.9(3)*"c."* This allocation is for the period beginning July 1, 2013, and ending June 30, 2026.

d. The program manager shall reimburse communications service providers on a calendar quarter basis for carriers' eligible expenses for transport costs between the wireless selective router and the PSAPs related to the delivery of wireless E911 phase I services and the integration of an Internet protocol-enabled next generation 911 network as specified in the Wireless NG911 Implementation and Operations Plan.

e. The program manager shall reimburse wire-line carriers and third-party E911 automatic location information database providers on a quarterly basis for the costs of maintaining and upgrading the E911 components and functionalities beyond the input to the E911 selective router, including the E911 selective router and the automatic location information database.

f. The program manager shall allocate $4,380,000 to the department of public safety in the fiscal year beginning July 1, 2016, and ending June 30, 2017, for payments and other costs due under the financing agreement entered into by the treasurer of state for building the statewide interoperable communications system pursuant to Iowa Code section 29C.23(2) as amended by 2016 Iowa Acts, Senate File 2326.

g. The department may, in a reserve account established within the E911 emergency communications fund, credit each fiscal year an amount of up to 12½ percent of the annual emergency communications service surcharge collected pursuant to rule 605—10.8(34A) and the prepaid wireless E911 surcharge collected pursuant to rule 605—10.17(34A). However, the moneys contained in such reserve account shall not exceed 12½ percent of the total surcharges collected for each fiscal year. Moneys credited to the reserve account shall only be used by the department for the purpose of repairing or replacing equipment in the event of a catastrophic equipment failure, as determined by the director.

h. If moneys remain in the fund after all obligations are fully paid under paragraphs 10.9(3)*"a,""b,""c," "d,""e," "f,"* and *"g,"* an amount of up to $4,400,000 shall, for the fiscal year beginning July 1, 2016, and ending June 30, 2017, be expended and distributed in the following priority order:

(1) The director, in consultation with the program manager and the E911 communications council, may provide grants for nonrecurring costs to the department of public safety or joint E911 service board operating a PSAP agreeing to consolidate. For purposes of this subparagraph, "consolidate" means either the consolidation of all PSAP systems, functions, enhanced 911 service areas, and physical facilities of two or more PSAPs, resulting in responsibility by the consolidated PSAP for all call answering and dispatch functions for the combined enhanced 911 service area, or the consolidation of two or more

PSAPs utilizing shared services technology to combine PSAP systems, including but not limited to 911 call processing equipment, computer-aided dispatch, mapping, radio, and logging recorders. Such a grant to a PSAP shall not exceed one-half of the projected cost of consolidation, or $200,000, whichever is less. The department of public safety or joint E911 service board wishing to apply for such funds shall complete an Intent to Consolidate Application form prior to December 1, 2016. The form can be found on the department's Web site, www.homelandsecurity.iowa.gov. Such applications shall provide a detailed consolidation plan and demonstrate that the proposed project shall be completed prior to June 30, 2017.

(2) The program manager, in consultation with the E911 communications council, shall allocate an amount, not to exceed $100,000 per fiscal year, for development of public awareness and educational programs related to the use of 911 by the public; for educational programs for personnel responsible for the maintenance, operation, and upgrading of local E911 systems; and for the expenses of members of the E911 communications council for travel, monthly meetings, and training, provided, however, that the members have not received reimbursement funds for such expenses from another source.

(3) The program manager shall allocate an equal amount of moneys to each PSAP for the following costs:

1. Costs related to the receipt and disposition of 911 calls, including hardware and software for an Internet protocol-enabled next generation 911 network as specified in the Wireless NG911 Implementation and Operations Plan.

2. Local costs related to access the statewide interoperable communications system pursuant to Iowa Code section 29C.23 as amended by 2016 Iowa Acts, Senate File 2326.

(4) Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

[Filed 11/16/16, effective 1/11/17]
[Published 12/7/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/7/16.

ARC 2834C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272C.3, the Board of Pharmacy hereby rescinds Chapter 30, "Impaired Pharmacy Professionals and Technician Recovery Program," and adopts new Chapter 30, "Iowa Monitoring Program for Pharmacy Professionals," Iowa Administrative Code.

This amendment rescinds current Chapter 30 regarding the Impaired Pharmacy Professional and Technician Recovery Program and adopts new Chapter 30 establishing the Iowa Monitoring Program for Pharmacy Professionals. The program and committee established pursuant to the new chapter are intended to support the evaluation and monitoring of licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, while protecting the health, safety and welfare of the public. The program will provide an alternative to formal disciplinary actions against pharmacists, pharmacist-interns, and pharmacy technicians who recognize their impairment and seek assistance and monitoring under the guidance of the program committee. The rules identify the members of the program committee, the organization of the committee, and the length of appointment terms.

Impaired professionals' eligibility requirements and terms for participation and continued monitoring under the program are established. The rules define actions that constitute noncompliance with the terms of participation in the program and the consequences of noncompliance. The rules identify the circumstances under which program participant records and information may be disclosed to parties other than members of the committee. The rules also authorize the committee to enter into 28E agreements with other health professional licensing boards to share administrative personnel to evaluate, assist, and

monitor eligible program participants and to report noncompliant participants to the appropriate licensing board for appropriate action.

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

Notice of Intended Action was published in the August 3, 2016, Iowa Administrative Bulletin as **ARC 2662C**. The Board received one written comment from the Iowa Pharmacy Association. The Association suggested amending the membership of the committee established pursuant to subrule 30.3(1) to include "one pharmacist-intern from each college of pharmacy in Iowa." The Board elected not to amend the committee membership in this manner. The colleges of pharmacy are represented on the committee as identified in the subrule.

Two changes from the Notice have been made for consistency and clarity. The word "committee" was changed to "program" in the definition of "self-report," and the word "individual" was changed to "applicant or licensee" in subrule 30.4(2).

This amendment was approved during the November 2, 2016, meeting of the Board of Pharmacy.

After analysis and review of this rule making, the Board has determined that the effect of this rule making on jobs cannot be accurately predicted. One of the goals of the Iowa Monitoring Program for Pharmacy Professionals is to encourage pharmacists, pharmacist-interns, and pharmacy technicians who recognize their impairment and who seek assistance and monitoring under the terms of the program to remain in practice within the profession. The continued employment and professional practice afforded these individuals, under the guidance and monitoring provided by this program, should have a positive impact on jobs in Iowa.

This amendment is intended to implement Iowa Code section 272C.3.

This amendment will become effective on January 11, 2017.

The following amendment is adopted.

Rescind 657—Chapter 30 and adopt the following **new** chapter in lieu thereof:

CHAPTER 30
IOWA MONITORING PROGRAM FOR PHARMACY PROFESSIONALS

657—30.1(272C) Iowa monitoring program for pharmacy professionals committee. Pursuant to the authority of Iowa Code section 272C.3(1)*"k,"* the board establishes the committee for the Iowa monitoring program for pharmacy professionals. The purpose of the committee is to provide a program to support the evaluation and monitoring of licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, while protecting the health, safety and welfare of the public.

657—30.2(272C) Definitions. For purposes of these rules, the following definitions shall apply:

"Board" means the Iowa board of pharmacy.

"Committee" means the Iowa monitoring program for pharmacy professionals committee.

"Contract" means the written document executed by an applicant or licensee and the committee after the committee receives a report from an approved treatment provider, which establishes the terms for participation in the program.

"Impairment" means an inability, or significant potential for inability, to practice with reasonable safety and skill as a result of a diagnosed substance use disorder or any diagnosed mental or physical health condition.

"Initial agreement" means the written document establishing the initial terms for participation in the program.

"Licensee" means a pharmacist licensed by the board, a pharmacist-intern registered with the board, or a pharmacy technician registered with the board.

"Participant" means an applicant or licensee who does any of the following: self-reports an impairment to the program, is referred to the program by the board, signs an initial agreement with the committee, or signs a contract with the committee.

"Program" means the Iowa monitoring program for pharmacy professionals.

"Self-report" means that an applicant or licensee provides written notification to the program that the applicant or licensee has been, is, or may be impaired. Information related to impairment or a potential impairment which is provided on a license application or renewal form may be considered a self-report.

657—30.3(272C) Organization of the committee. The board shall appoint the members of the Iowa monitoring program for pharmacy professionals committee.

30.3(1) *Membership.* The membership of the committee includes, but is not limited to:

a. The executive director of the board or the director's designee from board staff;

b. One representative from the Drake University College of Pharmacy and Health Sciences;

c. One representative from the University of Iowa College of Pharmacy;

d. One board of pharmacy licensee who has maintained sobriety for a period of no less than two years following successful completion of a recovery program;

e. One health care professional with expertise in substance use disorders;

f. One health care professional with expertise in mental health; and

g. One public member.

30.3(2) *Officers.* At the last meeting of each calendar year, the committee shall elect a chairperson and a vice chairperson, each of whom will begin serving a one-year term on January 1.

a. The chairperson is responsible for offering guidance and direction to staff between regularly scheduled committee meetings, including guidance and direction concerning program descriptions, interim restrictions on practice, and negotiation and execution of initial agreements and contracts on behalf of the committee. The committee retains authority to review all interim decisions at its discretion.

b. The vice chairperson is responsible for providing guidance and direction to staff between regularly scheduled committee meetings if the chairperson is unavailable or unable to assist in a particular matter.

30.3(3) *Terms.* Committee members, except the executive director or designee, shall be appointed for three-year terms and shall serve for a maximum of three terms. Each term shall expire on December 31 of the third year of the term.

657—30.4(272C) Eligibility.

30.4(1) *Self-report.* An applicant or a licensee shall self-report an impairment or potential impairment directly to the program.

30.4(2) *Board referral.* The board may refer an applicant or licensee to the program if a complaint or investigation reveals an impairment or potential impairment and the board determines that the applicant or licensee is an appropriate candidate for review by the committee. The board may refer a licensee to the program in a public disciplinary order or other public order.

30.4(3) *Review by the committee.* The committee will determine on a case-by-case basis whether an applicant or licensee who self-reports or is referred by the board is an appropriate candidate for participation in the program. Several factors may lead to the committee's determination that an applicant or licensee is ineligible to participate in the program, including but not limited to if the committee finds sufficient evidence that the applicant or licensee:

a. Diverted drugs for distribution to third parties or for personal profit;

b. Adulterated, misbranded, or otherwise tampered with drugs intended for a patient;

c. Provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the committee;

d. Participated in the program, or a similar program offered by another state, without success; or

e. Failed to sign an initial agreement or a contract when offered by the committee.

30.4(4) *Discretion.* Eligibility of a person to participate in the program is at the sole discretion of the committee. No person is entitled to participate in the program.

30.4(5) *Authority and jurisdiction.* Participation in the program does not divest the board of its authority or jurisdiction over the participant. A participant with an impairment or potential impairment

may be eligible to participate in the program while being subject to investigation or discipline by the board for matters other than the alleged impairment.

657—30.5(272C) Terms of participation. A participant shall agree to comply with the program terms of participation established in the initial agreement and the contract. Participants will be responsible for all expenses incurred to comply with the terms imposed by the program. Terms of participation specified in the contract shall include, but not be limited to:

30.5(1) *Duration.* The length of time a participant may participate in the program shall be determined by the committee in accordance with the following:

a. Participation in the program for participants impaired as a result of a substance use disorder is set at a minimum of three years. The committee may offer a contract with a shorter duration to a participant who can demonstrate successful participation in another state's monitoring program, who can document similar experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.

b. Length of participation in the program for participants with impairments resulting from mental or physical conditions will vary depending upon the recommendations provided by health care providers and the determination of the committee following review of all relevant information.

30.5(2) *Requirements.* The committee shall establish terms of participation designed to meet the specific needs of a participant. The committee shall determine the type of recovery, rehabilitation, or maintenance program required to treat the participant's impairment. The contract shall provide a detailed description of the goals of the program, the requirements for successful participation, and the participant's obligations therein. The committee may establish terms of participation specific to a participant's impairment including, but not limited to, the following: treatment, aftercare, worksite monitoring, chemical screening, further evaluations, structured recovery meetings, therapy, and medication management.

30.5(3) *Practice restrictions.* The committee may impose restrictions on the license to practice as a term of the initial agreement or contract until such time as the committee receives a report from an approved evaluator, and the committee determines, based on all relevant information, that the participant is capable of practicing with reasonable skill and safety. As a condition of participation in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the initial agreement or contract. In the event the licensee refuses to agree to or comply with the practice restrictions, the committee shall refer the licensee to the board for appropriate action.

30.5(4) *Noncompliance.* Noncompliance is the failure to adhere to the terms of the initial agreement or contract. Participants shall promptly notify the committee of any instances of noncompliance, including relapse. Any instances of significant noncompliance shall be reported by the committee to the board. The report shall include a description of the noncompliance and the committee's recommendation as to whether the participant should remain in the program.

657—30.6(272C) Confidentiality. Information in the possession of the board or the committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6. Information about participants in the program shall not be disclosed except as provided in this rule.

30.6(1) The committee is authorized, pursuant to Iowa Code section 272C.6(4), to communicate information about a current or former program participant to the applicable regulatory authorities or licensee monitoring programs in the state of Iowa and in any jurisdiction of the United States or foreign nations in which the participant is currently licensed or in which the participant seeks licensure. Program participants must report their participation to the applicable monitoring program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

30.6(2) The committee is authorized to communicate information about a program participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance for the duration of the contract.

30.6(3) The committee is authorized to communicate information about a program participant to the board in the event a participant does not comply with the terms of the contract as set forth in rule

657—30.5(272C). The committee may provide the board with a participant's program file in the event the participant does not comply with the terms of the contract and the committee refers the case to the board for the filing of formal disciplinary charges or other appropriate action. If the board initiates disciplinary action against a licensee for noncompliance with the terms of the contract, the board may include in the public disciplinary documents information about a licensee's participation in the program. The committee is also authorized to communicate information about a participant to the board in the event that the participant is under investigation by the board.

30.6(4) The committee is authorized to communicate information about a current or former program participant to the board if reliable information held by the committee reasonably indicates that a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include in the public disciplinary documents information about a licensee's participation if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

657—30.7(28E) Authority for 28E agreements. The committee may enter into 28E agreements with other health professional licensing boards to evaluate, assist, and monitor impaired licensees from other health professions who self-report and to report to those professional licensing boards regarding the compliance of individual licensees. In the event of noncompliance, the licensee may be referred to the appropriate licensing board for appropriate disciplinary action.

These rules are intended to implement Iowa Code section 272C.3(1)*"k."*

[Filed 11/16/16, effective 1/11/17]
[Published 12/7/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/7/16.

ARC 2845C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science hereby amends Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," and Chapter 32, "Continuing Education for Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

These amendments revise outdated language, revise the definitions, revise examination requirements, establish requirements for applicants taking the examination prior to graduation, revise the requirements for supervision electronically and by telephone, make the date for applicants who graduate from an accredited program and a nonaccredited program consistent, define requirements for a licensee who serves as a supervisor for temporary licensure, require that a licensee who serves as a supervisor complete coursework in counseling supervision, and establish continuing education requirements for persons serving in a supervisory role.

Notice of Intended Action was published in the September 28, 2016, Iowa Administrative Bulletin as **ARC 2738C**. A public hearing was held October 18, 2016, at 8 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, Des Moines, Iowa. No public comment was received. These amendments are identical to those published under Notice of Intended Action.

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

These amendments were adopted by the Board on November 10, 2016.

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

These amendments are intended to implement Iowa Code sections 147.3, 147.10, 147.55, 154D.2, and 154D.7.

These amendments will become effective on January 11, 2017.

The following amendments are adopted.

ITEM 1. Amend rule **645—31.1(154D)**, definition of "Reciprocal license," as follows:

"Reciprocal license" means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is currently licensed in another state which has ~~a mutual agreement with the Iowa board of behavioral science to license persons who have~~ the same or similar qualifications to those required in Iowa.

ITEM 2. Rescind the definition of "CRCC" in rule **645—31.1(154D)**.

ITEM 3. Amend subrule 31.2(1) as follows:

31.2(1) The applicant shall complete a board-approved application. Application forms may be obtained from the board's Web site ~~(http://www.idph.state.ia.us/licensure)~~ (https://www.idph.iowa.gov/licensure) or directly from the board office, or the applicant may complete the application online at https://ibplicense.iowa.gov. All paper applications shall be sent to the Board of Behavioral Science, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 4. Amend subrule 31.2(7) as follows:

31.2(7) The candidate for temporary licensure for the purpose of fulfilling the postgraduate supervised clinical experience requirement must submit the Supervised Clinical Experience: Approval and Attestation form to the board and receive approval of the ~~candidate's~~ candidate's supervisor(s) prior to licensure. The temporary licensee must notify the board immediately in writing of any proposed change in supervisor(s) and obtain approval of any change in supervisor(s). Within 30 days of completion of the supervised clinical experience, the attestation of the completed supervised experience must be submitted to the board office. The temporary licensee shall remain under supervision until a permanent license is issued.

ITEM 5. Amend paragraph **31.3(1)"b"** as follows:

b. For a mental health counselor license shall take and pass the National Counselor Examination of the NBCC~~,~~ or the National Clinical Mental Health Counselor Examination of the NBCC~~, or the Certified Rehabilitation Counselor Examination of the CRCC~~.

ITEM 6. Adopt the following **new** subrule 31.3(6):

31.3(6) An applicant who is requesting approval to take the licensure examination prior to graduation shall:

a. Apply for licensure by creating an account and paying online at https://ibplicense.iowa.gov or by completing and returning a paper application with a check or money order payable to the Board of Behavioral Science.

b. Have a letter on official school letterhead sent directly from the program director to the board indicating that the applicant is in good academic standing; that the applicant will graduate from the program within three months of the date on the letter; and the applicant's anticipated date of graduation.

ITEM 7. Amend subrule 31.4(2) as follows:

31.4(2) *Content-equivalent program.* Applicants must present an official transcript verifying completion of a master's degree of 60 semester hours (or 80 quarter hours or equivalent) or a doctoral degree in ~~a mental health~~ marital and family therapy, behavioral science, or a counseling-related field from a college or university accredited by an agency recognized by the United States Department of Education, which is content-equivalent to a graduate degree in marital and family therapy. Applicants who entered a program of study prior to July 1, 2010, must present with the application an official transcript verifying completion of a master's degree of 45 semester hours or the equivalent. ~~After March 31, 2009, graduates~~ Graduates from non-COAMFTE-accredited marital and family therapy programs shall provide an equivalency evaluation of ~~their~~ the graduates' educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site http://cce-global.org. The professional curriculum

must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation. In order to qualify as a "content-equivalent" degree, a graduate transcript must document:

a. to *c.* No change.

ITEM 8. Amend paragraph **31.5(1)"d"** as follows:

d. Include a minimum of 25 percent of all clinical supervision in person. ~~Up to 75 percent of all supervision may be completed by electronic means with no more than 50 percent completed by telephone. Supervision by electronic means is acceptable if:~~

(1) The first two meetings ~~are~~ shall be face-to-face and in person~~; and~~.

(2) Up to 50 percent of all supervision may be completed by telephone.

(3) Up to 75 percent of all supervision may be completed by electronic means.

~~(2)~~ (4) ~~The~~ Supervision by electronic means is acceptable if the system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.

ITEM 9. Adopt the following **new** paragraphs **31.5(2)"c"** and **"d"**:

c. Effective October 1, 2020, the supervisor shall:

(1) Be an Iowa-licensed marital and family therapist with a minimum of three years of clinical experience following licensure or shall be a supervisor or supervisor candidate approved by the American Association for Marriage and Family Therapy Commission on Supervision; or

(2) Be an Iowa-licensed mental health counselor in Iowa with at least three years of clinical experience following licensure or shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; and

(3) Have completed at least a six-hour continuing education course in counseling supervision or one master's level course in counseling supervision; and

(4) Meet a minimum of four hours per month with the supervisee; and

(5) Provide training that is appropriate to the functions to be performed; and

(6) Ensure that therapeutic work is completed under the professional supervision of a supervisor; and

(7) Not supervise any marital and family therapy or permit the supervisee to engage in any therapy that the supervisor cannot perform competently.

d. Exceptions to paragraph 31.5(2)*"c"* shall be made on an individual basis. Requests for alternative supervisors must be submitted in writing, and the board must approve the supervisor prior to commencement of the supervision.

ITEM 10. Amend subrule 31.6(1) as follows:

31.6(1) *Accredited program.* Applicants must present with the application an official transcript verifying completion of a master's degree of 60 semester hours (or equivalent quarter hours) or a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) from a college or university accredited by an agency recognized by the United States Department of Education. Applicants who entered a program of study prior to July 1, ~~2010~~ 2012, must present with the application an official transcript verifying completion of a ~~master's~~ master's degree of 45 semester hours or the equivalent; or

ITEM 11. Amend paragraph **31.7(1)"d"** as follows:

d. Include a minimum of 25 percent of all clinical supervision in person. ~~Up to 75 percent of all supervision may be completed by electronic means with no more than 50 percent completed by telephone. Supervision by electronic means is acceptable if:~~

(1) The first two meetings ~~are~~ shall be face-to-face and in person~~; and~~.

