



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXV  
December 12, 2012

NUMBER 12  
Pages 947 to 1086

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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

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Fax: (515)281-5534

### CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2013

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
14	Wednesday, December 19, 2012	January 9, 2013
15	Friday, January 4, 2013	January 23, 2013
16	Friday, January 18, 2013	February 6, 2013

**PLEASE NOTE:**

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

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

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

**DENTAL BOARD[650]**

Public health settings, 10.5(1) IAB 11/28/12 <b>ARC 0471C</b>	Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa	January 8, 2013 2:30 p.m.
Initial registration for dental assistants, 11.6(2), 15.3 IAB 11/28/12 <b>ARC 0473C</b>	Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa	January 8, 2013 10 a.m.
Iowa practitioner program and review committee, 35.1 IAB 11/28/12 <b>ARC 0472C</b>	Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa	January 8, 2013 11 a.m.

**EDUCATIONAL EXAMINERS BOARD[282]**

Notice of hearing—delivery, 11.7(1) IAB 12/12/12 <b>ARC 0494C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 9, 2013 1 p.m.
Substitute teacher's license, 13.16(1) IAB 12/12/12 <b>ARC 0509C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 9, 2013 1 p.m.
Elimination of Class D career and technical license, 17.4 IAB 12/12/12 <b>ARC 0492C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 9, 2013 1 p.m.
Professional administrator license, 18.5 IAB 12/12/12 <b>ARC 0493C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 9, 2013 1 p.m.
Evaluator endorsement—Class A administrator exchange license for out-of-state applicants, 19.6 IAB 12/12/12 <b>ARC 0491C</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 9, 2013 1 p.m.

**EDUCATION DEPARTMENT[281]**

Community colleges—award requirements, career and technical program length, 21.2 IAB 12/12/12 <b>ARC 0531C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 4, 2013 11 a.m. to 12 noon
High school equivalency diploma, 32.1 to 32.6, 32.8 IAB 12/12/12 <b>ARC 0510C</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 4, 2013 10 to 11 a.m.

**ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**

Transition to computer-based testing format, 1.2, 4.1(8), 5.1(8) IAB 12/12/12 <b>ARC 0530C</b>	Professional Licensing Bureau Offices 1920 SE Hulsizer Rd. Ankeny, Iowa	January 2, 2013 9 to 11 a.m.
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**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]**

Enhanced 911 telephone systems, amendments to ch 10 IAB 12/12/12 <b>ARC 0512C</b>	Conference Room, Building W-4 Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	January 3, 2013 1 p.m.
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**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Minimum physical standards for nursing facilities, ch 61 IAB 12/12/12 <b>ARC 0514C</b>	Room 319 Lucas State Office Bldg. Des Moines, Iowa	January 3, 2013 10 a.m.
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**SECRETARY OF STATE[721]**

Elections—complaints concerning violations of Iowa Code chapters 39 to 53, noncitizen registered voter identification and removal process, 21.100, 28.5 IAB 12/12/12 <b>ARC 0528C (ICN Network)</b>	Department of Public Health Sixth Floor (Check in with receptionist in NW corner of hall.) Lucas State Office Bldg. Des Moines, Iowa (Origination Site)	January 3, 2013 2 to 4 p.m.
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North Iowa Area Community College - 1 Room 106, Activity Center 500 College Dr. Mason City, Iowa	January 3, 2013 2 to 4 p.m.
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Iowa Lakes Community College Fiber Optic Room 118, Attendance Center 1900 North Grand Ave. Spencer, Iowa	January 3, 2013 2 to 4 p.m.
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Kirkwood Community College Room 117 1816 Lower Muscatine Rd. Iowa City, Iowa	January 3, 2013 2 to 4 p.m.
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Scott Community College Room 210 500 Belmont Rd. Bettendorf, Iowa	January 3, 2013 2 to 4 p.m.
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Iowa Western Community College - 1 Room 024, Looft Hall 2700 College Rd. Council Bluffs, Iowa	January 3, 2013 2 to 4 p.m.
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Western Iowa Tech Community College Room D201 4647 Stone Ave. Sioux City, Iowa	January 3, 2013 2 to 4 p.m.
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Iowa Central Community College Room 204, Liberal Arts Building One Triton Circle Fort Dodge, Iowa	January 3, 2013 2 to 4 p.m.
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National Guard Armory 2858 N. Court Rd. Ottumwa, Iowa	January 3, 2013 2 to 4 p.m.
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Department of Human Services Pinecrest Office Building 1407 Independence Ave. Waterloo, Iowa	January 3, 2013 2 to 4 p.m.
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Keystone Area Education Agency Room 2 2310 Chaney Rd. Dubuque, Iowa	January 3, 2013 2 to 4 p.m.
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**SECRETARY OF STATE[721]** (cont'd)**(ICN Network)**

Kirkwood Community College  
Room 123, Jones Hall  
6301 Kirkwood Blvd. SW  
Cedar Rapids, Iowa

January 3, 2013  
2 to 4 p.m.

Matilda J. Gibson Memorial Library  
200 W. Howard St.  
Creston, Iowa

January 3, 2013  
2 to 4 p.m.

**UTILITIES DIVISION[199]**

Pole attachments,  
15.5(2), ch 27  
IAB 11/14/12 **ARC 0455C**

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

February 12, 2013  
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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## ARC 0508C

## 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 sections 231.23 and 17A.3, the Iowa Department on Aging hereby gives Notice of Intended Action to amend Chapter 1, “Introduction, Abbreviations and Definitions,” Iowa Administrative Code.

The proposed amendments are necessary to work towards the creation of a single and comprehensive chapter of definitions applicable to all chapters within the Department’s rules.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 2, 2013. Such written comments or suggestions should be directed to Kimberly Murphy, Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [kimberly.murphy@iowa.gov](mailto:kimberly.murphy@iowa.gov).

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

These amendments are intended to implement Iowa Code chapter 231.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **17—1.5(231)**:

“*ADRC coordination center*” means an entity designated by the department that carries out duties and functions as mandated in rules promulgated by the department.

“*ADRC local access point*” means an entity designated by an ADRC coordination center that carries out duties and functions as mandated in rules promulgated by the department.

“*Aging and disability resource center*” or “*ADRC*” means the same as “Aging and Disability Resource Center” as defined in the federal Act.

“*Options counseling*” means the service of providing an interactive process whereby individuals receive guidance in their deliberations to make informed choices about long-term supports. The process is directed by the individual and may include others whom the individual chooses or those who are legally authorized to represent the individual. Options counseling may include but is not limited to the following: (1) a personal interview and assessment to discover strengths, values, and preferences of the individual and screenings for entitlement program eligibility, (2) a facilitated decision-making process which explores resources and service options and supports the individual in weighing pros and cons, (3) developing action steps toward a goal or a long-term support plan and assistance in applying for and accessing support options, and (4) follow-up to ensure supports and decisions are assisting the individual.

“*Options counselor*” means the person(s) responsible for providing the service of options counseling.

ITEM 2. Amend rule **17—1.5(231)**, definition of “Department on aging,” as follows:

“*Department on aging*” or “*department*” means the sole state agency responsible for administration of the Older Americans Act and Iowa Code ~~chapter~~ chapters 231; and 231E ~~and~~ 249H and other applicable laws or rules.

**ARC 0506C****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 sections 231.23 and 17A.3, the Iowa Department on Aging hereby gives Notice of Intended Action to amend Chapter 2, “Department on Aging,” Iowa Administrative Code.

The amendments are necessary to provide updated information regarding the mission statement and organizational structure of the Department.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 2, 2013. Such written comments or suggestions should be directed to Kimberly Murphy, Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [kimberly.murphy@iowa.gov](mailto:kimberly.murphy@iowa.gov).

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

These amendments are intended to implement Iowa Code chapter 231.

The following amendments are proposed.

ITEM 1. Amend rule 17—2.1(231) as follows:

**17—2.1(231) Mission statement.** The mission of the department on aging is to ~~provide advocacy, information, educational and prevention services to older individuals so they may find Iowa a healthy, safe, productive and enjoyable place to live and work.~~ develop a comprehensive, coordinated and cost-effective system of long-term living and community support services that help individuals maintain health and independence in their homes and communities.

ITEM 2. Amend rule 17—2.5(231) as follows:

**17—2.5(231) Organizational units of the department.** The department’s activities are performed by employees within the office of the director, two divisions and the office of elder rights. Grants will be managed by the appropriate division, office of the director or office of elder rights, dependent upon the source and intended use of funds.

**2.5(1) Office of the director.** The office of the director is comprised of the director, ~~administrative support, public information officer, division administrators and legislative liaison.~~ the assistant director, the state long-term care ombudsman, the policy coordinator, and other personnel. This office is responsible for the overall planning, policy, management and operations of the department.

**2.5(2) Division of administration.** The ~~administrative division~~ division of administration is responsible for the following:

- a. Coordinating, reviewing and processing the multiyear area plans from the area agencies on aging;
- b. Developing and processing the State Plan Funding Application to the federal government;
- c. Monitoring, assessing, evaluating and auditing the ~~43~~ area agencies on aging for general area plan performance;
- d. Maintaining accountability for all state, federal and local funds for which the department is responsible;
- e. Managing a variety of department administrative responsibilities (including but not limited to budget preparation, personnel activities, ordering supplies and purchasing equipment);

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

*f.* Developing and maintaining computerized information systems which compile and analyze data to assess the quality and priorities of the department's programs; and

*g.* Processing information for presentation in reports, pamphlets, brochures, videotapes and the news media.

**2.5(3) *Division of elder programs and advocacy.*** The division of elder programs and advocacy ~~division~~ is responsible for the following:

*a.* Developing program initiatives related to the department's mission;

*b.* Reviewing and commenting upon laws, regulations, and rules that impact programs and services for older individuals;

*c.* Program development related to:

(1) ~~The continua of long-term~~ Long-term care options;

(2) Case management program for the frail elderly;

(3) Nutrition and health promotion;

(4) Information and assistance;

(5) Adult day and respite services;

(6) Housing, including elder group homes and assisted living;

(7) Access to public benefits;

(8) Mature worker programs, including pension counseling; and

(9) Caregiver programs;

*d.* Providing customer services related to older individuals' rights issues;

*e.* Monitoring and assessing services related to older individual programs and advocacy issues;

*f.* Outreach to older individuals in greatest need (minority, rural, low-income and persons with disabilities);

*g.* Coordination and advocacy efforts which involve partnerships with a variety of public and private agencies; and

*h.* Providing educational opportunities such as conferences, workshops and other means of informing older individuals and their caregivers.