(2) Up to 50 percent of all supervision may be completed by telephone.

(3) Up to 75 percent of all supervision may be completed by electronic means.

~~(2)~~ (4) ~~The~~ Supervision by electronic means is acceptable if the system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.

ITEM 12. Adopt the following **new** paragraphs **31.7(2)"c"** and **"d"**:

c. Effective October 1, 2020, the supervisor shall:

(1) Be an Iowa-licensed mental health counselor in Iowa with at least three years of clinical experience following licensure or shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; or

(2) Be an Iowa-licensed marital and family therapist with a minimum of three years of clinical experience following licensure or shall be a supervisor or supervisor candidate approved by the American Association for Marriage and Family Therapy Commission on Supervision; and

(3) Have completed at least a six-hour continuing education course in counseling supervision or one master's level course in counseling supervision; and

(4) Meet a minimum of four hours per month with the supervisee; and

(5) Provide training that is appropriate to the functions to be performed; and

(6) Ensure that therapeutic work is completed under the professional supervision of a supervisor; and

(7) Not supervise any mental health counselor or permit the supervisee to engage in any therapy that the supervisor cannot perform competently.

d. Exceptions to paragraph 31.7(2)*"c"* shall be made on an individual basis. Requests for alternative supervisors must be submitted in writing, and the board must approve the supervisor prior to commencement of the supervision.

ITEM 13. Amend paragraph **31.8(1)"d"** as follows:

d. Provides official transcripts sent directly from the school to the board verifying completion of a master's degree of 45 hours or equivalent if the applicant entered a program of study prior to July 1, ~~2010~~ 2012, or verifying completion of a master's degree of 60 hours or equivalent if the applicant entered a program of study on or after July 1, ~~2010~~ 2012, or the appropriate doctoral degree. ~~After March 31, 2009, graduates~~ Graduates from a non-CACREP-accredited mental health counselor program or a non-COAMFTE-accredited marital and family therapy program shall provide an equivalency evaluation of their educational credentials by the Center for Credentialing and Education, Inc. (CCE), Web site http://cce-global.org. The professional curriculum must be equivalent to that stated in these rules. Applicants shall bear the expense of the curriculum evaluation;

ITEM 14. Amend paragraph **31.8(2)"c"** as follows:

c. The applicant possesses a master's degree or higher in mental health counseling or marital and family therapy or an equivalent counseling-related field; and

ITEM 15. Amend subparagraph **32.3(2)"c"(4)** as follows:

(4) Distance learning conferences or courses will be allowed if the following criteria are met:

1. The program is offered through electronic transmission ~~such as the Iowa Communications Network (ICN)~~.

2. and 3. No change.

ITEM 16. Amend subparagraph **32.3(2)"c"(5)** as follows:

(5) Home study courses will be allowed if the following criteria are met:

1. The program is recognized by the National Board for Certified Counselors (NBCC)~~, Commission on Rehabilitation Counselor Certification (CRCC),~~ or American Association of Marriage and Family Therapy (AAMFT) or meets all of the criteria in 645—32.3(272C).

2. No change.

ITEM 17. Amend subparagraph **32.3(2)"c"(7)** as follows:

(7) Computer-assisted instructional courses or programs pertaining to the practice of mental health counseling or marital and family therapy will be allowed if the following criteria are met:

1. The courses and programs are approved by the National Board for Certified Counselors (NBCC)~~, Commission on Rehabilitation Counselor Certification (CRCC),~~ or American Association of Marriage and Family Therapy (AAMFT) or their affiliates or meet all of the criteria in 645—32.3(272C).

2. An official transcript, certificate of completion, or verification that includes the following information is presented after successful completion of the course:

- Date course/program was completed.
- Title of the course/program.
- Number of course/program continuing education hours.
- Official signature or verification of the course/program sponsor.

ITEM 18. Amend subrule 32.3(3) as follows:

32.3(3) *Required specific criteria~~.~~:*

a. Three hours of the 40 continuing education hours shall be in ethics.

b. Effective with the biennial continuing education compliance period that begins October 1, 2022, persons serving in a supervisory role must complete three hours of continuing education in supervision.

[Filed 11/16/16, effective 1/11/17]
[Published 12/7/16]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/7/16.

ARC 2836C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 139A.8 and 135.11(12), the Iowa Department of Public Health hereby amends Chapter 7, "Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools, Licensed Child Care Centers or Institutions of Higher Education," Iowa Administrative Code.

The current administrative rules in Chapter 7 provide for the immunization requirements of persons attending elementary or secondary school and licensed child care centers in Iowa. These amendments implement changes made to Iowa Code section 139A.8 by 2016 Iowa Acts, House File 2460, section 92, which adds a requirement for meningococcal vaccine upon students' entry into the seventh and twelfth grades. Additional amendments include the addition of a definition of a pharmacist, provisions to terminate an enrolled user's access to the Immunization Registry Information System (IRIS) for failure to comply with the release of information and confidentiality requirements, provisions to allow a pharmacist to release immunization and health screening information, and language changes to make the release of immunization and health screening sections consistent. The immunization requirements table is replaced with a new table that adds a vaccination requirement for meningococcal vaccine for students in the seventh and twelfth grades. Additional changes were made to the table to clarify immunization requirements of persons attending elementary or secondary schools and licensed child care centers based upon Advisory Committee on Immunization Practices (ACIP) recommendations and questions for health care providers and schools.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2732C** on September 28, 2016. Two public comments, supportive of the proposed amendments, were received. These amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on November 9, 2016.

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

These amendments are intended to implement Iowa Code chapter 139A and Iowa Code section 139A.8 as amended by 2016 Iowa Acts, House File 2460, section 92.

These amendments will become effective on January 11, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition of "Pharmacist" in rule **641—7.1(139A)**:

"Pharmacist" means a person licensed to practice pharmacy pursuant to Iowa Code chapter 155A.

ITEM 2. Rescind subrule 7.4(1) and adopt the following **new** subrule in lieu thereof:

7.4(1) Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements below:

IMMUNIZATION REQUIREMENTS

Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements listed below. If, at any time, the age of the child is between the listed ages, the child must have received the number of doses in the "Total Doses Required" column.

Institution	Age	Vaccine	Total Doses Required
Licensed Child Care Center	Less than 4 months of age	This is not a recommended administration schedule, but contains the minimum requirements for participation in licensed child care. **Routine vaccination begins at 2 months of age.**	
	4 months through 5 months of age	Diphtheria/Tetanus/Pertussis	1 dose
		Polio	1 dose
		haemophilus influenzae type B	1 dose
		Pneumococcal	1 dose
	6 months through 11 months of age	Diphtheria/Tetanus/Pertussis	2 doses
		Polio	2 doses
		haemophilus influenzae type B	2 doses
		Pneumococcal	2 doses
	12 months through 18 months of age	Diphtheria/Tetanus/Pertussis	3 doses
		Polio	2 doses
		haemophilus influenzae type B	2 doses if the applicant received 1 dose before 15 months of age; or 1 dose if received when the applicant is 15 months of age or older.
		Pneumococcal	3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.
	19 months through 23 months of age	Diphtheria/Tetanus/Pertussis	4 doses
		Polio	3 doses
		haemophilus influenzae type B	3 doses, with the final dose in the series received on or after 12 months of age; or 2 doses if only 1 dose received before 15 months of age; or 1 dose if received when the applicant is 15 months of age or older.
		Pneumococcal	4 doses if the applicant received 3 doses before 12 months of age; or 3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.
		Measles/Rubella[1]	1 dose of measles/rubella-containing vaccine received on or after 12 months of age; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Varicella	1 dose received on or after 12 months of age, unless the applicant has a reliable history of natural disease.
	24 months of age and older	Diphtheria/Tetanus/Pertussis	4 doses
		Polio	3 doses
		haemophilus influenzae type B	3 doses, with the final dose in the series received on or after 12 months of age; or 2 doses if only 1 dose received before 15 months of age; or 1 dose if received when the applicant is 15 months of age or older. **Hib vaccine is not required for persons 60 months of age or older.**
		Pneumococcal	4 doses if the applicant received 3 doses before 12 months of age; or 3 doses if the applicant received 2 doses before 24 months of age; or 2 doses if the applicant received 1 dose before 24 months of age; or 1 dose if the applicant did not receive any doses before 24 months of age. **Pneumococcal vaccine is not required for persons 60 months of age or older.**
		Measles/Rubella[1]	1 dose of measles/rubella-containing vaccine received on or after 12 months of age; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Varicella	1 dose received on or after 12 months of age, unless the applicant has had a reliable history of natural disease.
Elementary or Secondary School (K-12)	4 years of age and older	Diphtheria/Tetanus/ Pertussis[4, 5]	3 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born on or before September 15, 2000[2]; or 4 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born after September 15, 2000, but on or before September 15, 2003[2]; or 5 doses with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born after September 15, 2003[2, 3]; and 1 time dose of tetanus/diphtheria/acellular pertussis-containing vaccine (Tdap) for the applicant in grades 7 and above, if born after September 15, 2000; regardless of the interval since the last tetanus/diphtheria-containing vaccine.
		Polio	3 doses, with at least 1 dose received on or after 4 years of age if the applicant was born on or before September 15, 2003[7]; or 4 doses, with at least 1 dose received on or after 4 years of age if the applicant was born after September 15, 2003.[6] **Polio vaccine is not required for persons 18 years of age or older.**
		Measles/Rubella[1]	2 doses of measles/rubella-containing vaccine; the first dose shall have been received on or after 12 months of age; the second dose shall have been received no less than 28 days after the first dose; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Hepatitis B	3 doses
		Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, but born on or before September 15, 2003, unless the applicant has had a reliable history of natural disease; or 2 doses received on or after 12 months of age if the applicant was born after September 15, 2003, unless the applicant has a reliable history of natural disease.[8]
		Meningococcal (A, C, W, Y)	1 dose of meningococcal vaccine received on or after 10 years of age for the applicant in grades 7 and above, if born after September 15, 2004; and 2 doses of meningococcal vaccines for the applicant in grade 12, if born after September 15, 1999; or 1 dose if received when the applicant is 16 years of age or older.

[1] Mumps vaccine may be included in measles/rubella-containing vaccine.

[2] DTaP is not indicated for persons 7 years of age or older, therefore, a tetanus and diphtheria-containing vaccine should be used.

[3] The 5th dose of DTaP is not necessary if the 4th dose was administered on or after 4 years of age.

[4] Applicants 7 through 18 years of age who received their 1st dose of diphtheria/tetanus/pertussis-containing vaccine before 12 months of age should receive a total of 4 doses, with one of those doses administered on or after 4 years of age.

[5] Applicants 7 through 18 years of age who received their 1st dose of diphtheria/tetanus/pertussis-containing vaccine at 12 months of age or older should receive a total of 3 doses, with one of those doses administered on or after 4 years of age.

[6] If an applicant received an all-inactivated poliovirus (IPV) or all-oral poliovirus (OPV) series, a 4th dose is not necessary if the 3rd dose was administered on or after 4 years of age.

[7] If both OPV and IPV were administered as part of the series, a total of 4 doses are required.

[8] Administer 2 doses of varicella vaccine, at least 3 months apart, to applicants less than 13 years of age. Do not repeat the 2nd dose if administered 28 days or greater from the 1st dose. Administer 2 doses of varicella vaccine to applicants 13 years of age or older at least 4 weeks apart. The minimum interval between the 1st and 2nd dose of varicella for an applicant 13 years of age or older is 28 days.

ITEM 3. Adopt the following **new** subrule 7.11(5):

7.11(5) *Suspend or terminate access.* The department may suspend or terminate an enrolled user's access consistent with department policy if the user violates this chapter, the IRIS Authorized Site Agreement-Organization, the IRIS Authorized Individual User Agreement, or the IRIS Security and Confidentiality Policy. The department shall approve, suspend, terminate, and reinstate user access in accordance with this chapter and department policy.

ITEM 4. Amend subrules 7.12(1) to 7.12(5) as follows:

7.12(1) *Between a physician, physician assistant, nurse, certified medical assistant, pharmacist, or screening provider and the elementary, secondary, or postsecondary school or licensed child care center that the student attends.* A physician, a physician assistant, a nurse, a certified medical assistant, a pharmacist, or a screening provider shall disclose a student's or patient's immunization or health screening information, including the name, date of birth, and demographic information~~, the month, day, year and vaccine(s) administered,~~; vaccine(s) administered and the month, day and year of administration; health screening results; and clinic source and location, to an elementary, secondary, or postsecondary school or a licensed child care center upon written or verbal request from the elementary, secondary, or postsecondary school or licensed child care center. Written or verbal permission from a student or parent is not required to release this information to an elementary, secondary, or postsecondary school or licensed child care center that the student attends.

7.12(2) *Among physicians, physician assistants, nurses, certified medical assistants, pharmacists or screening providers.* Immunization or health screening information, including the student's or patient's ~~last name, first~~ name, date of birth, and demographic information~~, the month, day, year and vaccine(s) administered,~~; vaccine(s) administered and the month, day and year of administration; health screening results; and clinic source and location, shall be provided by a physician, physician assistant, nurse, certified medical assistant, pharmacist, or screening provider to another health care provider without written or verbal permission from the student, parent, guardian or patient.

7.12(3) *Among an elementary school, secondary school, postsecondary school, and licensed child care center that the student attends.* An elementary school, secondary school, postsecondary school, and licensed child care center shall disclose a student's immunization or health screening information, including the student's ~~last name, first~~ name, date of birth, and demographic information~~, the month, day, and year of vaccine(s) administered,~~; vaccine(s) administered and the month, day and year of administration; health screening results; and clinic source and location, to another elementary school, secondary school, postsecondary school, and licensed child care center that the student attends. Written or verbal permission from a student, or if the student is a minor, the student's parent or guardian, is not required to release this information to an elementary school, secondary school, postsecondary school, and licensed child care center that the student attends.

7.12(4) *Among the department and a physician, physician assistant, nurse, certified medical assistant, pharmacist, screening provider, elementary school, secondary school, postsecondary school, and licensed child care center.* A student's or patient's immunization or health screening information, including name, date of birth, grade, and demographic information; vaccine(s) administered and the month, day and year of administration; and health screening results, clinic source, and location, all in a format specified by the department, shall be disclosed upon written or verbal request among the department, physicians, physician assistants, nurses, certified medical assistants, pharmacists, screening providers, elementary schools, secondary schools, postsecondary schools, and licensed child care centers. Written or verbal permission from a student, patient, parent, or guardian is not required to release this information.

7.12(5) *Among the department and physicians, physician assistants, nurses, resettlement agencies, federal, state, and local government agencies, and certified medical assistants conducting refugee health*

screenings. Refugee health screenings shall be disclosed only as indicated in this rule. Immunization or health screening information, including the patient's ~~last name, first~~ name, date of birth, and demographic information; the vaccine(s) administered and the month, day, and year of administration; health screening results; and clinic source and location, shall be disclosed upon written or verbal request among the department, physicians, physician assistants, nurses, certified medical assistants, resettlement agencies, federal, state, and local government agencies, or screening providers to another health care provider or the department. Written or verbal permission from the parent, guardian or patient is not required to release this information.

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ARC 2837C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135K.4, the Iowa Department of Public Health hereby amends Chapter 26, "Backflow Prevention Assembly Tester Registration," Iowa Administrative Code.

These amendments update the current division name, update the definition of "third-party certification agency," update the product standards referenced in the definition of "backflow prevention assembly" to reflect the current versions of the standards, remove references to past dates for submission of training courses and third-party certification, provide general language cleanup, add language to clarify the current registration fee structure, add language regarding a returned check fee to align the rules with the other rules of the Division of Acute Disease Prevention, Emergency Response and Environmental Health, and add requirements for test kit calibration and record keeping. These amendments resulted from discussions held with a backflow prevention assembly tester stakeholder group.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2734C** on September 28, 2016. A public hearing was held on October 18, 2016. No public comments were received. One change has been made to the amendments published under Notice of Intended Action. The word "probation" is added seven times in paragraphs 26.8(5)"a" and "b" where "denial, suspension, or revocation" is mentioned. This corrects the mistake of missing the intended insertion of the word in the Notice of Intended Action.

The State Board of Health adopted these amendments on November 9, 2016.

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

These amendments are intended to implement Iowa Code chapter 135K.

These amendments will become effective on January 11, 2017.

The following amendments are adopted.

ITEM 1. Amend rule **641—26.2(135K)**, definitions of "ABPA," "ASSE," "AWWA," "Backflow prevention assembly" and "Third-party certification agency," as follows:

"ABPA" means the American Backflow Prevention Association~~, P.O. Box 3051, Bryan, Texas 77805-3051~~.

"ASSE" means the American Society of Sanitary Engineering~~, 901 Canterbury Road, Suite A, Westlake, Ohio 44145~~.

"AWWA" means the American Water Works Association~~, 6666 West Quincy Avenue, Denver, Colorado 80235~~.

"Backflow prevention assembly," for the purposes of this chapter, means a device or means to prevent backflow into a potable water system for which a method of testing the device in-line has been published by the Foundation of Cross-Connection Control and Hydraulic Research at the University of Southern California.

NOTE: The following assemblies are included under this definition. This is not intended to be an exclusive list. If new devices and test methods are introduced that meet the definition, they are included under the rules.

Backflow Prevention Assembly	Product Standards
Double Check Valve Assembly	ASSE ~~1015-2009~~ 1015-2011, AWWA C510-07
Double Check Detector Assembly	ASSE ~~1048-2009~~ 1048-2011
Pressure Vacuum Breaker	ASSE ~~1020-2004~~ 1020-2011
Reduced Pressure Principle Backflow Preventer	ASSE ~~1013-2009~~ 1013-2011, AWWA 511-07
Reduced Pressure Detector Assembly	ASSE ~~1047-2009~~ 1047-2011
Spill Resistant Pressure Vacuum Breaker	ASSE ~~1056-2001~~ 1056-2013

"Third-party certification agency" means the ABPA, ASSE or another agency approved by the department to certify the knowledge and skills of backflow prevention assembly testers.

ITEM 2. Amend subrules 26.4(1) to 26.4(3) as follows:

26.4(1) *Tester training.*

a. A person or organization that plans to conduct or sponsor a backflow prevention assembly tester training course in Iowa shall apply to the department for approval of the course at least 15 days before the first time the course is held. ~~If a training course was approved before September 15, 2010, the person or organization responsible for the content of the course shall resubmit the information required by 26.4(1)*"c."*~~ The application shall include:

(1) to (9) No change.

(10) A $200 nonrefundable fee. A $15 returned check fee will be charged for each check returned for insufficient funds.

b. No change.

c. ~~For a course approved after September 15, 2010, the~~ The person or organization responsible for the course content shall submit to the department the information required in paragraph 26.4(1)*"a"* within 30 calendar days of the fifth anniversary of the initial approval by the department and within 30 calendar days of the anniversary date of each fifth year thereafter. ~~For training courses approved prior to September 15, 2010, the person or organization responsible for the content of the course shall submit to the department the information required in paragraph 26.4(1)*"a"* within 30 calendar days of October 1, 2011, and within 30 calendar days of October 1 of each fifth year thereafter.~~

d. The course sponsor shall notify the department at least 15 days before an approved training course is started. The notification shall include:

(1) to (3) No change.

(4) A $50 nonrefundable fee. A $15 returned check fee will be charged for each check returned for insufficient funds.

e. A training course shall be at least 32 instructional hours. ~~and~~

(1) The training course shall cover at least the following subjects:

~~(1)~~ 1. Backflow definitions, causes and examples.

~~(2)~~ 2. Description of backflow prevention assemblies, their proper application and installation, and their operational characteristics.

~~(3)~~ 3. Description and operational characteristics of test equipment.

~~(4)~~ 4. Techniques for testing backflow prevention assemblies.

~~(5)~~ 5. Troubleshooting of backflow prevention assemblies.

~~(6)~~ 6. Record keeping and the responsibilities of regulatory agencies and the registered tester.

(2) The course shall conclude with a written examination of at least 100 questions and a practical examination of testing techniques on all types of testable backflow prevention assemblies. The time for testing shall be in addition to the required instructional hours. To have successfully completed the

course, the student must achieve a passing mark of at least 70 percent on the written examination and demonstrate proficiency in testing and troubleshooting procedures.

(3) ~~ABPA or other approved~~ Approved third-party certification agency testing may be substituted for the course test.

f. and *g.* No change.

26.4(2) *Continuing education training.*

a. A person or organization that plans to conduct or sponsor a continuing education course for registered testers in Iowa shall apply to the department for approval of the course at least 15 days before the course is scheduled to begin. The application shall include:

(1) to (7) No change.