**2.5(4) *Office of elder rights.*** The office of elder rights includes:

*a.* The office of the state long-term care ombudsman which is responsible for all applicable duties contained within the federal Act and ~~the duties as outlined in 17 IAC 8~~ state law;

*b.* Legal assistance development related to the department's mission and duties as outlined ~~in 17 IAC 7~~ within the federal Act and state law;

*c.* Elder abuse policy development, prevention, education and intervention and duties as outlined ~~in 17 IAC 15~~ within the federal Act and state law; and

*d.* Providing customer services related to older individuals' rights issues.

**ARC 0505C**

## 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 sections 231.23 and 17A.3, the Iowa Department on Aging hereby gives Notice of Intended Action to amend Chapter 7, “Area Agency on Aging Service Delivery,” Iowa Administrative Code.

The proposed amendments make the following changes:

1. Area agencies on aging will utilize the most current Dietary Guidelines for Americans when determining meal content as provided by nutrition service providers.

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

2. Area agencies on aging will be allowed flexibility to plan menus using a current diet manual that is chosen by the area agency on aging and approved by the Department. Currently, area agencies on aging are mandated to use a specific diet manual provided by the Department.

3. Area agencies on aging will be allowed flexibility to provide notification of the opening, relocation, or termination of a nutrition site within 30 days. Currently, area agencies on aging are mandated to provide notification of these events 30 days prior to the occurrence of the event. It is often impossible for area agencies on aging to comply with this notification requirement.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 2, 2013. Such written comments or suggestions should be directed to Kimberly Murphy, Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [kimberly.murphy@iowa.gov](mailto:kimberly.murphy@iowa.gov).

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

These amendments are intended to implement Iowa Code chapter 231.

The following amendments are proposed.

ITEM 1. Amend subrule 7.14(1) as follows:

**7.14(1)** Each meal served by the nutrition services provider, whether at a congregate meal site, home-delivered or elsewhere, must comply with the current Dietary Guidelines for Americans, published by the Secretary of Health and Human Services and the Secretary of Agriculture, and provide to each participating older individual:

*a.* A minimum of 33 1/3 percent of the RDA/AI as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences, if the program provides one meal per day;

*b.* A minimum of 66 2/3 percent of the allowances if the program provides two meals per day; and

*c.* One hundred percent of the allowances if the program provides three meals per day.

ITEM 2. Amend rule 17—7.18(231) as follows:

**17—7.18(231) Special dietary needs.** The AAA shall ensure that special dietary needs of program participants are met where feasible and appropriate, including the particular requirements arising from the health, religious, or ethnic backgrounds of eligible participants.

**7.18(1)** The following criteria shall be used to determine feasibility and appropriateness:

*a.* Sufficient numbers of older individuals who have special dietary needs exist to make the provision practical;

*b.* Skills and food necessary to provide the special menus are available.

**7.18(2)** Special dietary and therapeutic menus must be planned under the supervision of a licensed dietitian in accordance with a current diet manual approved by the ~~director and supplied to each AAA by the department~~. Certified menus must be submitted to the department at least two weeks prior to the initial use of the menus.

**7.18(3)** A written physician's order for each older individual requesting a therapeutic diet shall be obtained prior to the older individual's receipt of the meal and kept on file where the meal is prepared and served. The order shall be interpreted by a licensed dietitian and the individual's physician.

ITEM 3. Amend rule 17—7.23(231) as follows:

**17—7.23(231) Requirements for opening or closing congregate nutrition sites.** The AAA shall notify the department ~~in writing at least~~, via electronic mail or other written notification, within 30 days prior to ~~of~~ the AAA's opening, relocating, or terminating a nutrition site. The notification must include:

1. Reasons for the action;
2. Impact on eligible individuals;
3. Impact on nearby meal sites; and
4. Impact on provision of nutrition-related services.

ARC 0507C

**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 sections 17A.3 and 231.23, the Iowa Department on Aging hereby gives Notice of Intended Action to adopt new Chapter 23, “Aging and Disability Resource Center,” Iowa Administrative Code.

The proposed rules establish the structure for the Aging and Disability Resource Center as directed by Iowa Code section 231.64.

Any interested person may make written suggestions or comments on the proposed rules on or before January 2, 2013. Such written comments or suggestions should be directed to Kimberly Murphy, Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [kimberly.murphy@iowa.gov](mailto:kimberly.murphy@iowa.gov).

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

These rules are intended to implement Iowa Code section 231.64.

The following amendment is proposed.

Adopt the following **new** 17—Chapter 23:

## CHAPTER 23

## AGING AND DISABILITY RESOURCE CENTER

**17—23.1(231) General.** The aging and disability resource center (ADRC) serves to assist individuals in living healthy, independent, and fulfilled lives in the community. The ADRC will work to ensure that individuals accessing the long-term care services and supports system experience the same process and receive the same information about service options wherever they enter the system.

**17—23.2(231) Authority.** The department has been given authority to administer the aging and disability resource center by Iowa Code section 231.64.

**17—23.3(231) Aging and disability resource center.** The department shall administer the aging and disability resource center and shall do all of the following:

1. Perform all duties mandated by federal and state law.
2. Designate ADRC coordination centers.
3. Provide technical assistance to ADRC coordination centers.
4. Provide oversight of ADRC coordination centers to ensure compliance with federal and state law and applicable rules and regulations.

**17—23.4(231) ADRC coordination centers.** An ADRC coordination center designated by the department shall do all of the following:

**23.4(1)** Perform all duties mandated by federal and state law and applicable rules and regulations.

**23.4(2)** Increase the accessibility of community long-term care services and supports by providing comprehensive information, referral, and assistance regarding the full range of available public and private long-term care programs, options, service providers, and resources within a community.

**23.4(3)** Develop a community long-term care services and supports enrollment system.

**23.4(4)** Provide options counseling to assist individuals in assessing their existing or anticipated long-term care needs and developing and implementing a plan for long-term care.

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

**23.4(5)** Serve as a point of entry for programs that provide consumer access to the range of publicly supported long-term care programs.

**23.4(6)** Designate ADRC local access points.

**23.4(7)** Provide technical assistance to ADRC local access points.

**23.4(8)** Establish an advisory council to advise the ADRC coordination center and to review and comment on ADRC coordination center policies and actions.

**23.4(9)** Provide oversight of ADRC local access points to ensure compliance with federal and state law, applicable rules and regulations, and policies and mandates as determined by the advisory board.

**17—23.5(231) ADRC local access points.** An ADRC local access point designated by an ADRC coordination center shall do all of the following:

1. Perform one or more functions of an ADRC coordination center.
2. Maintain an agreement with the ADRC coordination center, in the form of a referral agreement, contract, memorandum of understanding, or similar document, which specifies the duties of the ADRC local access point.
3. Serve on the advisory board of the ADRC coordination center.

**17—23.6(231) Population served.** The aging and disability resource center, ADRC coordination centers, and ADRC local access points shall assist the following individuals in seeking long-term care services and supports:

1. Older individuals;
2. Individuals with disabilities who are aged 18 or older;
3. Family caregivers of older individuals;
4. Family caregivers of individuals with disabilities who are aged 18 or older;
5. Individuals who inquire about or request assistance on behalf of older individuals; and
6. Individuals who inquire about or request assistance on behalf of individuals with disabilities who are aged 18 or older.

These rules are intended to implement Iowa Code section 231.64.

**ARC 0516C**

## **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 sections 17A.3 and 231.23, the Iowa Department on Aging hereby gives Notice of Intended Action to rescind Chapter 28, “Iowa Senior Living Program—Home- and Community-Based Services for Seniors,” Iowa Administrative Code.

Chapter 28 is no longer necessary or applicable to the operations of the Iowa Department on Aging or the Area Agencies on Aging due to the elimination of the Senior Living Trust Fund. The chapter was promulgated based on the creation of the Senior Living Trust Fund and should be rescinded entirely based on the Fund’s elimination.

Any interested person may make written suggestions or comments on the proposed amendment on or before January 2, 2013. Such written comments or suggestions should be directed to Kimberly Murphy, Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [kimberly.murphy@iowa.gov](mailto:kimberly.murphy@iowa.gov).

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

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

This amendment is intended to implement Iowa Code chapter 231.  
The following amendment is proposed.

Rescind and reserve **17—Chapter 28**.

**ARC 0498C**

## **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 sections 231.14 and 231.23 and 2012 Iowa Acts, House File 2320, the Iowa Department on Aging hereby gives Notice of Intended Action to adopt new Chapter 29, “Reduction of Area Agencies on Aging,” Iowa Administrative Code.

The proposed rules establish the procedure to be followed by area agencies on aging during the process to reduce area agencies on aging, as mandated by 2012 Iowa Acts, House File 2320.

Any interested person may make written suggestions or comments on the proposed rules on or before January 2, 2013. Such written comments or suggestions should be directed to Kimberly Murphy, Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [kimberly.murphy@iowa.gov](mailto:kimberly.murphy@iowa.gov).

These rules were also Adopted and Filed Emergency and are published herein as **ARC 0499C**. The content of that submission is incorporated herein by reference.

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

These rules are intended to implement Iowa Code chapter 231 and 2012 Iowa Acts, House File 2320.

**ARC 0515C**

## **AGRICULTURAL DEVELOPMENT AUTHORITY[25]**

### **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 175.2(2) and 175.6(14), the Agricultural Development Authority hereby gives Notice of Intended Action to amend Chapter 2, “Beginning Farmer Loan Program,” and Chapter 6, “Beginning Farmer Tax Credit Program,” Iowa Administrative Code.

The proposed amendments amend the definitions for “eligible applicant” and provide for an annual recalculation of the maximum allowable net worth for the Beginning Farmer Loan Program and the Beginning Farmer Tax Credit Program.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 2, 2013. Written comments should be addressed to Steve Ferguson, Iowa Agricultural Development Authority, 505 5th Avenue, Suite 327, Des Moines, Iowa 50309. Comments may also be submitted by fax to (515)281-8618 or by e-mail to [steve.ferguson@iowa.gov](mailto:steve.ferguson@iowa.gov).