(8) A $50 nonrefundable fee. A $15 returned check fee will be charged for each check returned for insufficient funds.

b. and *c.* No change.

26.4(3) *Third-party certification agencies.*

a. An agency that wishes to be a third-party certification agency in Iowa shall submit to the department a request for approval in writing on agency letterhead, signed by an authorized representative of the agency. The request shall include at least the following ~~information~~:

(1) to (8) No change.

(9) A nonrefundable fee of $200. A $15 returned check fee will be charged for each check returned for insufficient funds.

b. No change.

c. A third-party certification agency ~~approved before September 15, 2010,~~ shall submit to the department the information required in paragraph 26.4(3)*"a"* ~~on or within 30 calendar days before October 1, 2011, and on or within 30 calendar days before October 1 of each fifth year thereafter. A third-party certification agency approved after September 15, 2010, shall submit to the department the information in paragraph 26.4(3)*"a"* on or~~ within 30 calendar days before the fifth anniversary of the initial approval by the department and on or within 30 calendar days before the anniversary date of every fifth year thereafter.

ITEM 3. Amend subrules 26.5(1) and 26.5(2) as follows:

26.5(1) *Initial registration.*

a. A person who has successfully completed an approved training course may register with the department within the 12 months after the date of course completion. A person who is certified may register with the department. The applicant must submit:

(1) and (2) No change.

(3) A nonrefundable fee in accordance with Table 1. A $15 returned check fee will be charged for each check returned for insufficient funds.

The registration shall expire as shown in Table 1.

Table 1

Initial Registration Fees

Registration Month	Even Year		Odd Year	
	Fee	Registration Expiration	Fee	Registration Expiration
January - February	$66	October 31 + one year	$30	October 31
March - April	$60	October 31 + one year	$24	October 31
May - June	$54	October 31 + one year	$18	October 31
July - August	$48	October 31 + one year	$84	October 31 + two years
September - October	$42	October 31 + one year	$78	October 31 + two years
November - December	$36	October 31	$72	October 31 + one year

b. A person who has completed a course of training in another state may be registered in Iowa. The person shall submit:

(1) and (2) No change.

(3) A nonrefundable fee in accordance with Table 1. A $15 returned check fee will be charged for each check returned for insufficient funds.

The registration shall expire as shown in Table 1.

26.5(2) *Renewal registration.*

a. Except as provided in subrule 26.5(1), each registered tester shall renew the registration between July 1 and October 1 of each odd-numbered year. The registered tester shall submit:

(1) No change.

(2) Documentation that the registered tester has completed at least five hours of ~~training in~~ approved continuing education courses after October 31 of the previous odd-numbered year or documentation that the registered tester is certified. Registered testers with an initial registration date of January 1 or later in an odd-numbered year are not required to obtain continuing education prior to renewal in that year.

(3) A nonrefundable fee of $72. A $15 returned check fee will be charged for each check returned for insufficient funds.

(4) No change.

b. No change.

ITEM 4. Amend rule 641—26.6(135K) as follows:

641—26.6(135K) Standards of conduct.

26.6(1) and **26.6(2)** No change.

26.6(3) A registered tester shall use a differential pressure gauge to field test a backflow prevention assembly. Methods of testing that use other types of equipment, such as but not limited to dual pressure gauges, water columns, or single pressure gauges, shall not be acceptable.

a. The accuracy of a differential pressure gauge used to test backflow prevention assemblies shall be verified no less frequently than every 13 months. The accuracy verification results shall be traceable to the National Institute of Standards and Technology (NIST). Any differential pressure gauge with an error of more than plus or minus 0.2 psi shall not be used to test a backflow prevention assembly.

b. For every test report record retained in accordance with the requirements of subrule 26.6(2), the most recent accuracy verification, for the differential pressure gauge used, performed prior to that test report date shall be retained.

c. The accuracy verification records shall be made available to an authorized representative of the department or by an authorized representative of the administrative authority of the jurisdiction in which the assembly is located.

ITEM 5. Amend rule 641—26.7(135K) as follows:

641—26.7(135K) Penalty. ~~A~~ In addition to other sanctions provided in this chapter, a person who violates a provision of this chapter shall be guilty of a simple misdemeanor pursuant to the authority of Iowa Code section 135K.5.

ITEM 6. Amend rule 641—26.8(135K) as follows:

641—26.8(135K) Denial, probation, suspension or revocation. This rule pertains to denial, probation, suspension or revocation of registration; denial or revocation of training course approval; and denial or revocation of approval as a third-party certification agency.

26.8(1) The department may deny an application for registration or renewal, may place a registration on probation, may suspend or revoke a registration, or may order a registered tester not to test or repair backflow prevention assemblies when the department finds that the applicant or registered tester has committed any of the following acts:

a. to *j.* No change.

k. Engaging in any conduct that subverts or attempts to subvert a department investigation.

l. Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

m. Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

n. Knowingly aiding, assisting or advising a person to unlawfully practice as a backflow prevention assembly tester.

o. Representing oneself as a registered backflow prevention assembly tester when one's registration has been suspended or revoked or when one's registration is lapsed or has been placed on inactive status.

p. Permitting the use of a registration by a nonregistered person for any purpose.

q. Acceptance of any fee by fraud or misrepresentation.

r. Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department which was sent by registered or certified mail.

26.8(2) The department may deny or revoke the approval for a training course or a continuing education course when it finds:

a. to *g.* No change.

h. Failure to comply with these rules.

26.8(3) The department may deny or revoke the approval for a third-party certification agency when it finds:

a. to *c.* No change.

d. Failure to comply with these rules.

26.8(4) Complaints. Complaints regarding a registered tester, an approved training course or a third-party certification agency shall be made in writing and sent to the department at Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

a. to *d.* No change.

26.8(5) Appeals.

a. Notice of denial, probation, suspension or revocation of registration; denial, probation or revocation of course approval; or denial, probation or revocation of third-party certification agency approval shall be sent to the affected individual or organization by restricted certified mail, return receipt requested, or by personal service. The affected individual or organization shall have a right to appeal the denial, probation, suspension or revocation.

b. An appeal of a denial, probation, suspension or revocation shall be submitted by certified mail, return receipt requested, within 30 days of receipt of the department's notice. The appeal shall be sent to Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the notice of denial, probation, suspension or revocation shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, probation, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, probation, suspension or revocation. If no appeal is submitted within 30 days, the denial, probation, suspension or revocation shall become the department's final agency action.

c. to *i.* No change.

j. Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the department at Iowa Department of Public Health, Division of Acute Disease Prevention, Emergency Response and Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075.

k. No change.

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ARC 2838C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 136B.4, the Iowa Department of Public Health hereby amends Chapter 43, "Minimum Requirements for Radon Testing and Analysis," Iowa Administrative Code.

During the 2015 Legislative Session, Iowa Code section 136B.2(1)"b" was amended to allow certified radon measurement specialists to release radon measurement results to prospective home buyers who contracted to have the testing performed during the negotiation of a home sale. Prior to this change to Iowa Code section 136B.2(1)"b," measurement specialists were prohibited from releasing test results to anyone except the building owner without a waiver from the owner. These amendments align Chapter 43 with the language found in Iowa Code chapter 136B. There are also several other areas within Chapter 43 that need clarification, and the changes are outlined as follows:

- In subrule 43.3(1), language is added to cover possible additional means for offering radon testing kits other than by mail or directly.
- Subrules 43.3(3) and 43.3(4) are rescinded as they are duplicative statements, and the requirements for certification in those subrules are also included in the requirements for application in subrule 43.4(1).
- In subrule 43.4(1), language is added to more clearly allow for electronic submission of information.
- Subparagraph 43.4(1)"a"(7) is revised to remove specific references to outdated media.
- In paragraph 43.4(6)"e," "revoked immediately" is stricken, and "shall become inactive" is added regarding certifications that are not renewed within 30 days of expiration, and reinstatement language has also been added.
- Subrule 43.5(1) is stricken to remove duplicative statements and the remaining items are moved to subrule 43.5(2), which allows for all types of enforcement, not limited to revocation and suspension.
- In subrule 43.5(2), language is added so that probation as an enforcement action is a possibility.
- In paragraph 43.5(2)"c," the word "licensing" is stricken, and the word "certification" is added to be consistent with the rest of the chapter.
- Rule 641—43.8(136B) is amended to clarify exemptions and make them consistent with rule 641—43.1(136B) by adding a statement referencing persons performing testing for no compensation; is amended by striking the statement exempting persons performing scientific research; and is amended by adding a reference to local officials administering local programs.
- In rule 641—43.10(136B), language is added stating that penalties set forth in this rule are "in addition to other sanctions provided in this chapter."

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2726C** on September 28, 2016. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on November 9, 2016.

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

These amendments are intended to implement Iowa Code chapter 136B.

These amendments will become effective on January 11, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 43.3(1) as follows:

43.3(1) Except as provided in this chapter, no person may test for the presence of radon or radon progeny in the state of Iowa unless the person has been certified by the department of public health. This

requirement also applies to persons whose place of business is located in Iowa, or in a state other than Iowa, and who offer radon testing to residents of Iowa either directly, ~~or~~ through the mail, or by other means.

ITEM 2. Rescind subrules **43.3(3)** and **43.3(4)**.

ITEM 3. Renumber subrule **43.3(5)** as **43.3(3)**.

ITEM 4. Amend subrule 43.4(1), introductory paragraph, as follows:

43.4(1) An application for certification or renewal of certification as a radon measurement specialist or a radon measurement laboratory shall be filed on a form or other electronic document as prescribed by the department and shall contain complete and accurate information.

ITEM 5. Amend subparagraph **43.4(1)"a"(7)** as follows:

(7) A signed statement that the individual will submit radon test results every 30 days to the Iowa radon program within the department. The radon test results ~~may~~ shall be submitted ~~on a form, a diskette, or through E-mail~~ in a manner that is approved by the department.

ITEM 6. Amend paragraph **43.4(6)"e"** as follows:

e. If payment is not received and the certification has been expired 30 days, certification ~~will be revoked immediately~~ shall become inactive. In order to ~~regain certification~~ reinstate certification after 30 days past the expiration date, the person must reapply and pay the appropriate fees as outlined in this subrule.

ITEM 7. Amend rule 641—43.5(136B) as follows:

641—43.5(136B) ~~Revocation of certification~~ Enforcement actions.

43.5(1) ~~The department will consider revoking or suspending any certification, in whole or in part, for:~~

~~*a.* Any misstatement in the application or in any supplementary statement;~~

~~*b.* Any condition revealed by the application, supplementary statement, report, record, or other evidence, which would warrant the department's refusal to grant a certification on an original application;~~

~~*c.* Any violation or failure to observe any of the applicable terms or provisions of certification, the public health law, or any other applicable rule, regulation, code or order;~~

~~*d.* Being discontinued or removed from the NEHA or NRSB Radon/Radon Progeny Measurement Proficiency Program;~~

~~*e.* Not fully cooperating with the department or its agents when field evaluations are being conducted;~~

~~*f.* Not attending a scheduled meeting or inspection set up by the department or its agents, when the certified person was previously notified and agreed to the time and location of the inspection;~~

~~*g.* Not submitting radon test data as required in 641—43.6(136B).~~

43.5(2) The department may deny, suspend, revoke, modify the certification of a person, place on probation, impose a civil penalty, or refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code chapter 136B, or any combination thereof, when it finds that a certified person or a person who is not certified has committed any of the following ~~acts~~:

a. and *b.* No change.

c. Falsifying approval records, qualifications, or other information or documentation related to ~~licensing~~ certification approval;

d. to *o.* No change.

p. Failing to comply with a subpoena issued by the department or failing to cooperate with a department investigation; ~~or~~

q. Failing to pay costs assessed in any disciplinary action~~.~~;

r. Any condition revealed by the application, supplementary statement, report, record, or other evidence, which would warrant the department's refusal to grant a certification on an original application;

s. Being discontinued or removed from the NEHA or NRSB Radon/Radon Progeny Measurement Proficiency Program; or

t. Failing to submit radon test data as required in 641—43.6(136B).

ITEM 8. Amend paragraph **43.6(4)"c"** as follows:

c. Not disclose to any other person, except to the department, ~~the address or owner of a nonpublic building that was tested for radon gas or radon progeny, unless the owner of the building waives this right of confidentiality in writing~~ the results of a test or the address or the name of the owner of a nonpublic building that the person tested for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality. However, a person certified or credentialed pursuant to Iowa Code section 136B.1 may disclose the results of a test performed by the person for the presence of radon and radon progeny to a potential buyer of a nonpublic building when an offer to purchase has been presented by the buyer and if the potential buyer paid for the testing. Any test results disclosed shall be results of a test performed within the five years prior to the date of the disclosure.

ITEM 9. Amend rule 641—43.8(136B) as follows:

641—43.8(136B) Exemptions. Certification requirements shall not apply to:

1. Those persons who test for radon/radon decay products in buildings that they own or who perform radon tests for no compensation.

~~2. Those persons testing for radon/radon decay products as part of scientific research approved by the department.~~

~~3.~~ 2. State officials who are conducting radon testing as part of the state's radon testing program or local officials who are acting on behalf of the state or administering a local program, and approved by the department.

~~4.~~ 3. Officials who are conducting radon testing as part of government programs in the United States or contractors working for the United States government.

ITEM 10. Amend rule 641—43.10(136B) as follows:

641—43.10(136B) Penalties. It is unlawful for an individual to function as a radon measurement specialist or radon measurement laboratory in violation of the provisions of the Iowa radon testing Act or of any rule adopted pursuant to the Act. ~~Persons~~ In addition to other sanctions provided in this chapter, persons convicted of violating the provisions of the Act or the rules adopted pursuant to the Act shall be guilty of a serious misdemeanor (Iowa Code section 136B.5).

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ARC 2839C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11(12), the Department of Public Health hereby amends Chapter 73, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

These amendments to the rules in Chapter 73 make the chapter consistent with the Iowa WIC Policy and Procedure Manual and WIC USDA federal regulations. WIC participants now receive food benefits via an EBT (electronic benefits transfer) eWIC card instead of paper checks. Updates are made throughout Chapter 73 to reflect this change. Several undefined terms used throughout Chapter 73 are defined herein. Updates are made to the rule pertaining to food packages to ensure that the rule is consistent with how WIC foods are approved and which foods are approved. The rules pertaining to appeals and fair hearings are revised so that provisions for local agencies, participants, and vendors are organized into three separate rules instead of being grouped into one rule for local agencies and vendors

and one rule for participants. A rule about confidentiality is added. These amendments help to ensure that WIC rules and regulations are followed, thereby improving the success of the program.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2735C** on September 28, 2016. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on November 9, 2016.

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

These amendments are intended to implement Iowa Code section 135.11(12).

These amendments will become effective January 11, 2017.

The following amendments are adopted.

Amend **641—Chapter 73** as follows:

CHAPTER 73
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS, AND CHILDREN (WIC)

641—73.1(135) Program explanation. The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is a federal program operated pursuant to agreement with the states. The purpose of the program is to provide supplemental foods and nutrition education to eligible pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate incomes. The WIC program is administered on the federal level by the U.S. Department of Agriculture, Food and Nutrition Service (FNS). The Iowa department of public health serves as the administering agency for the state of Iowa. The Iowa department of public health enters into contracts with selected local agencies on an annual basis for the provision of WIC services to eligible participants.

641—73.2(135) Adoption by reference. Federal regulations ~~found at~~ in 7 CFR Part 246 found at http://www.fns.usda.gov/sites/default/files/wic/WICRegulations-7CFR246.pdf (effective as of February 13, 1985, as amended through ~~September 27, 2006~~ January 1, 2016, and any additional amendments), WIC EBT operating rules found at http://www.fns.usda.gov/sites/default/files/wic/WIC-EBT-Operating-Rules-September-2014.pdf (effective as of November 2009, as amended through September 2014, and any additional amendments), the WIC EBT technical implementation guide found at http://www.fns.usda.gov/sites/default/files/WICEBT-TechnicalImplementationGuide.pdf (as amended through September 30, 2012, and any additional amendments), FNS Handbook 901 found at http://www.fns.usda.gov/sites/default/files/2015-08-26-FNS_Handbook%20901-v1-8-1.pdf (as amended through May 28, 2015, and any additional amendments), and FNS Instruction 113-1 found at http://www.fns.usda.gov/sites/default/files/113-1.pdf (effective as of November 8, 2005, and any additional amendments) shall be the authority for rules governing the Iowa WIC program and are incorporated by reference herein. ~~The WIC state plan provides policy and procedural guidance in the implementation of these regulations to contract agencies administering WIC programs. The WIC state plan as approved by the United States Department of Agriculture is incorporated herein by reference.~~ The Iowa WIC Policy and Procedure Manual, which provides procedural guidance in the implementation of these regulations to contract agencies administering the WIC programs and which contains policies and procedures as approved by the United States Department of Agriculture, is incorporated herein by reference.

641—73.3(135) Availability of rules and policy and procedure manual. Copies of the federal rules and the Iowa WIC ~~state plan~~ Policy and Procedure Manual adopted by reference in 641—73.2(135) are available from: Chief, Bureau of Nutrition and Health Promotion, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075~~, (515)281-4919~~; (515) 281-7095 or 1-800-532-1579.

~~**641—73.4(135) Certain rules exempted from public participation.** The Iowa department of public health finds that certain rules should be exempted from notice and public participation as being in a very narrowly tailored category of rules for which notice and public participation are unnecessary as provided in Iowa Code section 17A.4(2). Such rules shall be those that are mandated by federal law and regulation governing the Iowa WIC program where the department has no option but to adopt such rules as specified and where federal funding for the WIC program is contingent upon the adoption of the rules.~~

~~641—73.5~~ 641—73.4(135) Definitions.

"Above-50-percent vendor" means a vendor that derives more than 50 percent of the vendor's annual food sales revenue from WIC food instruments, and a new vendor applicant expected to meet this criterion under guidelines approved by FNS.

"Applicant" means a ~~person applying for the WIC program, but not yet a participant of the WIC program~~ pregnant woman, breastfeeding woman, postpartum woman, an infant or a child who is applying to receive WIC benefits and the breastfed infant(s) of an applicant breastfeeding woman. "Applicant" includes an individual who is currently participating in the program and who is reapplying because the individual's certification period is about to expire.

"Authorized supplemental food" means supplemental food authorized by the state or local agency for issuance to a participant.

"Breastfeeding" means the practice of feeding a mother's breast milk to her infant(s) on the average of at least once a day.

"Breastfeeding ~~women~~ woman" means ~~women~~ a woman up to one year postpartum who ~~are~~ is breastfeeding ~~their infants~~ her infant(s).

"Cash-value benefit" means a fixed-dollar amount food instrument which is used by a participant to obtain authorized fruits and vegetables.

"Categorical eligibility" means a person who meets the definition of a pregnant woman, breastfeeding woman, postpartum woman, or infant or child.

"Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for the program.

"Chief state health officer" or *"director"* means the director of the Iowa department of public health.

"~~Children~~ Child" means ~~persons~~ a person who ~~have~~ has had ~~their~~ his or her first birthday but ~~have~~ has not yet attained ~~their~~ his or her fifth birthday.

"Clinic" means a facility where applicants are certified.

"Competent professional authority" or *"CPA"* means an individual on the staff of the contract agency who, using standardized WIC screening tools and eligibility criteria provided by the department, determines whether an applicant for WIC services is eligible to receive those services. A CPA shall be a member of one of the following categories:

1. A dietitian licensed by the Iowa board of ~~dietetic examiners~~ dietetics;
2. A nutrition educator as defined in the Iowa WIC Policy and Procedure Manual;
3. A physician, registered nurse or licensed physician assistant.

"Compliance buy" means a covert, on-site investigation in which a representative of the WIC program poses as a participant, parent or caretaker of an infant or child participant, or proxy, transacts one or more food instruments or cash-value benefits, and does not reveal during the visit that he or she is a program representative.

"Contract agency" means a private, nonprofit or public agency that has a contract with the department to provide WIC services and receives funds from the department for that purpose.

"Department" means the Iowa department of public health.

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

"Disqualification" means the act of ending the WIC program participation of a participant, authorized food vendor, or authorized state or local agency, whether as a punitive sanction or for administrative reasons.

"Division director" means the director of the division of health promotion and chronic disease prevention, Iowa department of public health.

"ECR" means electronic cash register.

"eWIC" means functions related to the electronic benefits transfer (EBT) card.

"Family" means a group of related or nonrelated individuals who are living together as one economic unit, except that residents of a homeless facility or an institution shall not all be considered as members of a single family.

"Fiscal year" means the period of 12 calendar months beginning October 1 of any calendar year and ending September 30 of the following calendar year.

"FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

"Food instrument" means a voucher, check, coupon, electronic benefits transfer (~~EBT~~ EBT-eWIC) card or any other document used to obtain supplemental foods.

~~*"HAWK-I"* means healthy and well kids in Iowa and is the health insurance program in Iowa, as authorized in Title XXI of the Social Security Act.~~

"Health professional" means an individual who is licensed to provide health care or social services within the individual's scope of practice.

"Health services" means ongoing, routine pediatric and obstetric care (such as infant and child care and prenatal and postpartum examinations) or referral for treatment.

"Hearing officer" means the contract agency director, health professional, community leader or impartial citizen who is designated to hear the appeal of a participant, and is not to be confused with the statutory definition of a hearing officer, which is an administrative law judge.

"Homeless facility" means the following types of facilities which provide meal service: a supervised publicly or privately operated shelter (including a welfare hotel or congregate shelter) designed to provide temporary living accommodations; a facility that provides a temporary residence for individuals intended to be institutionalized; or a public or private place not designed for, or normally used as, a regular sleeping accommodation for human beings.

"Homeless participant" means a woman, infant or child:

1. Who lacks a fixed and regular nighttime residence; or

2. Whose primary nighttime residence is:

- A supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodations;
- An institution that provides a temporary residence for individuals intended to be institutionalized;
- A temporary accommodation of not more than 365 days in the residence of another individual; or
- A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

"Infant formula" means a food that meets the definition of an infant formula in Section 201(z) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(z)) and that meets the requirements for an infant formula under Section 412 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350a) and the regulations at 21 CFR Parts 106 and 107.

"~~Infants~~ Infant" means ~~persons~~ a person under one year of age.

"Iowa WIC Policy and Procedure Manual" means all of the state WIC policies and procedures that describe the manner in which the department implements and operates all aspects of program administration within its jurisdiction in accordance with 7 CFR Part 246.

~~*"Nutritional risk"* means: (a) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements; (b) other documented nutritionally related medical conditions; (c) dietary deficiencies that impair or endanger health; or (d) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions.~~

"Nutritional risk" means:

1. Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements;

2. Other documented nutritionally related medical conditions;

3. Dietary deficiencies that impair or endanger health;

4. Conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or

5. Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and migrancy.

"Nutrition education" means an individual or group education ~~sessions~~ session and the provision of information and educational materials designed to improve health status, achieve positive change in dietary and physical activity habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

"~~Participants~~ Participant" means a pregnant ~~women~~ woman, breastfeeding ~~women~~ woman, postpartum ~~women~~ woman, ~~infants and children~~ infant or child who ~~are~~ is receiving supplemental foods under the program, and the breastfed ~~infants~~ infant(s) of a participant breastfeeding ~~women~~ woman.

"Peer group" means a system of grouping WIC vendors according to structure; type; number of cash registers; square footage; and sales. Peer groups are used to establish statistical norms that an individual ~~store~~ vendor may be compared against and provide the numeric baselines for the process of determining what may be fraudulent behavior.

"PIN" means personal identification number.

"Postpartum ~~women~~ woman" means ~~women~~ a woman up to six months postpregnancy who ~~are~~ is not breastfeeding.

"Pregnant ~~women~~ woman" means ~~women~~ a woman determined to have one or more embryos or fetuses in utero.

~~*"Program"* means the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966.~~

"Rebate" means the amount of money refunded under cost containment procedures to the department from the manufacturer of the particular food product as the result of the purchase of the supplemental food with a voucher or other purchase instrument by a participant in the department's WIC program. Such rebates shall be payments made subsequent to the exchange of a food instrument for food.

"Routine monitoring" means overt, on-site monitoring during which WIC program representatives identify themselves to vendor personnel.

"SNAP" or *"Supplemental Nutrition Assistance Program,"* formerly known as the Food Stamp Program, means the program authorized by the Food and Nutrition Act of 2008 (7 U.S.C. 2011, et seq.), in which eligible households receive benefits that can be used to purchase food items from authorized retail vendors and farmers' markets.

"USDA" means the United States Department of Agriculture.

"Vendor" means a retail outlet that provides supplemental food to WIC program participants.

"Vendor authorization" means the process by which the department assesses, selects, and enters into agreements with vendors that apply or subsequently reapply to be authorized as vendors.

"Vendor overcharge" means intentionally charging the department more for authorized supplemental foods than is permitted under the vendor agreement. It is not a vendor overcharge when a vendor submits a food instrument for redemption and the department makes a price adjustment to the food instrument.

"Vendor violation" means any intentional or unintentional action of a vendor's current owners, officers, managers, agents, or employees (with or without the knowledge of management) that violates the vendor agreement or federal or state statutes, regulations, policies, or procedures governing the WIC program.

"WIC program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Child Nutrition Act of 1966.

"WIC Vendor Instructions and Agreement Booklet" means the grocery vendor application, grocery vendor application guidance, special purpose vendor application, special purpose vendor application guidance, and vendor agreement.

~~641—73.6~~ 641—73.5(135) Staffing of contract agencies.

~~**73.6(1)** Rescinded IAB 10/9/96, effective 11/13/96.~~

~~**73.6(2)**~~ **73.5(1)** The competent professional authority (CPA) shall conduct either the diet history or the health history part of the certification process ~~and shall sign the certification form attesting~~ or both histories and shall attest to the applicant's eligibility for services after the certification process is completed.

~~**73.6(3)**~~ **73.5(2)** Contract agencies shall maintain on file documentation of qualifications for any individual employed or under contract as a CPA.

~~**73.6(4)**~~ **73.5(3)** All contract agencies shall employ at least one licensed dietitian to provide services for participants determined to be at high risk. Nutrition educators employed by a contract agency shall be supervised by a licensed dietitian.

~~**73.6(5)** Rescinded IAB 10/9/96, effective 11/13/96.~~

~~**73.6(6)** Contract agencies shall submit the license number of each dietitian hired within 30 days of employment.~~

~~**73.6(7)**~~ **73.5(4)** Proposed staffing patterns within contract agencies shall be subject to approval from the department following review in accord with established statewide WIC staff patterns.

~~**641—73.7**~~ **641—73.6(135) Certification of participants.** The certification process to determine eligibility for WIC services, as defined in 7 CFR 246.7, shall include the following procedures and definitions:

~~**73.7(1)**~~ **73.6(1)** *Application.* Information on identity, address, family incomes, and ~~nutrition~~ nutritional risk must be collected in accordance with the Iowa WIC Policy and Procedure Manual.

~~**73.7(2)**~~ **73.6(2)** *Income.*

a. The income guidelines used shall be the same as the National School Lunch Program guidelines for reduced price school lunches, which are equal to 185 percent of the current federal poverty guidelines. Definitions of income are mandated by federal regulation and are described in the Iowa WIC ~~state plan~~ Policy and Procedure Manual. Revised dollar figures for the 185 percent poverty level are published annually in the Federal Register and become effective for WIC no later than July 1 following their publication. Copies of the income definitions and monetary guidelines are available from the department.

b. Applicants must provide the contract agency written proof of their income as part of each certification process, pursuant to the Iowa WIC Policy and Procedure Manual.

~~**73.7(3)**~~ **73.6(3)** *Time frame for services.*

a. The date of initial visit shall be the day on which an applicant first requests services from a contract agency. A visit to another program office to complete a common application form does not constitute an initial visit.

b. Pregnant women shall be certified for the duration of their pregnancy and for up to six weeks postpartum. Pregnant women precertified with referral data require a full certification within 30 days.

~~*c.* Rescinded IAB 5/30/01, effective 7/4/01.~~

~~*d.*~~ *c.* Priority II infants ~~pre-certified~~ precertified with referral data require a full certification within ~~six weeks~~ 30 days of the infant's birth.

~~**73.7(4)**~~ **73.6(4)** *Medical equipment.*

a. Medical equipment used in conducting WIC clinics shall be subject to approval by the department.

b. Standards for conducting the medical and nutritional assessments on WIC program applicants shall be as described in the Iowa WIC Policy and Procedure Manual.

c. Medical equipment shall be recalibrated in accord with procedures outlined in the Iowa WIC Policy and Procedure Manual.

~~**73.7(5)**~~ **73.6(5)** *Documentation of health and nutrition information.* Documentation of health and nutrition information in individual participant records shall be as described in the Iowa WIC Policy and Procedure Manual.

~~**73.7(6)**~~ **73.6(6)** *Documentation of nonmedical information.* Documentation of nonmedical information in individual participant and collective program records shall be as described in the Iowa WIC Policy and Procedure Manual.

~~**73.7(7)**~~ **73.6(7)** *Transfer of participant information.* Requirements for use and disclosure of confidential applicant and participant information for non-WIC purposes were revised in the Federal Register September 27, 2006, Department of Agriculture, Food and Nutrition Service, 7 CFR Part 246, Miscellaneous Provisions; Final Rule 246.25(a)(4).

a. Designation by chief state health officer. The chief state health officer must designate in writing the permitted non-WIC uses of the information and the names of the organizations to which such information may be disclosed.

b. Notice to applicants and participants. The applicant or participant will be notified at the time of application (in accordance with 7 CFR 246.7(i)(11)) or through a subsequent notice that the chief state health officer may authorize the use and disclosure of information about an applicant's or participant's participation in the WIC program for non-WIC purposes. This statement will also indicate that such information will be used by state and local WIC agencies and public organizations only in the administration of programs that serve persons eligible for the WIC program.

c. Written agreement and ~~WIC state plan~~ policy and procedure manual. The state or local agency disclosing the information will enter into a written agreement with the other public organization or, in the case of a non-WIC use by a state or local WIC agency, the unit of the state or local agency that will be using the information. The ~~state agency~~ department will also include in ~~its state plan~~ the Iowa WIC Policy and Procedure Manual, as specified in 7 CFR 246.4(a)(24), a list of all organizations (including units of the ~~state agency~~ department or local agencies) with which the ~~state agency~~ department or its local agencies have executed or intend to execute a written agreement. The written agreement must:

(1) Specify that the receiving organization may use the confidential applicant and participant information only for:

1. Establishing the eligibility of WIC applicants or participants for the programs that the organization administers;

2. Conducting outreach to WIC applicants and participants for such programs;

3. Enhancing the health, education, or well-being of WIC applicants or participants who are currently enrolled in such programs, including the reporting of known or suspected child abuse or neglect that is not otherwise required by state law;

4. Streamlining administrative procedures in order to minimize burdens on staff, applicants, or participants in either the receiving program or the WIC program; or

5. Assessing and evaluating the responsiveness of a state's health system to participants' health care needs and health care outcomes; and

(2) Contain the receiving organization's assurance that ~~it~~ the organization will not use the information for any other purpose or disclose the information to a third party.

~~**641—73.8**~~ **641—73.7(135) Food delivery.** Food delivery refers to all aspects of the method by which WIC participants receive food benefits, ~~i.e., printing,~~ including but not limited to the issuing, distribution, and processing of ~~computerized~~ personal food instruments redeemable through retail food markets and the statewide banking system. Food delivery shall be uniform throughout the state as provided for by these rules.

~~**73.8(1)**~~ **73.7(1)** *Responsibilities of WIC participants.*

a. Prompt redemption of food instruments. A WIC participant must redeem WIC benefits within the validated date of use.

b. Claiming food instruments and benefits. Enrolled participants are required to appear in person to claim food instruments and benefits when they have appointments to certify or have nutrition education contacts. Missed attendance may entitle contract agencies to deny that month's benefit. ~~If a written statement is provided to the contract agency, a proxy may pick up food instruments.~~ A proxy may pick up food instruments as described in the Iowa WIC Policy and Procedure Manual.

c. Adherence to standards for use of the food instrument. The WIC participant in using the WIC food instrument to obtain the specified foods shall:

(1) ~~Sign the WIC identification card at~~ At the time of receipt of food benefits in the clinic, electronically sign that food benefits were received.

(2) ~~Present the WIC identification card to the vendor~~ Swipe the eWIC card at the vendor's ECR and enter the participant's PIN at point of purchase.

~~(3) Sign each food instrument in the appropriate box in the presence of the vendor.~~

~~(4) Write in the total amount of the purchase in the designated space.~~

~~(5)~~ (3) Not accept money in exchange for unused food ~~instruments~~ benefits or portions of the food allotment.

~~(6)~~ (4) Attempt to redeem food ~~instruments~~ benefits only with a WIC-contracted vendor.

~~**73.8(2)**~~ **73.7(2)** *Responsibilities of contract agencies.*

a. Loss or theft of food instruments. The contract agency is responsible for any financial loss due to theft or other loss of food instruments from clinics. Steps for minimizing the chances of theft or loss are followed in accord with the Iowa WIC Policy and Procedure Manual.

b. Mailing of WIC food instruments. Mailing of food instruments to participants is allowed ~~when inclement weather prevents participants from coming to a distribution site~~ only in specific situations as described in the Iowa WIC Policy and Procedure Manual. Any mailing of WIC food instruments on a clinicwide basis must have prior approval from the state.

~~*c. Use of manual food instruments.* Rescinded IAB 1/30/08, effective 3/5/08.~~

~~*d.*~~ *c. Training/monitoring of WIC vendors.* The contract agency shall communicate information regarding the Iowa WIC program to vendors, as instructed by the department. Monitoring and training of vendors and securement of contracts shall be carried out in accordance with department directives outlined in the Iowa WIC Policy and Procedure Manual.

~~*e.*~~ *d. Food ~~instrument~~ instrument/benefits distribution on ~~nonclinic~~ non-clinic days.* It is the policy of the Iowa WIC program to ensure maximum accessibility to program benefits by establishing alternate procedures for distributing WIC food instruments to participants on days other than regularly scheduled clinic days when the participant notified the contract agency on or before the clinic day of the participant's inability to appear at the clinic. Each contract agency shall establish written guidelines for assessing the adequacy of reasons presented for inability to appear and shall establish written procedures for alternative means of food ~~instrument~~ instrument/benefits distribution when a participant timely presents adequate reasons for inability to appear on a regularly scheduled clinic day. These written guidelines and procedures shall be subject to review and approval by the department.

~~**73.8(3)**~~ **73.7(3)** *Responsibilities of department.* Provision of foods through retail grocers and special purpose vendors is an integral part of the WIC program's function. It is the responsibility of the department to ensure that there are a sufficient number of ~~stores~~ vendors authorized to provide reasonable access for ~~program~~ WIC participants. The department also has an obligation to ensure that both food and administrative funds are expended in the most efficient manner possible. As with all other purchases made by state government, this means that ~~the number of vendors (retail grocers and special purpose vendors) may be limited and that~~ all vendors must meet minimum criteria for approval. The Iowa WIC program does not limit the number of vendors that may participate in the agency service area. A retailer that intends to derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments will not be allowed. The department shall be responsible for the following:

a. Approving or denying vendor applications. The department shall determine if applications meet the mandatory specifications in ~~73.8(4)~~ 73.7(4) and meet the minimum review points in ~~73.8(4)~~ 73.7(4) for a subsequent agreement.

b. Compiling the statewide or local area composite data against which vendor applications are reviewed, determining if applications meet the selection criteria which require use of that data, providing training, and signing the initial authorization agreement if a vendor is determined ~~to be~~ eligible.

c. Developing procedures, forms, and standards for agencies to use in conducting on-site review of vendor applications, monitoring, compliance buys, educational buy monitoring, or compliance investigations as defined in ~~73.8(5)~~ 73.7(5).

d. Determining when compliance investigation activities are necessary to verify WIC program violations, developing or approving standards and procedures to be used in conducting the activities,

and arranging for an appropriate state or private agency to conduct the compliance buying investigation as required.

e. Providing to vendors written notice ~~to vendors~~ of WIC program violations and sanctions.

f. Ensuring that activities related to eWIC follow information provided by FNS's WIC EBT operating rules, WIC EBT Technical Implementation Guide and FNS Handbook 901.

~~73.8(4)~~ 73.7(4) *Responsibilities of WIC vendors.* A potential vendor shall make application to the Iowa department of public health WIC program and shall accept the obligations imposed by the signing of a WIC vendor agreement prior to acceptance of any WIC food instrument. The two categories for which any potential vendor may apply are grocery vendors and special purpose vendors. A retailer that intends to derive more than 50 percent of annual revenue of the sale of food items, for grocery vendors, or of infant and special medical formula, for special purpose vendors, from the redemption of WIC food instruments will not be approved.

a. *Grocery vendor agreement.* To qualify for a grocery vendor agreement with the Iowa WIC program, a retail outlet shall meet all of the following criteria:

(1) The vendor must stock all of the following categories of items to be defined as a grocery vendor: a minimum of 5 linear feet of raw fruits and vegetables; a minimum of 12 linear feet of unbreaded fresh or frozen meats and poultry (prepackaged luncheon meats do not qualify); canned and frozen vegetables; dairy products; ~~and~~ cereals; and breads.

(2) No more than 20 percent of the vendor's gross retail sales may be from the sale of gasoline or other automotive supplies.

(3) No more than 20 percent of the vendor's gross retail sales may be from the sale of alcoholic beverages and tobacco products.

(4) The vendor must maintain regular business hours. This shall include a minimum of two 4-hour blocks of time on each of five days per week. Daily operating hours shall be consistent from week to week~~,~~ and shall be posted.

(5) The vendor must stock the minimum variety and quantity of WIC-approved foods as defined in the latest revised version of the Iowa WIC vendor application.

1. The specific brands of products that are included on the WIC-approved food list shall be made available to the vendor at the time of application and prior to renewal of each agreement.

2. The variety and quantity in stock are defined as including both inventory on display and in on-premises storage, but not inventory on order from suppliers.

(6) The vendor must purchase formula only from state-licensed wholesalers, distributors, retailers, and infant formula manufacturers registered with the Food and Drug Administration (FDA) through a list maintained by the WIC program.

~~(6)~~ (7) A vendor shall charge a price to WIC participants that is equal to or less than the price charged to all other customers. The prices charged to WIC participants for the average of all WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 105 percent of the average prices of all other WIC vendors in the same peer group. The vendor's average price for any category of WIC items, as reported on the application, at the time of the on-site review, and throughout the agreement period, shall not exceed 115 percent of the average price charged for the same category by all other WIC vendors in the same peer group. Categories refer to the broad groupings of items rather than specific brands. For purposes of making the price comparisons, the average price for all other WIC vendors in the peer group shall be computed from the most recent Price Assessment Reports on file from those vendors. If a vendor intends to comply with this provision by charging WIC participants a lower price than the price charged to other customers, the WIC price for each approved item must be identified on the package or shelf front.

~~(7) There must be a minimum of five current WIC participants residing in the same ZIP code area as the vendor.~~

(8) Vendors will also be selected based on access to WIC participants. If at all possible, at least one vendor contract will be maintained in rural counties where a WIC clinic is located. The Iowa WIC program does not limit the number of vendors that may participate in the agency service area.

(9) The vendor must have a current state of Iowa food establishment license.

(10) The vendor must consistently identify WIC products by using shelf labels that meet specific criteria and price points as described in the WIC Vendor Instructions and Agreement Booklet as found in the Iowa WIC Policy and Procedure Manual.

~~(8)~~ (11) The vendor must not have had a ~~food stamp program~~ Supplemental Nutrition Assistance Program (SNAP) disqualification or civil monetary penalty imposed within the 12 months preceding the date of the application or reauthorization.

~~(9)~~ (12) The vendor must not have had a WIC program suspension imposed or a WIC application denied within the six-month period preceding the date of the application.

~~(10)~~ (13) The vendor must not have had a conviction or civil judgment for any activity that indicates a lack of business integrity against any of the officers or owners during the previous six years.

~~(11)~~ (14) The vendor must accept training on WIC program regulations prior to signing an agreement and must agree to provide training to all employees who will handle WIC food instruments prior to accepting any food instruments.

~~(12)~~ (15) The vendor must agree to adhere to all provisions of the WIC Vendor Instructions and Agreement Booklet as found in the Iowa WIC Policy and Procedure Manual.

b. *Special purpose vendor.* To qualify as a special purpose vendor, a retail outlet shall meet all of the following criteria:

(1) The vendor may be primarily a retailer of any type of merchandise but shall be authorized to provide only specified infant formula in exchange for WIC food instruments.

(2) The vendor must be able to provide the specified formula within 48 hours; 72 hours if a weekend or holiday is involved.

(3) The prices charged to WIC participants must be equal to or less than the prices charged to all other customers. The average price of each brand of infant formula sold to WIC participants as reported must not exceed the average price of the same brands of infant formula charged by all authorized WIC grocery vendors in the same peer group.

(4) The vendor shall meet the criteria in paragraph ~~*"a,"*~~ 73.7(4)*"a,"* subparagraphs (2) ~~to~~ through (4), ~~and~~ (6) ~~to (12)~~ through (8), and (10) through (15), for grocery vendors.

(5) The vendor must agree to adhere to applicable provisions of the WIC Vendor Instructions and Agreement Booklet as found in the Iowa WIC Policy and Procedure Manual.