The proposed amendments are subject to the Authority’s general waiver provision.

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

## AGRICULTURAL DEVELOPMENT AUTHORITY[25](cont'd)

These amendments are intended to implement Iowa Code section 175.12.

The following amendments are proposed.

ITEM 1. Amend rule **25—2.1(175)**, definition of “Eligible applicant,” as follows:

*“Eligible applicant”* means an individual who ~~is~~ has a net worth of not more than the maximum allowable net worth for calendar year 2013 of \$691,172. The maximum allowable net worth for each calendar year shall be increased or decreased as of January 1 of such calendar year by an amount equal to the percentage increase or decrease (September to September) in the United States Department of Agriculture “Index of Prices Paid for Commodities and Services, Interest, Taxes, and Farm Wage Rates” reported as of October 1 of the immediately preceding calendar year. The applicant must also be a beginning farmer, as defined in Iowa Code section 175.12, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility and who operates or will operate a farm.

ITEM 2. Amend rule **25—6.1(175)**, definition of “Eligible applicant,” as follows:

*“Eligible applicant”* means an individual who has a net worth of ~~less not more~~ less not more than \$343,000 the maximum allowable net worth for calendar year 2013 of \$366,324. ~~The maximum net worth will be indexed annually based on the October 1 annual change in the United States Department of Agriculture’s Prices Paid by Farmers Index.~~ The maximum allowable net worth for each calendar year shall be increased or decreased as of January 1 of such calendar year by an amount equal to the percentage increase or decrease (September to September) in the United States Department of Agriculture “Index of Prices Paid for Commodities and Services, Interest, Taxes, and Farm Wage Rates” reported as of October 1 of the immediately preceding calendar year. The applicant must also satisfy all of the criteria contained in Iowa Code section 175.37 and provisions of these rules relating to recipient eligibility and must operate or intend to operate a farm.

ITEM 3. Amend rule **25—6.1(175)**, definition of “Taxpayer,” as follows:

*“Taxpayer”* means a person or entity who may acquire or otherwise obtain or lease agricultural land in the state pursuant to Iowa Code chapter 9H or 9I. An individual may claim a tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed shall be based upon the pro-rata share of the individual earnings from the partnership, limited liability company, S corporation, estate, or trust. A taxpayer must also meet the requirement of ~~2006 Iowa Acts, Senate File 2268, section 2~~ Iowa Code section 175.37.

ITEM 4. Amend subrule 6.2(1) as follows:

**6.2(1) Eligibility.** To qualify for this credit, the taxpayer must meet all the requirements of Iowa Code chapter 9H or 9I, ~~2006 Iowa Acts, Senate File 2268, section 2~~ Iowa Code section 175.37, and these rules. The beginning farmer must meet all the requirements of Iowa Code section 175.12 and these rules.

ITEM 5. Amend subrule 6.5(1) as follows:

**6.5(1)** Either the beginning farmer or the taxpayer shall immediately notify the authority of any material changes in the agricultural assets transfer agreement. The authority shall act upon these changes pursuant to ~~2006 Iowa Acts, Senate File 2268, section 2~~ Iowa Code section 175.37. Material changes cannot result in an increase in the original tax credit amount approved. Death of a party to the lease, divorce, or sale of the property will be considered eligible material changes. Sale of the property will be considered only if the original lease terms remain in effect and the asset purchaser is determined to be eligible for the program.

ITEM 6. Amend **25—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 175 ~~as amended by 2006 Iowa Acts, Senate File 2268.~~

ARC 0494C

**EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 11, “Complaints, Investigations, Contested Case Hearings,” Iowa Administrative Code.

This proposed amendment will remove first-class mail as an option for delivery of a notice of hearing. First-class mail is not sufficient under Iowa Code chapter 17A. The proposed amendment will not change agency practice because the Board of Educational Examiners does not use first-class mail to deliver notices of hearing.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 9, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 11, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code section 272.13(1).

The following amendment is proposed.

Amend subrule 11.7(1) as follows:

**11.7(1) Delivery.** Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- ~~c. First-class mail; or~~
- ~~d. c.~~ Publication, as provided in the Iowa Rules of Civil Procedure.

**ARC 0509C****EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

This proposed amendment addresses the issue of applicants who have completed a nontraditional teacher preparation program and have one or more years of teaching experience and who apply for a substitute teacher’s license or for full licensure. Currently, in many cases such applicants can only obtain a substitute authorization. This amendment would allow an applicant in these circumstances to be issued a substitute license.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 9, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 11, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code section 272.2(1)(a).

The following amendment is proposed.

Amend subrule 13.16(1) as follows:

**13.16(1) Substitute teacher requirements.** A substitute teacher’s license may be issued to an individual who:

*a.* Has completed a traditional teacher preparation program and been the holder of, or presently holds, a license in Iowa; or holds or held a regular teacher’s license or certificate in another state, exclusive of temporary, emergency, or substitute certificate or license, or a certificate based on an alternative certification program; or

*b.* Has successfully completed all requirements of an approved teacher education program, but did not apply for an Iowa teacher’s license at the time of completion of the approved program; or

*c.* Holds a valid or expired teaching certificate based on a nontraditional teacher preparation program, is able to verify three years of teaching experience, and provides passing scores on tests mandated by the state that issued the certificate. The license issued will contain a disclaimer stating that the holder of this license may not be eligible for full Iowa teaching licensure.

**ARC 0492C****EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 17, “Career and Technical Endorsements and Licenses,” Iowa Administrative Code.

In 2009, the Board of Educational Examiners eliminated the option for a Class D occupational license. The Board now proposes an amendment to eliminate a similar rule in Chapter 17 for the conditional career and technical license.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 9, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 11, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code section 272.2(1)(a).

The following amendment is proposed.

Rescind and reserve rule **282—17.4(272)**.

**ARC 0493C****EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 18, “Issuance of Administrator Licenses and Endorsements,” Iowa Administrative Code.

This proposed amendment will align the rule with current agency practice. The current rule does not specifically indicate that the applicant must complete one year of administrative experience in order

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

to convert the initial administrator license to the professional administrator license. The proposed amendment will clarify the requirements.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 9, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 11, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code section 272.2(1)(a).

The following amendment is proposed.

Amend rule 282—18.5(272) as follows:

**282—18.5(272) Specific requirements for a professional administrator license.** A professional administrator license valid for five years may be issued to an applicant who:

**18.5(1)** Completes the requirements in 18.4(2)“a” to “g”; and

**18.5(2)** Successfully meets each standard listed below:

*a. to d.* No change.

**18.5(3)** Completes one year of administrative experience in an Iowa public school and completes the administrator mentoring program while holding an administrator license, or successfully completes two years of administrative experience in a nonpublic or out-of-state school setting.

**ARC 0491C**

## EDUCATIONAL EXAMINERS BOARD[282]

### 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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 19, “Evaluator Endorsement and License,” Iowa Administrative Code.

This proposed amendment will align the wording of the rules in Chapter 19 regarding evaluator licensure requirements with the wording of the rules in Chapter 18 regarding administrator licensure requirements. The relevant amendments to Chapter 18 were filed under Notice following the Board’s meeting on October 15, 2012, and published as **ARC 0444C** in the November 14, 2012, Iowa Administrative Bulletin.

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 9, 2013, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, January 11, 2013. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by e-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

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

This amendment is intended to implement Iowa Code section 272.2(1)(a).

The following amendment is proposed.

Amend rule 282—19.6(272) as follows:

**282—19.6(272) Out-of-state applicants.** An out-of-state applicant who seeks an administrator license after July 1, 2003, will be granted a Class A administrator exchange license valid for one year in order to complete the evaluator endorsement requirements. ~~If the person does not hold an administrator license in the state where the person completed the administrative program, then a Class A license will be granted.~~ The Class A administrator exchange license is valid for one year and is nonrenewable. The requirements for the evaluator endorsement must be met before the issuance of the initial or professional administrator license.

**ARC 0531C**

## 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 gives Notice of Intended Action to amend Chapter 21, “Community Colleges,” Iowa Administrative Code.

The proposed amendments modify award requirements by phasing out Associate of Science-Career Option programs over a three-year period and implementing an Associate of Professional Studies pilot. These amendments were developed through more than two years of discussion with college academic leaders.

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

Interested individuals may make written comments on the proposed amendments on or before January 4, 2013. Comments on the proposed amendments should be directed to Mike Cormack, Iowa Department of Education, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0146; telephone (515)281-3399; e-mail [mike.cormack@iowa.gov](mailto:mike.cormack@iowa.gov); or fax (515)242-5988.

## EDUCATION DEPARTMENT[281](cont'd)

A public hearing will be held on January 4, 2013, from 11 a.m. to 12 noon at 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 and advise the Department of Education of specific needs by calling (515)281-5295.

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

These amendments are intended to implement Iowa Code chapter 260C.

The following amendments are proposed.

ITEM 1. Amend subrule 21.2(9) as follows:

**21.2(9) Award requirements.** The director shall approve all new credit certificate, diploma, and degree award programs in accordance with Iowa Code section 260C.14. Awards from a community college shall be certified by the issuance of appropriate recognition, pursuant to award approval requirement guidelines issued by the department, indicating the type of program the student has completed. The minimum number and maximum number of credit hours required for each award type contained within this subrule may be waived pursuant to paragraph 21.2(13) "i." Each award shall meet the expectations of statewide articulation agreements between Iowa community colleges and public universities.

a. No change.

b. *Associate of science (AS).* The degree is awarded upon completion of a course of study that requires a strong background in mathematics or science. The degree is intended to prepare students to transfer and initiate upper-division work in baccalaureate programs ~~or prepare them for employment.~~ ~~An associate of science degree may also be awarded upon completion of a state-approved associate of science career option (AS-CO) program of study that includes core technical coursework needed to complete a concentration in a specific field of study. The AS-CO program shall prepare students for entry-level careers and to complete requirements for transfer to a baccalaureate degree.~~ An associate of science degree awarded upon completion of an arts and sciences course of study shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours. ~~An associate of science degree awarded upon completion of an AS-CO course of study shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum number of credit hours stated in program guidelines issued by the department. An associate of science degree awarded upon completion of an AS-CO course of study shall not consist of more than 70 semester (117 quarter) credit hours without an approved waiver pursuant to paragraph 21.2(13) "i."~~

c. *Associate of general studies (AGS).* The degree is awarded upon completion of a an individualized course of study that is primarily designed for the acquisition of a broad educational background rather than the pursuit of a specific college major or professional/technical program. ~~It~~ The AGS is intended as a flexible course of study and may include specific curriculum in lower division transfer, occupational education, or professional-technical education. It shall not include a marketed course of study. An associate of general studies degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

d. and e. No change.

f. *Associate of professional studies (APS) pilot.* The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for transfer and upper division coursework in aligned baccalaureate programs or immediate entry into the workforce.