~~(6) Vendors that derive more than 50 percent of annual revenue of the sale of food items from the redemption of WIC food instruments are not allowed.~~

c. *Application review.* The department shall review each vendor application within five working days of receipt and determine if the information provided indicates that the retail outlet meets the selection criteria. If the application shows that the vendor does not meet one or more of the criteria, the department shall deny the application. If the vendor's application indicates that the vendor would qualify, the department or contract agency shall make an on-site visit to verify that the information provided in the application is correct, to provide training, and sign the agreement. If the department or contract agency finds that the vendor has two or more types of out-of-date, stale, or moldy WIC foods in stock during the on-site visit, the vendor's application may be denied. If the contract agency or department determines during the on-site visit that the vendor does not qualify, the contract agency or department shall not sign the agreement. Within five working days of disapproving an application or agreement, the department will advise the vendor in writing of the reasons for denial of the application and the procedure for appeal. During the on-site visit, the contract agency representative is acting as an agent of the department and has the authority to approve or deny an application.

A vendor that is denied an agreement, either at the application review level or at the on-site review, is required to wait six months prior to submitting a new application. ~~The~~ Prior to completing its review, the department may, at its discretion, request a vendor to resubmit an application ~~prior to completing its review~~ if the application has not been completed to the extent that a determination of eligibility can be made.

~~*c.*~~ *d.* *Reauthorization.* If ownership of an authorized vendor changes during the agreement period, the agreement becomes void. The new owner must file an application and be approved prior to accepting WIC food instruments. Vendor agreements are valid only for the period of time specified, and a vendor

may not continue accepting food instruments past the expiration date unless a new agreement is signed. When a currently authorized vendor makes application for a subsequent agreement, an agreement shall be signed only if the vendor has been assessed less than 60 violation points under paragraph 73.19(2)*"b"* ~~within the previous 24 months~~ during a contract period.

Vendors must complete a new application and sign a new WIC vendor agreement at least every three years to continue accepting WIC food instruments.

The department shall send the vendor written notice at least 30 days prior to the expiration of the agreement that it does not intend to offer the vendor a new agreement if the vendor has been assessed 60 or more violation points under paragraph 73.19(2)*"b"* ~~within the last 24 months,~~ during a contract period or if any of the following conditions are in effect:

(1) The vendor has failed to submit any of the preceding year's Price Assessment Reports by the specified dates.

~~(2) The vendor has not cashed any WIC food instruments for at least two consecutive months at any time during the contract period, or has not cashed five or more WIC food instruments for any 120-day period during the contract period. A vendor will not be excluded under this provision if it is the only grocery or special purpose vendor in that ZIP code area.~~

~~(3)~~ (2) Any of the selection criteria listed in ~~73.8(4)~~ ~~*"a"*~~ 73.7(4)*"a"* and *"b"* above are no longer met.

Expiration of a WIC agreement is not subject to appeal. A vendor who is not offered a new agreement by the department has the right to file a new application. If that application is denied, the vendor has the right to appeal.

~~*d.*~~ *e.* *Training.* Vendors shall accept training in WIC program policies and procedures at the on-site review prior to becoming an authorized vendor and shall be responsible for training all employees who will be handling WIC food instruments. The manager and person responsible for staff training must allow time at this visit for training; the agreement will not be signed until training is completed. Vendors shall be responsible for all actions of their employees in conducting WIC transactions.

If violations of WIC program policies and procedures are documented, either through on-site monitoring or other indirect means, the vendor shall implement a corrective action training plan developed jointly by the vendor and the department or contract agency.

~~*e. Validity of food instruments.* The WIC vendor shall be responsible for ensuring that:~~

~~(1) The participant signature required on the food instrument is completed in the vendor's presence;~~

~~(2) The participant presents a WIC identification card prior to redeeming food instruments. A signature on the WIC identification card must match the food instrument signature;~~

~~(3) The type and quantity of food to be purchased is as indicated on the food instrument;~~

~~(4) The amount of money written onto the food instrument for repayment does not exceed the maximum amount as designated by the department and printed on the food instrument;~~

~~(5) The expiration date is present on the food instrument and is equal to or no later than the date of usage;~~

~~(6) WIC food instruments are never exchanged for cash or credit;~~

~~(7) Substitutions of foods different from those listed on the food instrument in type or amount are not made;~~

~~(8) Food instruments are presented to the state's agent (bank) for payment within 15 days of the date of receipt;~~

~~(9) The costs of foods purchased by WIC participants do not exceed charges to other customers for the same foods;~~

~~(10) The vendor's authorizing number is stamped with the state-issued vendor stamp on the face of the food instrument prior to its being presented for payment.~~

f. *Cooperation during monitorings.* Contracted WIC vendors shall cooperate with department and contract agency staff who are present on site to monitor the ~~store's~~ vendor's WIC activities.

g. *Reimbursement to the WIC program.* Vendors determined by the department to have collected more moneys than the true value of food items received shall make reimbursement to the department.

~~**73.8(5)**~~ **73.7(5)** *Vendor monitoring.* To maintain WIC program integrity and accountability for federal or state program funds, the department and contract agencies shall conduct ongoing monitoring of authorized vendors, both through on-site visits and through indirect means. A sample of 10 percent of currently authorized vendors receives on-site monitoring every year. Vendors that change ownership during the year~~,~~ or that apply during the contract period~~,~~ receive an on-site visit prior to signing an agreement. The types of on-site monitoring are defined as follows:

a. Routine or representative monitoring is used for vendors for which there is no record of violations or complaints or other indication of problems. It may include any or all of the following: use of a food instrument or observation of a participant, educational buys, review of inventory levels, ~~examination of redeemed WIC food instruments on hand,~~ review of ~~store~~ vendor policies on return items, and review of employee training procedures. The results of the monitoring are reviewed with the owner or manager on duty, and a follow-up letter confirming the findings is sent from the department. Routine monitoring may be performed by the department or by contract agency staff under the direction of the department. Depending on the nature and severity of violations noted, the department may schedule additional visits, initiate a compliance investigation, or apply sanctions.

Educational buy monitoring is a specialized type of routine monitoring. Department or contract agency staff attempt to use a WIC food instrument to purchase unauthorized types or brands of foods to test the level of training of ~~store~~ vendor employees. At the conclusion of the transaction, the results of the buy are discussed with the ~~store~~ vendor owner or manager on duty. The transaction is then voided, and the merchandise returned to the shelves. Educational buys are used on authorized vendors selected by the department. If unauthorized items are allowed to be purchased, the vendor shall agree to a corrective action training plan. A follow-up educational buy is scheduled within 30 to 90 days. A letter is sent from the department documenting the violation. By signing a WIC agreement, a vendor gives consent for educational buys by the department or contract agency. Vendors are not notified in advance that an educational buy is scheduled. The protocol for educational buys, including procedures, appropriate items to purchase, and forms to be used, is specified in the Iowa WIC Policy and Procedure Manual.

b. Electronic monitoring is examination of indicators tracked in the vendor computer database. It allows the analysis of data collected via computer from the contract agencies and the state's bank, from which patterns indicating compliance with or deviation from established patterns for Iowa WIC vendors emerge. Data is collected daily and reviewed on an ongoing basis. Trends identified can necessitate another type of monitoring, depending on the nature of each exception.

c. Compliance investigations may be used for any vendors. Compliance investigations will be conducted annually in a minimum percentage of vendors as mandated in federal regulations. A compliance investigation includes a sufficient number of compliance buys to provide evidence of WIC program noncompliance, two compliance buys in which no WIC program violations are found, or when an inventory audit has been completed. A compliance buy means a covert, on-site investigation in which a representative of the WIC program poses as a participant, parent or caretaker, or proxy, transacts one or more food instruments and does not reveal during the visit that he or she is a WIC representative. Compliance buys may be performed by the department or another state agency or private company under contract with the department. The department is responsible for identifying the vendors to be investigated and for approving the protocol to be used during the investigation. Upon completion of a compliance buy documenting WIC program violations, the department shall issue the vendor a notice of violation points assessed unless such notification would hinder an investigation.

The department also monitors vendor performance through in-office review of information. Such information, specifically the total amount of WIC redemptions, is confidential as provided for in Iowa Code section 22.7(6). This business information could provide an advantage to competitors and would serve no public purpose if made available.

~~**641—73.9**~~ **641—73.8(135) Food package.** The authorized supplemental foods shall be prescribed for participants by a CPA in the contract agency from food packages outlined in 7 CFR 246.10 and in accordance with the following:

~~**73.9(1)**~~ **73.8(1)** *Prescription of foods.* Food packages shall maintain a balance between cost and nutrition integrity. There are two components to this balance: (1) administrative adjustments by the department; and (2) nutrition tailoring by both the department and the CPA in the contract agencies.

a. Administrative adjustments include restrictions in the packaging methods, brands, sizes, types, and forms (but not quantities) of the federally allowable foods in order to establish the approved food list for the state. Administrative adjustments include decisions to eliminate more expensive brands or prohibit more costly food items allowed by regulations. Criteria for considering foods for inclusion in the approved food list are found in ~~73.9(3)~~ 73.8(3).

b. Nutrition tailoring includes changes or substitutions to food types, forms, and quantities in order to prescribe food packages that better meet the nutritional needs of participants. Tailoring is done to reduce quantities of foods based on nutritional needs, to accommodate participant preferences, to accommodate household conditions, such as lack of refrigeration or other special needs and problems of homeless or transient participants, and to recommend or prescribe specific forms of the allowable WIC foods based upon a participant's nutritional needs or goals.

~~*c.* Rescinded IAB 8/4/04, effective 9/8/04.~~

~~**73.9(2)**~~ **73.8(2)** *Tailoring to meet individual* ~~*nutrition*~~ *nutritional needs.* Food packages are individually tailored to meet the needs of specific participants according to USDA regulations and the Iowa WIC Policy and Procedure Manual.

~~**73.9(3)**~~ **73.8(3)** *Criteria for approving products for inclusion in the WIC food package.*

a. A product shall meet the federal regulations governing the WIC food package.

b. Variety in the food package is encouraged to increase the likelihood of products being used and to allow participants to exercise responsibility in shopping.

c. Changes to the approved food list take effect on October 1 in years when new vendor contracts are signed. Inquiries from food companies about new and continuing products must be received prior to February 1 of the year vendor contracts expire to be guaranteed consideration. The state reserves the right to change the food list more frequently if necessary.

d. Cereals shall meet federal guidelines for content and shall also meet the following conditions:

~~(1) They are carried by current Iowa WIC-approved vendors.~~

~~(2) The product form and marketing approach are consistent with the promotion of good nutrition and education.~~

~~(3)~~ (1) If a group of cereals from one manufacturer have similar names and package designs and some of the cereals do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants.

(2) The brand is carried by current Iowa WIC-approved vendors. Any private-label (store) brands that meet the selection criteria will also be considered.

~~(4) Ready-to-eat cold cereals are ranked by the six major distributors to Iowa grocery retailers based on volume of total sales. Hot cereals are ranked in the same way. Multiple container sizes of a single cereal variety shall be considered as one variety for the purposes of constructing this ranking. The department compiles data from all distributors to develop an overall ranking or ranked list. At least half of the cereals authorized on the WIC-approved food list must have whole grain as the primary ingredient by weight and must meet labeling requirements for making a health claim as a whole grain food with moderate fat content.~~

(3) The department reserves the right to limit the number of approved cereals for administrative efficiency.

~~(5) Product has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.~~

e. Juices shall meet the federal guidelines for vitamin C content and all of the following conditions:

(1) Juices are 100 percent juice and contain no added sugar, sweeteners or artificial sweeteners.

(2) The brand is carried by current Iowa WIC-approved vendors. ~~Juices are ranked by the six major distributors to Iowa grocery retailers based on volume of total sales.~~ Any private-label (store) brands that meet the selection criteria will also be considered.

(3) The product form and marketing approach are consistent with the promotion of good nutrition and education.

(4) If a group of juices from one manufacturer have similar names and package designs and some of the juices do not qualify, the department reserves the right to not approve those types that would otherwise qualify, to reduce the potential for confusion by retail vendors and participants. Single-strength and concentrated varieties of juice with the same brand name will be evaluated separately.

~~(5) Product has been available in retail grocery stores in Iowa for one year prior to the effective date of inclusion in the WIC-approved food list.~~

~~(6)~~ (5) Frozen fruit juices must be single flavors.

f. The following conditions apply to dairy products:

(1) To qualify, brands of whole, 1%, or fat-free skim milk marketed in Iowa must contain or be fortified with vitamins A and D to meet the federal standards. The department reserves the right to disqualify brands which have a retail value of 115 percent or higher than the state average for this product.

(2) Fluid milk with added bacterial cultures or enzymes, including but not limited to sweet acidophilus or lactose-reduced milk, may qualify. Brands are approved by the department on a case-by-case basis.

(3) All brands of natural cheese designated in the USDA WIC regulations qualify. The cheese shall have no added flavors (e.g., smoke flavoring, peppers, wine).

(4) Yogurt shall meet federal guidelines for content and shall also meet the following conditions:

1. The brand is carried by current Iowa WIC-approved vendors.

2. Nonfat, lowfat, and whole yogurts cannot contain artificial sweeteners. No frozen yogurt, yogurt tubes, or drinkable yogurts are allowed.

g. All brands of packaged dried beans or peas are approved ~~whether packaged or purchased in bulk~~; however, no soup mixes and no dried beans or peas with added vegetables, fruits, meat, sugars, fats, or oils are allowed.

h. ~~Any brand of peanut~~ Peanut butter ~~qualifies as long as it does not contain other ingredients such as jelly~~ must meet federal guidelines. Brands may be either refrigerated or nonrefrigerated.

i. Eggs shall be fresh, Grade A ~~or AA~~ large chicken eggs. Eggs which have a retail value of 115 percent or higher than the state average for this product shall not be approved.

j. Any brand of tuna or salmon qualifies if it is either water- or oil-packed, in cans or pouches, chunked, solid, or flaked. Fish packaged with other items such as crackers, relish or other flavorings may not be purchased. Albacore tuna is not allowed.

k. Commercial infant formula shall meet the following conditions:

(1) It is registered with the Food and Drug Administration as complying with the legal definition of infant formula.

(2) It complies with the calorie and iron content prescribed by the ~~federal WIC regulations~~ USDA.

(3) It is approved by the USDA for use in the WIC program.

(4) The product form and marketing approach are consistent with the promotion of good nutrition and education.

~~(5) All of the formula marketed under one label shall meet all standards. If a similar, nonqualifying formula is marketed along with a qualifying formula, participants may be easily confused. Therefore, the qualifying formula shall not be approved.~~

l. At least two whole grain options that meet federal guidelines will be provided.

m. Infant food fruits, vegetables and meats must meet the federal guidelines.

n. Fresh and frozen vegetables and fruits that meet federal guidelines will be available for purchase with ~~cash value vouchers~~ cash-value benefits specifically for fruits and vegetables.

o. Soy beverages shall meet federal guidelines.

p. Tofu shall meet federal guidelines.

~~*p.*~~ *q.* Products will be evaluated for use in the Iowa WIC program based on nutrient content, packaging, container size, labeling, availability to wholesale distributors, cost and participant preference. The state reserves the right to limit the number of foods for the WIC-approved food list

based on accessibility, availability, retail value of product, USDA recommendations, increased number of WIC participants, changes in appropriation of funds and administrative efficiency.

~~*q.*~~ *r.* In addition to the criteria specified above, the department reserves the right to further restrict the number and types of brands of any products in order to contain the cost of the food package through competitive procurement of rebate contracts or other similar means.

~~*r.*~~ *s.* The department reserves the right to discontinue specific brand names and products if the cost is 115 percent or higher than the state average for that particular product. The department reserves the right to add or delete products pursuant to federal regulations.

~~641—73.10~~ 641—73.9(135) Education.

~~73.10(1)~~ 73.9(1) *Nutrition education for WIC participants.*

a. Nutrition education is provided as a benefit to all women and to parents of all children enrolled in the WIC program.

b. A minimum of two nutrition education contacts shall be offered to each woman participant or the parent/guardian of ~~children~~ children/infants participating in WIC during each certification period.

c. Nutrition education shall be based on information obtained through the diet and health histories and shall be tailored to the specific nutrition need of the participant.

d. All pregnant women enrolled in WIC shall ~~receive~~ be offered education on the benefits of breastfeeding.

e. Education in normal nutrition, i.e., education in nutrition for life-cycle stages, shall be provided in accordance with the Iowa WIC Policy and Procedure Manual.

f. Participants who are at high risk, as defined in the Iowa WIC Policy and Procedure Manual, shall receive counseling and a nutrition plan of care developed by a licensed dietitian. The plan of care shall be documented in the participant record and shall include scheduling a minimum of one individual education contact by a licensed dietitian.

g. The department shall make nutrition education materials and resources available at no cost to contract agencies. The department reserves the right to review and approve or disapprove any printed materials or lesson plans developed by contract agencies.

h. To the extent that time and resources are available, nutrition education may be provided to applicants who are not eligible to receive other WIC services.

~~73.10(2)~~ 73.9(2) *Education of contract agency personnel.* Agencies accepting WIC funds shall be responsible for ensuring that all agency staff or contractors are adequately trained for their responsibilities. At a minimum, training shall include the components described in the Iowa WIC Policy and Procedure Manual.

Continuing education is an allowable WIC administrative expense for contract agency staff and contractors who provide nutrition education.

~~641—73.11~~ 641—73.10(135) Health services. The WIC program shall serve in the arrangement of ongoing health services for its participants. ~~Health services are defined to include ongoing, routine pediatric and obstetrical care, and referral for diagnosis and treatment of any other condition.~~ Contract agencies not able to provide such health services directly shall enter into written agreements with other public health agency(ies) or private physician to ensure availability of health services.

~~73.11(1)~~ 73.10(1) *Written agreements.*

a. *Contract for services.* Contract agencies shall maintain an annual written, contractual agreement with any health agency performing WIC health assessments, whether for fee or exchange of service.

b. *Memorandum of understanding.* Contract agencies shall maintain a current memorandum of understanding with any health agency designated to provide ongoing health services to WIC participants and with any agency providing referral data ~~for precertification of infants and pregnant women~~.

~~73.11(2)~~ 73.10(2) *Referral procedures.* The contract agency shall be responsible for referral of WIC participants to appropriate health care providers, as determined by the WIC health professional's assessment of their condition.

a. Authorization for release of information. Except as indicated below, before releasing medical or other personal information, including name, to an outside agency, the contract agency shall secure the participant's or parent/legal guardian's written authorization to release such information. A statement shall be signed for each specific provider to which information is being sent. The information contained in individual participant records shall be confidential pursuant to 7 CFR 246.26.

Referrals to the department of human services' child protective services for investigation of potential child abuse ~~or to a law enforcement agency conducting an active criminal investigation~~ may be made without obtaining a written release of information. Procedures for responding to a subpoena are made in accordance with the Iowa WIC Policy and Procedure Manual.

b. The referral form. A standard referral form, as provided by the department, shall be completed and sent to the referral agency. Documentation and follow-up are made in accord with the Iowa WIC Policy and Procedure Manual.

~~641—73.12~~ 641—73.11(135) Appeals and fair hearings—local agencies ~~and vendors~~.

~~**73.12(1)**~~ **73.11(1)** *Right of appeal.* ~~The right to appeal shall be granted when a local agency's or a vendor's application to participate is denied. The right to appeal shall also be granted when, during the course of the contract or agreement period, a local agency or vendor is disqualified or any other action which affects participation is taken. For participating vendors, a minimum of 30 days' advance notice will be given before the effective date of the action. For participating contract agencies, a minimum of 60 days' advance notice will be given before the effective date of the action. The right to appeal shall not be granted in the following circumstances:~~

~~*a.* When a vendor's contract expires.~~

~~*b.* When the department makes a determination regarding participant access.~~

~~*c.* When a vendor is disqualified from the WIC program as a result of a food stamp program disqualification.~~

~~*d.* When a vendor does not agree with the validity or appropriateness of selection criteria defined in 73.8(4).~~

a. Applicant. An applicant may appeal the denial or rejection of a timely submitted application.

b. Contract agencies. The right to appeal shall be granted when, during the course of the contract or agreement period, a local agency is disqualified or any other action which affects participation is taken.

~~**73.12(2)**~~ **73.11(2)** *Request for hearing.* ~~An appeal is brought by filing a written request for a hearing with the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within ten days of receipt of notification of the adverse action. The written request for hearing shall state the adverse action being appealed.~~ The appeal shall be submitted in writing within ten business days of receipt of notification of the adverse decision. The appeal shall be addressed to the contract administrator cited in the competitive selection application guidance, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

a. Applicant. In the event of an appeal, the department will continue working with the applicant awarded funding pending the outcome of the appeal.

b. Contract agencies. For participating contract agencies, a minimum of 60 days' advance notice will be given before the effective date of the action.

~~**73.12(3)**~~ **73.11(3)** *Contested cases.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals (DIA) pursuant to the administrative rules adopted by ~~that agency~~ DIA regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to ~~the department of inspections and appeals~~ DIA.

~~**73.12(4)**~~ **73.11(4)** *Notice of hearing.* Parties shall receive notice of the hearing in advance. The administrative law judge (ALJ) shall schedule the time, place, and date of the hearing so that the hearing is held as expeditiously as possible. ~~Hearings shall be conducted by telephone or in person in Des Moines~~

~~at the Lucas State Office Building or other suitable location. If necessary, parties will be provided at least two opportunities to have the hearing rescheduled.~~

~~**73.12(5)**~~ **73.11(5)** *Conduct of hearing.* The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code, and federal regulations found at 7 CFR 246.24. Copies of these regulations are available from the department of inspections and appeals upon request.

~~**73.12(6)**~~ **73.11(6)** *Decision.* A written decision of the ALJ shall be issued, where possible, within 60 days from the date of the request for a hearing unless the parties agree to a longer period of time.

~~**73.12(7)**~~ **73.11(7)** *Decision of ALJ.* When the ALJ makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is ~~taken~~ filed by either of the parties as provided in 641—subrule ~~73.12(8)~~ 176.8(5) or the director serves notice on the parties of the director's intent to review the decision.

~~**73.12(8)**~~ **73.11(8)** *Appeal to director.* Any appeal to the director for review of the proposed decision and order of the ALJ shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the ALJ's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the ALJ. Any request for an appeal shall state the reason for appeal.

~~**73.12(9)**~~ **73.11(9)** *Record of hearing.* Upon receipt of an appeal request, the ALJ shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the ~~hearing officer~~ ALJ.

~~**73.12(10)**~~ **73.11(10)** *Decision of director.* ~~The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.~~ Upon receipt of a properly filed appeal, the director shall establish a briefing schedule and, at the discretion of the director, an opportunity for oral argument. An appeal to the director shall be based on the record made at the hearing. The director may reverse or modify any finding of fact if a preponderance of the evidence will support a determination to reverse or modify such a finding, or may reverse or modify any conclusion of law the director finds to be in error. The decision and order of the director shall be delivered by certified mail, return receipt requested, or by personal service, and becomes the department's final decision upon receipt by the aggrieved party.

~~**73.12(11)**~~ **73.11(11)** *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review pursuant to Iowa Code chapter 17A.

~~**73.12(12)**~~ **73.11(12)** *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The party who appeals a final agency action to district court shall pay the costs of the preparation of a transcript of the contested case hearing for the district court.

~~641—73.13~~ 641—73.12(135) Right to appeal—participant.

~~**73.13(1)**~~ **73.12(1)** *Right of appeal.* A WIC participant shall have the right to appeal whenever a decision or action of the department or contract agency results in the individual's denial of participation, disqualification, or termination from the WIC program. All hearings shall be conducted in accordance with these rules.

~~**73.13(2)**~~ **73.12(2)** *Notification of appeal rights and right to hearing.* Each WIC program participant shall be notified in writing of the participant's right to appeal at the time of application and at the time of denial of eligibility or termination from the WIC program ~~(on Denial or Termination of Eligibility Form)~~ and at the time a participant receives a notice of a claim being established for repayment of improperly issued benefits. Appeal and hearing notices shall also be written, posted, and immediately available at contract agencies to explain the method by which a hearing is requested, and that the participant may present arguments at the hearing either personally or through a representative such as a relative, friend, legal counsel, or other spokesperson.

~~**73.13(3)**~~ **73.12(3)** *Request for hearing.* A request for hearing by an individual or the individual's parent, guardian, or other representative must be made in writing or verbally. The request for hearing shall be made to the contract agency within 90 days from the date the individual receives notice of the decision or action that is the subject of appeal.

~~**73.13(4)**~~ **73.12(4)** *Receipt of benefits during appeal.* Participants who are involuntarily terminated from the WIC program prior to the end of the standard certification period shall continue to receive WIC program benefits while the decision to terminate is under administrative appeal, provided that subsequent certifications are completed as required. Participants who are terminated because of categorical ineligibility (e.g., a child over five years of age) shall not continue to receive benefits during the administrative appeal period. Participants who are terminated at the end of a certification period for failure to reapply, following notice of expiration of certification, shall not continue to receive benefits during the administrative appeal period. Applicants who are denied WIC program benefits at the initial certification or at subsequent recertifications, due to a finding of ineligibility, shall not receive benefits during the administrative appeal period.

~~**73.13(5)**~~ **73.12(5)** *Hearing officer.* The hearing officer shall be impartial, shall not have been directly involved in the initial determination of the action being contested, and shall not have a personal stake in the decision. If the party filing the appeal objects prior to a scheduled hearing to a contract agency director serving as a hearing officer in a case involving the director's own agency, another hearing officer shall be selected and, if necessary, the hearing shall be rescheduled as expeditiously as possible. Contract agencies may seek the assistance of the state WIC office in the appointment of a hearing officer.

~~**73.13(6)**~~ **73.12(6)** *Notice of hearing.* The hearing officer shall schedule the time, place and date of the hearing as expeditiously as possible. Parties shall receive notice of the hearing at least ten days in advance of the scheduled hearing. The hearing shall be accessible to the party requesting the hearing. The hearing shall be scheduled within three weeks from the date the contract agency received the request for a hearing, or as soon as possible thereafter, unless a later date is agreed upon by the parties.

~~**73.13(7)**~~ **73.12(7)** *Conduct of hearing.* The hearing shall be conducted in accordance with federal regulations found at 7 CFR ~~Section~~ 246.23. Copies of these regulations are available from the contract agency and the department.

a. At a minimum, the party requesting the hearing or the party's representative shall have the opportunity to:

~~*a.*~~ (1) Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;

~~*b.*~~ (2) Be assisted or represented by an attorney or other person at the party's own expense;

~~*c.*~~ (3) Bring witnesses;

~~*d.*~~ (4) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses;

~~*e.*~~ (5) Submit evidence to establish all pertinent facts and circumstances in the case;

~~*f.*~~ (6) Advance arguments without undue interference.

~~g.~~ b. If a participant fails to attend the hearing, the agency will reschedule the hearing and give the participant 20 days' notice. The participant may have another person as the participant's designee. If neither the participant nor the designee attends the second hearing, the appeal will be closed.

~~73.13(8)~~ 73.12(8) *Decision.* Decisions of the hearing officer shall be in writing and shall be based on evidence presented at the hearing. The decision shall summarize the facts of the case, specify the reasons for the decision, and identify the supporting evidence and pertinent regulations or policy. The decision shall be issued within 45 days of the receipt of the request for a hearing, unless a longer period is agreed upon by the parties.

~~73.13(9)~~ 73.12(9) *Appeal of decision to the department.* If either party to a hearing receives an unfavorable decision, that decision may be appealed to the department. Such appeals must be made within 15 days of the mailing date of the decision. Appeals shall be sent to the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

~~73.13(10)~~ 73.12(10) *Contested case.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the Iowa department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to the Iowa department of inspections and appeals.

~~73.13(11)~~ 73.12(11) *Hearing.* Parties shall receive notice of the hearing in advance. The administrative law judge shall schedule the time, place and date of the hearing so that the hearing is held as expeditiously as possible. The hearing shall be conducted according to the procedural rules of the Iowa department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

~~73.13(12)~~ 73.12(12) *Decision of administrative law judge.* The administrative law judge's decision shall be issued within 60 days from the date of request for hearing. When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final decision without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule ~~73.13(13)~~ 73.12(13).

~~73.13(13)~~ 73.12(13) *Appeal to director.* Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

~~73.13(14)~~ 73.12(14) *Record of hearing.* Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the administrative law judge.

~~73.13(15)~~ 73.12(15) *Decision of director.* An appeal to the director shall be based on the record of the hearing before the administrative law judge. The decision and order of the director becomes the department's final decision upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

~~73.13(16)~~ 73.12(16) *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department

who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

~~**73.13(17)**~~ **73.12(17)** *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

~~**73.13(18)**~~ **73.12(18)** *Benefits after decision.* If a final decision is in favor of the person requesting a hearing and benefits were denied or discontinued, benefits shall begin immediately and continue pending further review should an appeal to district court be filed. If a final decision is in favor of the contract agency, benefits shall be terminated, if still being received, as soon as administratively possible after the issuance of the decision. Benefits denied during an administrative appeal period may not be awarded retroactively following a final decision in favor of a person applying for benefits.

641—73.13(135) Right to appeal—vendor.

73.13(1) *Right of appeal.* The right of appeal shall be granted when a vendor's application to participate is denied. The right to appeal shall also be granted when, during the course of the contract or agreement period, a vendor is disqualified or any other action which affects participation is taken. For participating vendors, a minimum of 30 days' advance notice will be given before the effective date of the action. The right to appeal shall not be granted in the following circumstances:

a. When a vendor's contract expires.

b. When the department makes a determination regarding participant access.

c. When a vendor is disqualified from the WIC program as a result of a Supplemental Nutrition Assistance Program (SNAP) disqualification.

d. When there are disputes regarding food instrument or cash-value benefit payments and vendor claims (other than the opportunity to justify or correct a vendor overcharge or other error, as permitted by 7 CFR 246.12(k)(3)).

e. The denial of authorization, if the department vendor authorization is subject to the procurement procedures applicable to the department.

f. When a vendor does not agree with the validity or appropriateness of the department's vendor selection and limiting criteria, the department's peer group criteria, the department's above-50-percent vendor criteria, and the department's prohibition of incentive items and the department's denial of an above-50-percent vendor's request to provide an incentive item to customers pursuant to 7 CFR 246.12(h)(8).

g. Determination of the following by the department:

(1) Whether or not a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation,

(2) To include or exclude an infant formula, manufacturer, wholesaler, distributor, or retailer from the approved-formula list required pursuant to 7 CFR 246.12(g)(11),

(3) Whether to notify a vendor in writing when an investigation reveals an initial violation to impose a sanction, pursuant to 7 CFR 246.12(l)(3).

73.13(2) *Request for hearing.* An appeal is brought by filing a written request for a hearing with the Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, within ten days of receipt of notification of the adverse action. The written request for hearing shall state the adverse action being appealed.

73.13(3) *Contested cases.* Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon

which the adverse action is based and any additional information that may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

73.13(4) *Notice of hearing.* The administrative law judge (ALJ) shall schedule the time, place and date of the hearing as expeditiously as possible. Hearings shall be conducted by telephone or in person in Des Moines, Iowa, at the Lucas State Office Building or other suitable location.

73.13(5) *Conduct of hearing.* The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code, and federal regulations found at 7 CFR 246.18. Copies of these regulations are available from the department of inspections and appeals upon request.

73.13(6) *Decision.* A written decision of the ALJ shall be issued, where possible, within 60 days from the date of the request for a hearing unless the parties agree to a longer period of time.

73.13(7) *Decision of ALJ.* When the ALJ makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 73.13(8).

73.13(8) *Appeal to director.* Any appeal to the director for review of the proposed decision and order of the ALJ shall be filed in writing and mailed to the Director, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the ALJ's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the ALJ. Any request for an appeal shall state the reason for appeal.

73.13(9) *Record of hearing.* Upon receipt of an appeal request, the ALJ shall prepare the record of the hearing for submission to the director. The record shall include the following:

a. All pleadings, motions, and rules.

b. All evidence received or considered and all other submissions by recording or transcript.

c. A statement of all matters officially noticed.

d. All questions and offers of proof, objections and rulings thereon.

e. All proposed findings and exceptions.

f. The proposed decision and order of the hearing officer.

73.13(10) *Decision of director.* The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

73.13(11) *Exhausting administrative remedies.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final decision of the department who has exhausted all administrative remedies may petition for judicial review pursuant to Iowa Code chapter 17A.

73.13(12) *Petition for judicial review.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of petition for judicial review shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Division Director, Division of Health Promotion and Chronic Disease Prevention, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

641—73.14(135) State monitoring of contract agencies. The department shall review contract agency operations through use of reports and documents submitted, state-generated data processing reports, and on-site visits for evaluation and technical assistance.

73.14(1) *On-site visits.* Department staff shall visit contract agencies whenever necessary, to review operations and ensure compliance with state and federal regulations.

73.14(2) *Request for written reports.* The department may request written progress reports from contract agencies within specified times.

73.14(3) *Qualifications of department reviewers.* At minimum, one of the persons from the department responsible for reviewing a contract agency shall be a licensed dietitian.

641—73.15(135) Migrant services. To meet the WIC needs of migrant workers within the state, a contract or work agreement shall be maintained with at least one contract migrant service agency within the state to provide or assist in the provision of service to this population.

641—73.16(135) Civil rights. The Iowa WIC program shall operate in compliance with ~~the Equal Employment Opportunity Act of 1973, the Civil Rights Act of 1964, amended 1972, the State of Iowa Civil Rights Act of 1965, the Age Discrimination Act of 1967, Section 504 of Rehabilitation Act of 1973, Iowa Executive Order #15 of 1973, Executive Order #11246 of 1965 as amended by Executive Order #11375 of 1967, and the Americans With Disabilities Act of 1991~~ state and federal regulations to ensure the rights of all individuals under ~~this~~ the WIC program.

641—73.17(135) Audits. Each contract agency shall ensure an audit of the WIC program within the agency at least every two years, to be conducted by a private certified public accountant or in accord with applicable Office of Management and Budget Circulars: A-128, Audits of State and Local Governments, and A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions. Each audit shall cover all unaudited periods through the end of the previous grant year. The department's audit guide shall be followed to ensure an audit that meets federal and state requirements.

641—73.18(135) Reporting. Completion of grant applications, budgets, expenditure reports and written responses to the department's monitoring for the WIC program shall be conducted by contract agencies in compliance with the formats and procedures outlined by the department in the Iowa WIC Policy and Procedure Manual, as specified in the contract entered into by the department and the contract agency.

641—73.19(135) ~~Program~~ WIC program violation. Participants or vendors are subject to the sanctions outlined below if determined by contract agency or department staff to be guilty of abusing the WIC program or its regulations.

73.19(1) *Participant violation.* Violations may be detected by contract agency staff, by vendors, or by department staff. Information obtained by the department is forwarded to the contract agency for appropriate action.

a. Whenever possible, the participant is counseled in person concerning the violation. Documentation is maintained according to procedures set forth in the Iowa WIC Policy and Procedure Manual.

b. Participants who violate WIC program regulations are subject to sanction in accordance with the schedule below:

Violation	Points Per Event
1. Attempting to purchase unauthorized brands/types of foods (i.e., incorrect brands of cereal, juices, etc.).	3
2. Attempting to cash food ~~instrument for more than the possible value of the foods listed~~ instruments outside of valid dates.	~~3~~ 4
3. ~~Not signing the food instrument at the time of purchase.~~ Attempting to redeem WIC food instruments at an unauthorized vendor.	~~3~~ 4
~~4. Attempting to cash food instruments after the last valid date.~~	~~4~~
~~5. Redeeming WIC food instruments at an unauthorized vendor.~~	~~4~~
~~6. Redeeming food instruments before the allowable date.~~	~~4~~
~~7. Attempting to cash food instruments that were signed prior to redemption at the vendor.~~	~~5~~
~~8.~~ 4. Redeeming WIC food instruments that were reported as lost or stolen.	5

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Violation			Points Per Event
~~9.~~	5.	Attempting to purchase more than the quantity of foods specified ~~on the food instrument~~ in the food benefits.	5
~~10.~~	6.	Verbal abuse or harassment of WIC or vendor employees.	5
	7.	Verbal abuse or harassment on social media.	5
~~11.~~	8.	Threat of physical abuse of WIC or vendor employees.	10
	9.	Threat of physical abuse of WIC or vendor employees on social media.	10
~~12.~~	10.	Attempting to sell, return, or exchange foods for cash or credit.	10
~~13.~~	11.	Attempting to purchase unauthorized (non-WIC) foods, such as meat, canned goods, etc.	10
~~14.~~	12.	Attempting to purchase items that are not food.	10
~~15.~~	13.	Sale or exchange of WIC food instruments for cash or credit or giving away WIC foods.	10
	~~16.~~	~~Altering a food instrument (e.g., changing last valid date, food item or quantity).~~	~~10~~
~~17.~~	14.	Attempting to redeem food instrument issued to another participant.	10
~~18.~~	15.	Receiving more than one set of benefits for the same time period.	10
~~19.~~	16.	Knowing and deliberate misrepresentation of circumstances to obtain benefits (resulting in a false determination of eligibility).	10
~~20.~~	17.	Attempting to steal WIC food instruments from a contract agency or participant.	10
~~21.~~	18.	Physical abuse of WIC contract agency or vendor employees.	10
~~22.~~	19.	Attempting to pick up food instruments for a child that is not currently in their care.	10
	20.	Other violations of this chapter or the Iowa WIC Policy and Procedure Manual.	

c. The accumulation of 10 violation points within a 12-month period will result in a 2-month disqualification.

The accumulation of 10 additional violation points within a 12-month period following the disqualification will result in a 3-month disqualification. The participant must then reapply for the WIC program and be scheduled for a certification.

d. Fifteen days' notice must be given prior to all disqualifications. In all cases, the participant must be informed of the reason for the disqualification, ~~and~~ of the right to appeal the decision through the fair hearing process, and of eligibility to reapply for the WIC program at the end of the disqualification period.

e. A disqualification generally applies to all members of a family who are on the WIC program. The competent professional authority may waive the disqualification for one or more members of the family if it is determined that a serious health risk may result from WIC program disqualification. The reason for this waiver must be documented in the participant's file.

f. ~~The cashing of one or more food instruments at the same time constitutes a single violation. Participants will not be charged with a second violation for minor violations worth 5 or fewer points for subsequent food instruments cashed between the first instance and the receipt of the violation notice if the violation is the same. If a major violation greater than 5 points occurs during this period, the participant will be disqualified.~~ Violations are cumulative.

g. When a participant improperly received benefits as a result of intentionally making a false or misleading statement~~,~~ or intentionally misrepresenting, concealing, or withholding facts, the department shall collect the cash value of the improperly used food instruments. Collection of overpayment is not required when the department determines it is not cost-effective to do so.

The contract agency shall issue a ~~Statement of Restitution along with the disqualification notice~~ written notice of restitution and disqualification. The ~~statement~~ written notice lists the serial numbers and dollar value of the food instruments for which payment is required.

The participant is required to surrender any unspent food instruments and send payment to the department in check or money order for those food instruments that have been cashed.

h. Each contract agency shall maintain a master list of all participant violation notices, disqualifications, and statements of restitution. The participant's notice of violation must also indicate when it is a second offense.

73.19(2) *Vendor violations.* There are five types of sanctions that are applied to vendors for violations of WIC program regulations: nonpayment of food instruments, issuance of violation points, temporary disqualification, permanent disqualification, and civil money penalties.

a. Nonpayment of food instruments. If the vendor has been terminated from the WIC program and submits a claim, it will be fully denied.

~~(1) As a result of prepayment reviews conducted by the state's bank, improperly completed food items are refused payment and returned to the vendor. Items screened during prepayment are authorized vendor stamp not present or legible in the "Pay to the Order of:" box on face of food instrument, missing signature, price exceeds maximum printed on face of food instrument.~~

~~(2) If the violation can be corrected by applying the authorized stamp, obtaining the proper signature, or reducing the price, the item may be resubmitted for payment. Federal banking regulations prohibit a financial instrument from being sent through the federal reserve system more than twice. If an improperly completed WIC food instrument is received by the state's bank a second time, it is voided and may not be redeposited.~~

b. Administrative and procedural violation points. Administrative and procedural violations are offenses to the provisions of the WIC vendor agreement that do not rise to the level of fraud against the WIC program or its participants.

These violations are an indication of a vendor's inattention to or disregard of the requirements of a WIC vendor agreement. It is in the department's interest to record and consider these violations when considering whether to continue its contractual relationship with the vendor.

One or more transactions prior to notification of the vendor constitute only one violation if they contain the same error.

The assignment of violation points does not limit the department's right to effect stronger penalties and sanctions in cases in which there is evidence of an intentional or systematic practice of abusing or defrauding the Iowa WIC program.