(1) Pilot awards shall be approved on a limited basis at the director's sole discretion. To be eligible to participate in the pilot, a college shall demonstrate that other award types cannot meet needs and the associate of professional studies award is appropriate. The department shall study the effectiveness of associate of professional studies programs with regard to transfer and employment success after five years and make recommendations to the state board of education regarding program parameters and continuation.

## EDUCATION DEPARTMENT[281](cont'd)

(2) Each state-approved associate of science-career option (AS-CO) program of study shall be phased out by the end of the 2015-2016 academic year. All existing AS-CO programs shall be modified to meet the parameters of allowable award types or shall be discontinued.

(3) An associate of professional studies degree shall consist of a minimum of 62 semester (93 quarter) credit hours and a maximum of 68 semester (102 quarter) credit hours. The general education component of the associate of professional studies degree shall consist of a minimum of 30 semester (45 quarter) credit hours of general education including 3 semester (4.5 quarter) credit hours of each of the following: speech, mathematics, humanities, social and behavioral sciences, science; 6 semester (9 quarter) credit hours of writing; and 9 semester (13.5 quarter) credit hours distributed among mathematics, social and behavioral sciences, humanities, and science. The technical specialty component of the associate of professional studies degree shall consist of a minimum of 16 semester (24 quarter) credit hours of career and technical coursework accepted by a receiving baccalaureate degree-granting institution with an aligned program as applying toward a specific major or program of study. The technical specialty component of the degree shall also consist of a minimum of 16 additional semester (24 quarter) credit hours of career and technical coursework accepted by the receiving institution as electives.

(4) An associate of professional studies degree program of study shall have a minimum of three program-to-program articulation agreements with baccalaureate degree-granting institutions, at least one of which must be a public institution. A program shall have a minimum of one articulation agreement effective prior to program implementation, provided all three agreements are effective within the program's first year of student enrollment. The agreements shall provide for the application of no fewer than 60 semester (90 quarter) credit hours toward the graduation requirements of each articulated baccalaureate degree program.

f. g. *Diploma.* The diploma is awarded upon completion of a state-approved program of study that is a coherent sequence of courses consisting of a minimum of 15 semester (22.5 quarter) credit hours and a maximum of 48 semester (72 quarter) credit hours including at least 3 semester (4.5 quarter) credit hours of general education. The general education component shall be from any of the following areas: communications, social science or humanities, and mathematics or science. A diploma may be a component of and apply toward subsequent completion of an associate of applied science or associate of applied arts degree.

g. h. *Certificate.* The certificate is awarded upon completion of a state-approved program of study that is designed for entry-level employment and shall consist of a maximum of 48 semester (72 quarter) credit hours. A certificate may be a component of and apply toward subsequent completion of a diploma or associate of applied science or associate of applied arts degree and may be developed in rapid response to the needs of business and industry. A certificate may consist of only career and technical courses and no general education course requirements.

ITEM 2. Amend subrule 21.2(13) as follows:

**21.2(13) *Career and technical program length.***

a. Program length for the associate of applied science (AAS) degree in career and technical education, and for the associate of applied arts (AAA) degree, and for the associate of professional studies (APS) degree shall consist of an academic program not to exceed two academic years. All required course offerings are to be available within two academic years. All required offerings in AAS and AAA degree programs shall not exceed a maximum of 86 semester (129 quarter) credit hours unless the department of education has granted a waiver pursuant to paragraph 21.2(13) "i." All required offerings in pilot APS degree programs shall not exceed a maximum of 68 credit hours. Programs shall not exceed an average of 19 credit hours per regular term.

b. All credit-bearing courses required for program admittance or graduation, or both, ~~must~~ shall be included in the ~~86 semester (129 quarter) program length~~ credit hour maximum, with the exception of developmental course credit hours. Prerequisites that provide an option to students for either credit or noncredit shall be counted toward the program ~~maximum of 86 semester (129 quarter) credit hours~~ parameters. Prerequisite options that are only offered for noncredit ~~will~~ shall not be counted

## EDUCATION DEPARTMENT[281](cont'd)

toward ~~the 86 semester (129 quarter) credit hour maximum program length parameters.~~ A high school course prerequisite is permissible and shall not count toward program length parameters, provided the prerequisite is reasonable. A high school course prerequisite is reasonable if a community college demonstrates that students entering the program predominantly meet the requirement without prior college coursework.

*c.* No change.