Violation		Points Per Event
~~1.~~	~~Accepting food instrument(s) outside the valid dates of use.~~	~~5~~
~~2.~~	~~Depositing food instrument(s) more than 15 days after purchase date.~~	~~5~~
~~3.~~	~~Accepting food instrument(s) with no date stamp.~~	~~5~~
1.	Developing and using promotional materials including stickers, tags, labels, or channel strips with the WIC service mark to identify WIC-approved foods.	5
2.	Developing and using vendor-created WIC vendor identification decals to indicate vendor is an authorized vendor.	5
3.	Failure to allow WIC participants to leave the vendor with WIC foods that were debited/removed from their eWIC account during a WIC transaction.	5
4.	Failure to post eWIC signs in the cash register lane that has a working WIC terminal if the vendor is not integrated.	5
5.	Failure to provide vendor ECR system participant receipts to WIC participants during each WIC transaction.	5
6.	Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.	10
~~4.~~ 7.	Refusal to accept valid WIC food instruments from participants.	10

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Violation			Points Per Event
~~5.~~	8.	Discriminatory treatment of WIC participants, such as requiring WIC participants to use special checkout lanes or provide extra identification, or disallowing the use of coupons or other vendor discounts in WIC transactions that are allowed in non-WIC transactions.	10
	9.	Treating WIC customers differently by offering them incentive items, vendor discounts, coupons, or other promotions that are not offered to non-WIC customers.	10
~~6.~~	10.	Providing to WIC participants incentive items not prior authorized by the department.	10
~~7.~~	11.	Failure to carry out corrective action plan developed as a result of monitoring visit.	10
	~~8.~~	~~Failure to reimburse department for potentially overpaid food instrument or provide reasonable explanation for the cost of the food instrument.~~	~~5~~
~~9.~~	12.	Accepting the return of food purchased with WIC food instruments for cash or credit toward other purchases.	10
	~~10.~~	~~Failure to use the WIC vendor stamp issued by the Iowa WIC program.~~	~~5~~
~~11.~~	13.	Issuing "rain checks" or credit in exchange for WIC food instruments.	10
~~12.~~	14.	Stocking out-of-date, stale, or moldy WIC foods.	10
~~13.~~	15.	Failure to submit vendor price assessment reports as requested.	10
	16.	Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor's current agreement and in the current publication of the Iowa WIC program's vendor instruction booklet.	10
	17.	Requiring WIC participants to purchase a particular brand when other WIC-approved brands are available.	10
	18.	Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.	10
	19.	Requiring to enter the PIN for the participant and/or asking for the participant's PIN.	10
~~14.~~	20.	For vendors that have special WIC prices, failure to post WIC prices on the shelf or on the package.	15
	~~15.~~	~~Cashing food instrument(s) without amount, date of purchase, or participant signature.~~	~~15~~
~~16.~~	21.	Contacting WIC participants in an attempt to recover funds not paid by WIC.	15
~~17.~~	22.	Providing false information on the price assessment report.	15
	~~18.~~	~~Failure to train all employees and ensure their knowledge regarding WIC program procedures set forth in the vendor's current agreement and in the current publication of the Iowa WIC program's vendor instruction booklet.~~	~~10~~
	~~19.~~	~~Requiring WIC participants to purchase a particular brand when other WIC-approved brands are available.~~	~~10~~
	~~20.~~	~~Not allowing WIC participants to use discount coupons or promotional specials to reduce the WIC food instrument amount.~~	~~10~~
	23.	Knowingly entering false information or altering information on the eWIC receipt/benefits.	10
~~21.~~	24.	Requiring other cash purchases to redeem WIC food instruments.	15

Violation		Points Per Event
~~22.~~	~~Failure to allow purchase of up to the full amount of WIC foods authorized on the food instrument if such foods are available and desired by the WIC participant.~~	~~20~~
25.	Failure to obtain infant and/or special needs formula from an approved source listed by the state WIC program.	15
26.	Offering incentive items with a value of more than $1.99.	15
27.	Scanning any UPC code that is not affixed to the actual item being purchased by the WIC participant.	20
28.	Failure to allow purchase of up to the full amount of WIC foods authorized on the food instrument if such foods are available and desired by the WIC participant.	20
29.	Other violations of this chapter or the vendor agreement or the Iowa WIC Policy and Procedure Manual.	

c. One-year disqualification. With an administrative finding of the following ~~violations~~ patterns of sanctions, the vendor will be disqualified for one year.

(1) ~~Accumulation of 45 or more violation points within a single federal fiscal year of the agreement period.~~ A pattern of allowing purchase of nonapproved food items in exchange for WIC food instruments or for foods provided in excess of those listed on the WIC food instrument. (federally mandated sanction)

(2) ~~Allowing purchase of nonapproved and nonsimilar food items in exchange for WIC food instruments.~~ Accumulation of 45 or more violations points within a single federal fiscal year of the agreement period. (department sanction)

(3) Failure to provide access to ~~store~~ vendor premises or in any manner to hinder, impede or misinform authorized WIC personnel in the act of conducting an on-site education, monitoring or investigation visit. (department sanction)

(4) Loss of Iowa department of inspections and appeals license. (department sanction)

(5) Submitting for payment a WIC food instrument redeemed by another authorized vendor. (department sanction)

(6) Threatening or verbally abusing WIC participants or authorized WIC program personnel in the conduct of legitimate WIC program transactions. (department sanction)

(7) Submitting for payment WIC food instruments known by the vendor to have been lost or stolen. (department sanction)

(8) Participating with other individuals, including but not limited to WIC employees, vendors, and participants, in systematic efforts to submit false claims for reimbursement of improper WIC food instrument. (department sanction)

d. With an administrative finding of the following ~~violations~~ federally mandated sanctions, the vendor will be disqualified from being a WIC vendor for three years.

(1) A pattern of charging WIC participants more than non-WIC customers or charging WIC participants more than the current shelf price.

(2) A pattern of charging for items not received by the WIC participant or for foods provided in excess of those listed on the WIC food instrument.

(3) A pattern of providing credit or nonfood items, except for alcohol, alcoholic beverages, or tobacco products, in exchange for WIC food instruments.

(4) One incidence of allowing the purchase of alcohol, alcoholic beverages, or tobacco products with a WIC food instrument.

(5) A pattern of receiving, transacting, or redeeming WIC food instruments outside authorized channels, including through unauthorized vendors or persons.

(6) A pattern of claiming reimbursement for the sale of a quantity of a specific food item which exceeds the ~~store's~~ vendor's documented inventory of that food item for a specified period of time.

~~(7) Submission for payment of WIC food instruments known by the vendor to have been lost or stolen.~~

e. With an administrative finding of the following ~~violations~~ federally mandated sanctions, the vendor will be disqualified for six years.

(1) One incidence of buying or selling food instruments for cash (trafficking).

~~(2) Participating with other individuals including but not limited to WIC employees, vendors, and participants, in systematic efforts to submit false claims for reimbursement of improper WIC food instruments.~~

~~(3)~~ (2) One incidence of selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for WIC food instruments.

f. With a conviction in a criminal court of law for trafficking in WIC food instruments or selling firearms, ammunition, explosives, or controlled substances (as defined in Section 102 of the Controlled Substances Act (21 U.S.C. 802)) in exchange for WIC food instruments, the vendor will be permanently disqualified from the Iowa WIC program. The department may impose a civil money penalty (CMP) in lieu of a disqualification when it determines, in its sole discretion, that:

(1) Disqualification of the vendor would result in inadequate participant access; or

(2) The vendor had, at the time of the violation, an effective policy and program in effect to prevent trafficking; and the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation.

g. The following items do not have a point value, but shall result in or extend a disqualification period:

(1) Failure to return WIC vendor stamp(s) to the WIC program within ~~10~~ ten days of effective date of disqualification, or expiration of agreement following denial of subsequent application, shall result in a 30-day extension of a disqualification period.

(2) For each month in which a vendor accepts WIC food instruments during a disqualification period, the disqualification period shall be extended by 30 days.

h. The above sanctions notwithstanding, the state of Iowa reserves the right to seek civil and criminal prosecution of WIC vendors for any and all instances of dealing in stolen or lost food instruments, trading cash and other inappropriate commodities for food instruments, or cases in which there exists evidence of a clear business practice to improperly obtain WIC funds, or other practices meeting the definition of fraud as defined in 7 CFR Part 246 or the Iowa Code.

i. A vendor shall not be entitled to receive any compensation for revenues lost as a result of any temporary or permanent disqualification.

j. A minimum of 15 days' notice is provided prior to all disqualifications, except for permanent disqualifications assessed under paragraph 73.19(2)*"f,"* which are effective on the date of receipt of the notice of administrative action. When the department determines that an offense has occurred, a disqualification letter with supporting documentation is prepared for the WIC director's signature. The disqualification letter identifies the specific offenses that the vendor is charged with and the procedures for filing an appeal. Voluntary withdrawal from the WIC vendor agreement to avoid a sanction is not allowed.

k. The department is responsible for issuing all warning and disqualification letters. Contract agencies are informed of all vendor correspondence regarding violations. In situations where participant violations are also involved, the contract agency is responsible for follow-up, as detailed in subrule 73.19(1).

l. Federal ~~food stamp~~ Supplemental Nutrition Assistance Program (SNAP) regulations require automatic disqualification from ~~the food stamp program~~ SNAP for vendors disqualified by the WIC program for certain types of violations. When a vendor is disqualified from the WIC program, the disqualification letter to the vendor will include the following statement: "This disqualification from WIC may result in disqualification as a retailer in the ~~food stamp program~~ Supplemental Nutrition Assistance Program (SNAP). Such disqualification may not be subject to administrative or judicial review under

~~the food stamp program~~ SNAP." For all vendor disqualifications from the WIC program, notice will be sent to the United States Department of Agriculture for appropriate action.

m. The department shall disqualify a vendor who has been disqualified from ~~the food stamp program~~ SNAP. The disqualification shall be for the same length of time as the ~~food stamp program~~ SNAP disqualification, may begin at a later date than the ~~food stamp program~~ SNAP disqualification, and shall not be subject to administrative or judicial review under the WIC program. If the department determines that disqualification of a vendor would result in inadequate participant access, it will impose a civil money penalty (CMP) in lieu of disqualification.

n. Civil money penalties.

(1) When the department determines that a civil money penalty (CMP) shall be imposed in lieu of disqualification for reasons specified under paragraph 73.19(2)*"f"* or 73.19(2)*"m,"* it shall use the civil money penalty formula in accordance with Title 7 CFR ~~Subpart~~ 246.12(k)(1)(x) to determine the CMP.

(2) If a vendor does not pay, only partially pays, or fails to timely pay a CMP, the department will disqualify the vendor for the length of the disqualification corresponding to the violation for which the CMP was assessed. "Failure to timely pay a CMP" includes the failure to pay a CMP in accordance with an installment plan approved by the department.

(3) Money received by the state WIC agency as a result of civil money penalties or fines assessed against a vendor and any interest charged in the collection of these penalties and fines shall be considered as WIC program income.

641—73.20(135) Data processing. All contract agencies shall comply with the instructions outlined in the Iowa WIC Policy and Procedure Manual for use of the automated data processing system in provision of WIC food instruments and monitoring of WIC services. No contract agency is exempted from adherence to any portion of these instructions.

641—73.21(135) Outreach. Outreach efforts within the Iowa WIC program shall be directed toward extension of services to the neediest Iowans of high priority by reason of their WIC status (see 7 CFR ~~246.1(d)3~~ 246.1(d)(3)). The department and contract agencies shall share responsibility for the conduct of outreach efforts.

73.21(1) *Contract agency responsibilities.* Contract agencies shall conduct any or all of the following outreach activities annually:

~~*a.* Employ outreach worker(s).~~

~~*b.* Submit for publication a minimum of two newspaper articles on WIC in the local community.~~

~~*c.*~~ *a.* Distribute WIC brochures to numerous community organizations and offices.

b. Complete outreach activities as specified in the local agency contract.

~~*d.* Hold informational meetings for county social service departments, including food stamp program staff, drug/alcohol abuse counseling services, family investment program staff, and child abuse staff; and for public health nurse offices, physician offices, maternal and child health programs, Head Start programs, dental programs, family planning programs, nutrition professional groups, nursing professional groups, extension services, parent-teacher and other community organizations.~~

73.21(2) Reserved.

641—73.22(135) Caseload management. The statewide caseload (number of participants) shall be managed by the department in accord with funding limitations and federal regulations or directives. The federally established priority categories of participant shall be followed when limitation of services is necessary in accord with 7 CFR ~~246.7(d)3~~ 246.7(d)(3). In addition the following rules shall apply:

73.22(1) A contract agency shall maintain a waiting list only when the department determines that sufficient funds are not available to meet demand.

73.22(2) When a waiting list has been authorized, contract agencies shall certify applicants of potential highest priority first (e.g., women and infants) and potential lower priority second (children). Within these priority groups, applicants shall be offered certification appointments in the order of placement on the list.

73.22(3) When insufficient funds are available to serve all priority categories, the department shall provide instructions to contract agencies regarding which priority categories may continue to be certified.

73.22(4) When necessitated by federal funding restrictions, the department reserves the right to terminate or temporarily suspend benefits for categories of participants prior to the end of their certification period. Each participant shall be advised in writing 15 days before the effective date of the reasons for the action and of the right to a fair hearing.

641—73.23(135) Grant application procedures for contract agencies. Private, nonprofit or public agencies wishing to provide WIC services shall file a letter of intent to make application to the department no later than April 1 of the competitive year. Applications shall be to administer WIC services for a specified project period, as defined in the request for proposal, with an annual continuation application. The contract period shall be from October 1 to September 30 annually. All materials submitted as part of the grant application are considered public records in accordance with Iowa Code chapter 22, after a notice of award is made by the department. Notification of the availability of funds and grant application procedures will be provided in accordance with the department rules found in 641—Chapter 176.

Contract agencies are selected on the basis of the grant applications submitted to the department. The department will consider only applications from private, nonprofit or public agencies. In the case of competing applications, the contract will be awarded to the agency that scores the highest number of points in the review. Copies of review criteria are available from: Chief, Bureau of Nutrition and Health Promotion, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075~~, (515)281-4913~~; (515)281-7095 or 1-800-532-1579.

641—73.24(135) Participant rights. The special supplemental nutrition program for women, infants and children shall be open to all eligible persons regardless of race, color, sex, creed, age, mental/physical handicap or national origin. ~~An applicant or participant may appeal any decision made by the contract agency or department regarding the applicant's or participant's eligibility for the program.~~ The USDA Nondiscrimination Statement can be found on the following USDA Web site: http://www.fns.usda.gov/sites/default/files/cr/Nondiscrimination-Statement.pdf.

641—73.25(135) Confidentiality. The department and local agencies shall protect the confidentiality of participant, applicant, and vendor information in accordance with 7 CFR Part 246.

These rules are intended to implement federal law 42 U.S.C. Section 1786, and Iowa Code ~~sections 10A.202(1)*"h"* and 135.11(1)~~ section 135.11(12).

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ARC 2840C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 137.119, the Iowa Department of Public Health hereby amends Chapter 77, "Local Boards of Health," Iowa Administrative Code.

The purpose of Chapter 77 is to define the structure, powers, and duties of local boards of health. The chapter also describes a process for voluntarily merging local boards of health into a district board of health. To date, this process has not been utilized to completion. Counties that have attempted to form a district board of health have reached points of impasse, some of which were related to Iowa Code requirements that were too inflexible. 2016 Iowa Acts, Senate File 2159, removed unnecessary barriers to district formation and cumbersome requirements that were part of the application process. It

also removed references to the Iowa public health standards since local boards of health are pursuing national accreditation instead.

These amendments reflect the changes that 2016 Iowa Acts, Senate File 2159, made to Iowa Code chapter 137 and allow more flexibility for determining the district board's membership and makeup, modify documentation required to be submitted to the Department, limit the Department's role in assessing the application for completeness, and permit the newly merged entity to subcontract for a treasurer or auditor if necessary. A new rule is adopted to allow city boards of health to voluntarily dissolve by submitting notice to the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2725C** on September 28, 2016. A public hearing was held on October 18, 2016. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on November 9, 2016.

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

These amendments are intended to implement Iowa Code chapter 137 and 2016 Iowa Acts, Senate File 2159.

These amendments will become effective on January 11, 2017.

The following amendments are adopted.

ITEM 1. Rescind the definition of "Iowa public health standards" in rule **641—77.2(137)**.

ITEM 2. Amend subrule 77.3(2) as follows:

77.3(2) Policy development: Exercise responsibility to serve the public interest in the development of comprehensive public health policies. This core function can be accomplished by promoting use of a scientific knowledge base in decision making about public health and by taking the lead in public health policy development.

a. A local board of health may perform the following essential public health services:

(1) Develop policies and plans that support individual and community health efforts; and

(2) Research new insights and innovative solutions to health problems and health threats.

b. A local board of health shall perform the following essential public health services:

(1) Enforce laws and regulations that protect public health and enforce lawful orders of the department;

(2) Make and enforce reasonable rules and regulations not inconsistent with the law~~,~~ <u>or</u> the rules of the state board~~, or the Iowa public health standards~~ as may be necessary for the protection and improvement of the public health; and

(3) Employ persons as necessary for the efficient discharge of ~~its~~ <u>the board's</u> duties. Employment practices shall meet the requirements of Iowa Code chapter 8A, subchapter IV, or any civil service provision adopted under Iowa Code chapter 400.

ITEM 3. Rescind rule 641—77.4(137) as follows:

~~**641—77.4(137) Local boards of health—Iowa public health standards.** Local boards of health may:~~

~~1. Designate an agency to assure compliance with the Iowa public health standards in the jurisdiction.~~

~~2. Demonstrate a commitment to comply with the Iowa public health standards.~~

~~3. Request at least annually reports from organizations that provide public health services within the jurisdiction.~~

ITEM 4. Renumber rules **641—77.5(137)** to **641—77.7(137)** as **641—77.4(137)** to **641—77.6(137)**.

ITEM 5. Adopt the following <u>**new**</u> rule 641—77.7(137):

641—77.7(137) Dissolution of city boards. A city board of health may voluntarily dissolve by submitting notice to the department. The notice shall set an effective date for the action.

ITEM 6. Amend rule 641—77.8(137) as follows:

641—77.8(137) ~~District boards~~ Request to form district board of health. The county boards of health of any two or more geographically contiguous counties may at any time submit to the department a written request to form a district board of health.

77.8(1) A request to form a district board of health shall be executed by the county ~~boards~~ board of supervisors and the county ~~boards~~ board of health for each county comprising the proposed district.

77.8(2) A request to form a district board of health shall be submitted to the department and shall be completed on the department's application form. The application form shall include:

a. A written narrative that explains how the formation of a district board of health will ~~increase organizational capacity and~~ attain the capability to provide population-based and personal health services ~~compared with operating as local boards of health~~.

~~*b.* A written narrative that details the infrastructure capability of the proposed district board of health to deliver core public health functions, provide essential public health services, and comply with Iowa public health standards.~~

~~*c.*~~ *b.* The composition of the district board of health, including the number of members each county shall appoint pursuant to Iowa Code section ~~135.105~~ 137.105 and the total number of members on the district board of health.

~~*d.*~~ *c.* Proof of approval by all county boards of supervisors and county boards of health involved in the request to form a district and of the elements included in the formation plan.

~~*e.*~~ *d.* A service delivery plan ~~to include each component of the public health standards~~. The service delivery plan shall detail how population-based and environmental health services will be delivered throughout the district.

~~*f.*~~ *e.* The budget and fiscal plan for the proposed district health department. The budget plan shall include an estimate of the proposed expenditures and revenues and an allocation of the revenue responsibilities of each of the counties participating in the proposed district.

~~*g.*~~ *f.* A table of organization.

~~*h.*~~ *g.* A personnel system description, including identification of the district health department treasurer and district health department auditor and a section which addresses the employment issues contained in Iowa Code section 137.110.

~~*i.*~~ *h.* The location of the district health department offices and workforce throughout the jurisdiction. The request shall include a map showing district boundaries.

~~*j.*~~ *i.* An inventory of the property and equipment in the custody of each county health department and a description as to whether such property and equipment shall remain in the custody of the county health department or shall be transferred to the district health department to become property of the district health department. Property and equipment include any item which costs more than $5,000.

~~*k.*~~ *j.* An information technology (IT) plan ~~that details the formation of a centralized IT department able to serve the needs of the proposed district health department~~.

~~*l.*~~ *k.* A proposed date upon which the district board of health shall be formed and established and a timeline for the adoption of district board of health rules and regulations.

ITEM 7. Amend rule 641—77.9(137) as follows:

641—77.9(137) ~~Approval~~ Review, approval or denial of district board of health formation.

77.9(1) to **77.9(4)** No change.

77.9(5) The state board of health has the authority to deny formation of a district board of health if the application fails to conform with Iowa Code chapter 137 as amended by 2016 Iowa Acts, Senate File 2159, or this chapter.

77.9(6) The department will notify, in writing, all local boards of health in the proposed district of the reason and rationale for the denial of the district board of health formation within 30 days of the decision.

77.9(7) The local boards of health in the proposed district shall have the right to request reconsideration of the decision by submitting the request to the department within 30 days of receiving notice of the decision.

77.9(8) The state board of health shall reconsider the request by the local boards of health at its next regularly scheduled meeting. The reconsideration shall not constitute a contested case hearing. The state board of health's final decision following reconsideration shall constitute final agency action pursuant to Iowa Code section 17A.19, and judicial review of any such decision shall be treated as other agency action.

ITEM 8. Rescind rule 641—77.10(137) as follows:

~~**641—77.10(137) Denial of district board of health formation.** The department and the state board of health have the authority to deny formation of a district board of health. The department is responsible for assessing the application form for completeness and accuracy. The state board of health has the authority to deny formation of a district board of health if the application does not show sufficient organizational capacity to deliver core public health functions and essential public health services, does not ensure compliance with the Iowa public health standards, or otherwise fails to conform with Iowa Code chapter 137 or this chapter.~~

~~**77.10(1)** The department will notify, in writing, all local boards of health in the proposed district of the reason and rationale for the denial of the district board of health formation within 30 days of the decision.~~

~~**77.10(2)** The local boards of health in the proposed district shall have the right to request reconsideration of the decision by submitting the request to the department within 30 days of receiving notice of the decision.~~

~~**77.10(3)** The state board of health shall reconsider the request by the local boards of health at its next regularly scheduled meeting. The reconsideration shall not constitute a contested case hearing. The state board of health's final decision following reconsideration shall constitute final agency action pursuant to Iowa Code section 17A.19, and judicial review of any such decision shall be treated as other agency action.~~

ITEM 9. Renumber rules **641—77.11(137)** and **641—77.12(137)** as **641—77.10(137)** and **641—77.11(137)**.

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ARC 2841C

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 691.6, the Iowa Department of Public Health hereby amends Chapter 127, "County Medical Examiners," Iowa Administrative Code.

These amendments implement changes made to Iowa Code section 331.802(2)"b" in 2016 Iowa Acts, House File 2446, in regards to reimbursing county medical examiner staff for services performed. In accordance with Iowa Code section 331.802(2), if a person's death affects the public interest, the county medical examiner is required to conduct a preliminary investigation of the cause and manner of death, prepare a written report of the findings, and submit the full report to the state medical examiner and a copy of the report to the county attorney. In accordance with Iowa Code section 331.802(2)"b," the county medical examiner is authorized to submit an invoice to the county of appointment for the actual costs incurred. The county where the death occurred is the county of appointment. The county of appointment is permitted to seek reimbursement from the county of the decedent's residence for costs incurred, but

seeking reimbursement typically occurs after the county of appointment has paid the invoiced amount to the county medical examiner staff. The county of the decedent's residence is required to reimburse the county of appointment.

These amendments state that the county medical examiner, deputy medical examiner and medical examiner investigators shall submit a joint invoice to the county of appointment for services performed. The county of appointment can choose to pay the invoice immediately or forward the invoice to the county of the decedent's residence for payment to the county medical examiner staff. If payment is not received by the county medical examiner staff from the county of the decedent's residence within 60 days, the county of appointment shall pay the invoice to the county medical examiner staff.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2733C** on September 28, 2016. No public comments were received. These amendments are identical to those published under Notice of Intended Action.

The State Board of Health adopted these amendments on November 9, 2016.

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

These amendments are intended to implement Iowa Code section 331.802(2) as amended by 2016 Iowa Acts, House File 2446.

These amendments will become effective on January 11, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 127.4(1) as follows:

127.4(1) *Payment of fee and expenses.*

a. A medical examiner shall receive from the county of appointment or the county of the decedent's residence a fee for each preliminary investigation and report submitted in a case in which a death affects the public interest. A county medical examiner shall also receive from the county of appointment or the county of the decedent's residence the examiner's actual expenses. The fee and expenses shall be submitted by the county medical examiner to the county of appointment, which may immediately pay the invoice or forward the invoice to the county of the decedent's residence for payment to the county medical examiner. If the county medical examiner does not receive payment from the county of the decedent's residence within 60 days of receiving the invoice, the county of appointment shall pay the invoice.

b. A pathologist or other physician who performs an autopsy under medical examiner authorization shall be paid for the services by the county of appointment.

c. Invoices produced for services performed by a county medical examiner, deputy county medical examiner or county medical examiner investigator shall be submitted as a joint invoice to the county of appointment when services were rendered in a case by multiple county medical examiner staff.

ITEM 2. Amend subrule 127.7(5) as follows:

127.7(5) *Fees.* Fees for the services provided by a CME-I shall be paid by the county of appointment or by the county of the decedent's residence. A CME-I shall also receive from the county of appointment or the county of the decedent's residence reimbursement for actual expenses. The fee and expenses shall be submitted by the CME-I to the county of appointment, which may immediately pay the invoice or forward the invoice to the county of the decedent's residence for payment to the CME-I. If the CME-I does not receive payment from the county of the decedent's residence within 60 days of receiving the invoice, the county of appointment shall pay the invoice.

ITEM 3. Amend subrule 127.8(4) as follows:

127.8(4) *Fees.* Fees for the services provided by a DCME shall be paid by the county of appointment or by the county of the decedent's residence. A DCME shall also receive from the county of appointment or the county of the decedent's residence reimbursement for actual expenses. The fee and expenses shall be submitted by the DCME to the county of appointment, which may immediately pay the invoice or forward the invoice to the county of the decedent's residence for payment to the DCME. If the DCME

does not receive payment from the county of the decedent's residence within 60 days of receiving the invoice, the county of appointment shall pay the invoice.

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ARC 2833C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 422.68, the Department of Revenue hereby amends Chapter 42, "Adjustments to Computed Tax and Tax Credits," Iowa Administrative Code.

Currently, Iowa offers an individual income tax credit for certain geothermal heat pump property installed in the taxpayer's residence during the tax year. The credit is calculated as a percentage of the federal individual income tax credit available for the same type of property. As of the date of submission of this adopted filing, the federal credit is set to expire on December 31, 2016. In anticipation of the probable expiration of the federal credit, the 2016 Iowa Legislature created a separate Iowa credit that will allow Iowa taxpayers a credit for 10 percent of the qualified costs of installing these same types of geothermal heat pump systems during years in which the federal credit is not available. This amendment is intended to incorporate this new credit into the existing rules and to clarify the relationship between the two Iowa credits for geothermal heat pump property and the corresponding federal credit.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 2776C** on October 12, 2016. One public comment was received in relation to this rule making. That comment was in support of the amendments as published in the Notice. These amendments are identical to those published under Notice of Intended Action, except for a correction to paragraphs 42.47(1)"b" and 42.74(2)"c" in order to change numbered paragraphs to subparagraphs.

Any person who believes that the application of the discretionary provisions of these rules 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 701—7.28(17A).

The Department of Revenue adopted this amendment on November 16, 2016.

After analysis and review of this rule making, the Department finds that this amendment is not likely to have a significant impact on jobs.

This amendment is intended to implement 2016 Iowa Acts, House File 2468.

This amendment will become effective January 11, 2017.

The following amendment is adopted.

Amend rule 701—42.47(422) as follows:

701—42.47(422) Geothermal ~~heat pump~~ tax ~~credit~~ credits. ~~For tax years beginning on or after January 1, 2012, a geothermal heat pump tax credit is available for residential property located in Iowa.~~ There are two distinct Iowa geothermal heat pump tax credits. Each Iowa credit is described in detail below. The Iowa credit described in subrule 42.47(1) is only available for years in which the federal credit provided in Section 25D(a)(5) of the Internal Revenue Code is also available. The Iowa credit described in subrule 42.47(2) is only available for years in which the federal credit provided in Section 25D(a)(5) of the Internal Revenue Code is not available.

42.47(1) ~~*Calculation of credit*~~ *Geothermal heat pump tax credit for years in which the federal credit is available.*

a. Availability of the credit. For tax years beginning on or after January 1, 2012, in which the federal residential energy efficient property tax credit for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code is available, an Iowa geothermal heat pump tax credit, as described in this subrule, is also available for residential property located in Iowa.

b. Eligibility for the credit. To be eligible for the credit described in this subrule, all of the following requirements must be met:

(1) The geothermal heat pump must be eligible for the federal residential energy efficient property tax credit provided in Section 25D(a)(5) of the Internal Revenue Code.

(2) The taxpayer must claim the federal residential energy efficient property tax credit.

(3) The geothermal heat pump must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a geothermal heat pump and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.

EXAMPLE: A taxpayer reported a $6,000 geothermal tax credit on the 2011 federal return due to an installation that was completed in 2011. The taxpayer applied $2,000 of the credit on the taxpayer's 2011 federal return since the federal tax liability was $2,000. The remaining $4,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was completed before January 1, 2012.

c. Calculation of the credit. The credit described in this subrule is equal to 20 percent of the federal residential energy efficient property tax credit allowed for geothermal heat pumps provided in Section 25D(a)(5) of the Internal Revenue Code. ~~The~~ As of the publication date of the Notice proposing to amend these rules, October 12, 2016, the federal residential energy efficient tax credit for geothermal heat pumps is ~~currently~~ allowed for installations that are completed on or before December 31, 2016. Therefore, the corresponding Iowa tax credit will be available for the 2012 to 2016 tax years. ~~The geothermal heat pump must be installed on or after January 1, 2012, to qualify for the Iowa credit. If the taxpayer installed a geothermal heat pump and initially reported the federal tax credit for a tax year beginning prior to January 1, 2012, no Iowa credit will be allowed.~~ If the federal residential energy efficient property tax credit for geothermal heat pumps is extended into additional tax years, absent action by the Iowa legislature to repeal the Iowa credit, the Iowa credit described in this subrule will continue to be available for each year in which the federal residential energy efficient property tax credit for geothermal heat pumps is available.

~~EXAMPLE: A taxpayer reported a $6,000 geothermal tax credit on the 2011 federal return due to an installation that was completed in 2011. The taxpayer applied $2,000 of the credit on the taxpayer's 2011 federal return since the federal tax liability was $2,000. The remaining $4,000 of federal credit was applied on the 2012 federal return. No credit will be allowed on the 2012 Iowa return since the installation was completed before January 1, 2012.~~

~~42.47(2)~~ *d. Claiming the tax credit.* The geothermal heat pump tax credit ~~will~~ must be claimed on Form IA 148, Tax Credit Schedule. The taxpayer must include a valid copy of the taxpayer's federal Form 5695, Residential Energy Credits, with ~~any~~ the Iowa tax return for the tax year in which the geothermal heat pump was installed claiming the geothermal heat pump credit described in this subrule.

e. Refundability. Any credit in excess of the taxpayer's tax liability is nonrefundable.

f. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until ~~used~~ depleted, whichever is ~~the~~ earlier.

g. Transferability. The credit may not be transferred to any other person.

42.47(2) *Geothermal tax credit for years in which the federal credit is not available.*

a. Availability of the credit. For tax years beginning on or after January 1, 2017, in which the federal residential energy efficient tax credit for geothermal heat pumps is not available, an Iowa geothermal tax credit is available for certain geothermal heat pump property installed in this state.

b. Definitions.

"Qualified geothermal heat pump property" means any equipment that meets the requirements of the federal Energy Star Program in effect at the time that the expenditure for such equipment is made and uses the ground or groundwater as either:

1. A thermal energy source to heat the dwelling unit of the taxpayer, or

2. A thermal energy sink to cool the dwelling unit of the taxpayer.

"Qualified geothermal heat pump property expenditure" means an expenditure for qualified geothermal heat pump property installed on or in connection with a dwelling unit that is:

1. Located in Iowa, and

2. Used as a residence by the taxpayer.

c. Eligibility for the credit. To be eligible for the credit described in this subrule, the qualified expenditures must be incurred:

(1) To install qualified geothermal heat pump property at a location in Iowa that is used as a residence by the taxpayer, and

(2) During the tax year for which the credit is claimed. Qualified geothermal heat pump property expenditures are deemed to have been made on the date the installation is complete. In the case of new construction or reconstruction, the expenditures are deemed to have been made on the date the taxpayer first began to use the structure as the taxpayer's residence.

d. Calculation of the credit. The credit described in this subrule is equal to 10 percent of the qualified geothermal heat pump property expenditures made by the taxpayer during the tax year. This credit is not available during any year in which the federal credit may be claimed, and no expenditure used to calculate the federal residential energy efficient property tax credit may be used to calculate the amount of the Iowa geothermal tax credit described in this subrule. For information on an Iowa tax credit that is available for years in which the federal residential energy efficient property tax credit for geothermal heat pump property is also available, see subrule 42.47(1).

e. Multiple housing cooperatives and horizontal property regimes. In the case of a taxpayer whose dwelling unit is part of a multiple housing cooperative organized under Iowa Code chapter 499A or a horizontal property regime under Iowa Code chapter 499B, the taxpayer shall be treated as having made the taxpayer's proportionate share of any qualified geothermal heat pump property expenditures made by the cooperative or the regime.

f. Claiming the credit. The geothermal credit described in this subrule must be claimed on Form IA 148, Tax Credit Schedule, and included with the tax return for the tax year in which the expenditures are deemed to have been made. In order to claim this credit, a taxpayer must also complete the form provided by the department to substantiate eligibility for the tax credit claimed and include any other information the department may require.

g. Refundability. Any credit in excess of the taxpayer's tax liability is nonrefundable.

h. Carryforward. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the taxpayer's tax liability for the following ten years or until depleted, whichever is earlier.

i. Transferability. The credit may not be transferred to any other person.

This rule is intended to implement ~~2012 Iowa Acts, Senate File 2342, section 1~~ Iowa Code section 422.11I and 2016 Iowa Acts, House File 2468.

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ARC 2843C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation, on November 16, 2016, adopted new Chapter 162, "Surface Transportation Block Grant Program," Iowa Administrative Code.

The federal Surface Transportation Program was renamed the Surface Transportation Block Grant Program under the Fixing America's Surface Transportation (FAST) Act. Because this program is now considered a federal block grant, Iowa Code section 8.41 requires that these funds be deposited into a special fund in the state treasury and then appropriated by the General Assembly to the Department. Therefore, during the past legislative session, 2016 Iowa Acts, Senate File 2320, section 4, amended 2015 Iowa Acts, chapter 130, to appropriate $149,300,000 from the special fund in the state treasury to

the Department for federal fiscal year (FFY) 2017. The dollar amount reflects the amount anticipated to be received from the federal government for FFY 2017 for the Surface Transportation Block Grant Program.

2016 Iowa Acts, Senate File 2320, section 4, requires the Department to expend the moneys appropriated as provided in 23 U.S.C. Section 133 and in conformance with rules adopted by the Department.

These rules were previously Adopted and Filed Emergency and published in the October 12, 2016, Iowa Administrative Bulletin as **ARC 2745C**. Notice of Intended Action to solicit comments on that submission was published in the October 12, 2016, Iowa Administrative Bulletin as **ARC 2750C**. These rules are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

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

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

These rules are intended to implement 2016 Iowa Acts, Senate File 2320, section 4.

These rules will become effective January 11, 2017, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

Rule-making action:

Adopt the following **new** 761—Chapter 162:

CHAPTER 162
SURFACE TRANSPORTATION BLOCK GRANT PROGRAM

761—162.1(86GA,SF2320) Purpose. Federal authorization acts appropriate funds to states to support surface transportation investments. A portion of these funds are provided to the state of Iowa for the Surface Transportation Block Grant Program. The purpose of these rules is to establish requirements for the Surface Transportation Block Grant Program.

761—162.2(86GA,SF2320) Contact information. Information relating to this chapter may be obtained from the Office of Program Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1661.

761—162.3(86GA,SF2320) Source of funds. The Surface Transportation Block Grant Program established in 23 U.S.C. Section 133 provides for the use of federal funds to preserve and improve the condition and performance of any federal-aid highway, bridge or tunnel project on any public road. Surface Transportation Block Grant funds may also be used on pedestrian and bicycle infrastructure and transit capital projects including intercity bus terminals.

761—162.4(86GA,SF2320) Administration of funds. Surface Transportation Block Grant funds are administered by the department and shall be made available for obligation throughout the state on a fair and equitable basis. The department, in consultation with city, county and local planning agency officials, through their representative organizations, shall allocate these funds to Iowa's transportation management areas, metropolitan planning organizations, regional planning affiliations, incorporated cities, counties and the department. Allocation of these funds shall be based upon a distribution methodology approved by the commission. The commission shall review and approve the distribution methodology upon passage of each federal authorization act. Funds allocated to cities and counties to support the Federal-Aid Highway Bridge Program shall be made in accordance with 761—Chapter 161. All allocations of the Surface Transportation Block Grant funds shall be made in accordance with the Federal Highway Administration's regulations and include the allocations of the Surface Transportation Program (STP) Set-Aside for transportation alternatives as established in 23 U.S.C. Section 133(h).

These rules are intended to implement 2016 Iowa Acts, Senate File 2320, section 4.

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ARC 2842C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.12 and 307A.2, the Iowa Department of Transportation, on November 16, 2016, adopted amendments to Chapter 821, "Highway-Railroad Grade Crossing Surface Repair Fund," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the October 12, 2016, Iowa Administrative Bulletin as **ARC 2751C**.

These amendments change the way in which funds are distributed by the Department to assist railroads and highway authorities in repairing highway-railroad grade crossing surfaces. The repair of highway-railroad grade crossing surfaces restores a safe and smooth crossing for the motorist. Applications were only funded in the order in which they were received. Funding applications in the order received left no discretion or process to advance projects based on need, safety or other considerations. These amendments allow the Department to set aside an amount not to exceed 50 percent of the repair fund in any fiscal year for discretionary project selection and set out the criteria to take into consideration when utilizing that funding. Cost sharing between the Department, railroad, and highway authority remains unchanged.

Other amendments update the contact information of the Department and the chapter implementation sentence.

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

These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code section 327G.29.

These amendments will become effective January 11, 2017.

Rule-making actions:

ITEM 1. Amend subrule 821.2(2) as follows:

821.2(2) ~~Information about the repair fund may be obtained by contacting the department at the following address:~~ Program information, applications and application instructions are available on the department's Web site at www.iowadot.gov. The program is administered by the Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone ~~(515)239-1140~~ (515)239-1108. ~~Submissions to the department under this chapter shall be sent or delivered to this address.~~

ITEM 2. Amend rule 761—821.3(327G) as follows:

761—821.3(327G) Procedures for the use of grade crossing surface repair funds.

821.3(1) *Use of funds.* A portion of the repair fund, not to exceed 50 percent in any fiscal year, shall be set aside to meet critical or atypical needs. In identifying priorities for the set-aside funds, criteria including, but not limited to, the following shall be considered:

a. Condition of the crossing.

b. Safety concerns.

c. Utilization of the rail line.

d. Train and motor vehicle traffic density at the site. Special consideration may be given to heavy truck traffic.

e. Recent or planned development or construction in the vicinity of the crossing.

~~**821.3(1)**~~ **821.3(2)** *Notification to department.* If a railroad and a jurisdiction agree to use the repair fund for grade crossing surface repair, written notification of the action signed by both parties shall be sent to the department.

a. The notification shall include the American Association of Railroads—Department of Transportation (AAR-DOT) crossing number, the total estimated cost of the repair, and a statement that the railroad and the jurisdiction each agree to pay 20 percent of the cost of the repair.

b. Notification shall be accepted by the department in order of receipt.

~~**821.3(2)**~~ **821.3(3)** *Processing an agreement.*

a. The department shall determine if the agreed-upon work constitutes grade crossing surface repair and may consult with the jurisdiction or the railroad if further information is needed.

b. If the work constitutes grade crossing surface repair and when funds are available in the repair fund, the department shall furnish the railroad and the jurisdiction with three copies of an agreement for grade crossing surface repair.

c. The railroad and the jurisdiction shall sign all three copies of the agreement and return them to the department.

d. The department shall:

(1) Approve the agreement and obligate from the repair fund an amount equal to 60 percent of the cost of the agreed-upon work.

(2) Sign all three copies of the agreement, retain one copy of the fully executed agreement, transmit one copy to the jurisdiction, and transmit one copy to the railroad, authorizing work to proceed.

~~**821.3(3)**~~ **821.3(4)** *Preaudit.* Prior to approval of the agreement, the department may perform a preaudit evaluation of the railroad.

The preaudit evaluation may include an examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the surface repair project; an examination of the railroad's cost factors to ensure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

~~**821.3(4)**~~ **821.3(5)** *Review of completed project.* Upon completion of the agreed-upon work, the department, the railroad and the jurisdiction shall review the project to determine satisfactory completion.

~~**821.3(5)**~~ **821.3(6)** *Project billing and payment.*

a. The railroad shall submit to the jurisdiction and the department a final detailed billing covering the actual and necessary costs incurred by the railroad for the agreed-upon work.

b. The jurisdiction and the department shall review the billing for reasonable conformance with the agreement. The department may audit the billing to determine the allowability and propriety of the billing costs in accordance with the agreement.

c. Once the department approves the billing, the department shall pay to the railroad from the repair fund an amount equal to 60 percent of the actual cost of the agreed-upon work.

d. The jurisdiction shall pay to the railroad an amount equal to 20 percent of the actual cost of the agreed-upon work.

ITEM 3. Amend **761—Chapter 821**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~312.2(5)~~ 312.2(2), 327G.29~~,~~ and 327G.30~~, and 327G.31~~.

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