*d.* ~~Program length for the state-approved associate of science degree shall consist of an academic program that includes core technical coursework needed to complete a concentration in a specific field of study. The associate of science-career option program may prepare students for entry-level careers or allow students to complete requirements for a transfer to a baccalaureate degree. The associate of science-career option program shall not exceed the credit hour limit stated in department guidelines. To facilitate the transfer of students enrolling in associate of science-career option programs and awarded the associate of science transfer degree, each program shall have articulation agreements with baccalaureate degree programs meeting the articulation agreement requirements stated in department guidelines. The associate of science-career option program shall under no circumstances exceed a maximum of 70 semester (117 quarter) credit hours unless the department has granted a waiver pursuant to paragraph 21.2(13)“i.”~~ Associate of professional studies pilot programs shall not be eligible for a program length waiver pursuant to paragraph 21.2(13)“i.”

*e. to h.* No change.

*i.* Waiver process. A college may petition the department to suspend in whole or in part a program-length requirement contained in paragraphs ~~21.2(12)“h” to “m”~~ 21.2(13)“a” to “e” as applied to a specific program on the basis of the particular circumstances of that program.

(1) to (4) No change.

**ARC 0510C****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 gives Notice of Intended Action to amend Chapter 32, “High School Equivalency Diploma,” Iowa Administrative Code.

This chapter provides standards and procedures for proper management and administration of a high school equivalency test. Changes in the single-source provider required changes in the administration of testing procedures. The amendments proposed are designed to bring the rules in Chapter 32 into alignment with Iowa Code chapter 259A.

Interested persons may submit comments orally or in writing by January 4, 2013, at 4:30 p.m. Comments on the proposed amendments should be directed to Mike Cormack, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-3399; e-mail [mike.cormack@iowa.gov](mailto:mike.cormack@iowa.gov); or fax (515)242-5988.

A public hearing will be held on January 4, 2013, 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 advise the Department of Education 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 259A.

## EDUCATION DEPARTMENT[281](cont'd)

The following amendments are proposed.

ITEM 1. Amend rule 281—32.1(259A) as follows:

**281—32.1(259A) Test.** Applicants for ~~high school equivalency diplomas~~ the Iowa high school equivalency diploma shall satisfactorily complete the General Educational Development Tests published by the General Educational Development Testing Service of the American Council on Education, One Dupont Circle, Washington, D.C. 20036. indicate the holder thereof has achieved the equivalent of a high school education as measured by scores obtained on the test(s) approved by the Iowa department of education to measure high school completion.

This rule is intended to implement Iowa Code section 259A.1.

ITEM 2. Amend rule 281—32.2(259A) as follows:

**281—32.2(259A) By whom administered.** ~~The General Educational Development Tests tests shall be administered in official testing centers authorized by the General Educational Development Testing Service, other agencies for whom scores are reported by the General Educational Development Testing Service, Defense Activities for Non-Traditional Education Support (DANTES), and other institutions and agencies upon special authorization of the Commission on Educational Credit and Credentials. Iowa department of education. Official testing centers shall be established with an accredited and approved institution.~~

This rule is intended to implement Iowa Code section 259A.2.

ITEM 3. Amend rule 281—32.3(259A) as follows:

**281—32.3(259A) Minimum score.** ~~Applicants shall make a minimum standard score of 410 on each test and an average standard score of 450 on all five of the General Educational Development Tests. must achieve the appropriate minimum standard scores in effect at the time the applicant tested as established by the Iowa department of education.~~

ITEM 4. Amend rule 281—32.4(259A) as follows:

**281—32.4(259A) Date of test. Effectiveness of test scores.** ~~Test results dated prior to the date of application will be acceptable provided the tests were taken at an authorized center as specified in rule 32.2(259A). Test scores shall remain valid for a period of five years from the date of the first test. If the applicant has not received the Iowa high school equivalency diploma by then, the applicant must retake the expired test(s). The only exception is for test series expiring prior to the five years, in which case all prior tests are void.~~

This rule is intended to implement Iowa Code section 259A.1.

ITEM 5. Amend rule 281—32.5(259A) as follows:

**281—32.5(259A) Retest.** Any applicant not achieving the minimum standard test scores as defined in rule 281—32.3(259A), upon payment of a \$10 fee to cover only the testing costs, shall be permitted to make application for retest and scoring of the retest, provided that one of the following conditions is met:

**32.5(1)** A period of ~~six~~ three months from the date of original testing has elapsed.

**32.5(2)** Applicant shall complete instruction in an adult education program, in the area or areas to be retested. This instruction shall be certified by an official of the adult education program to the ~~chief or alternate examiner administering the retest(s).~~ test administrator (state or local) authorized to release the retest earlier than three months.

This rule is intended to implement Iowa Code sections 259A.2 and 259A.5.

ITEM 6. Amend rule 281—32.6(259A) as follows:

**281—32.6(259A) Application fee.** The applicant or supporting agency shall pay an application fee ~~of \$25 to cover only actual testing costs. This fee shall be paid to the official Iowa General Educational~~

EDUCATION DEPARTMENT[281](cont'd)

~~Development Testing Agency and shall allow for initial testing and scoring of the initial testing of the eligible candidate with the five General Educational Development Tests.~~

This rule is intended to implement Iowa Code sections 259A.2 and 259A.5.

ITEM 7. Adopt the following **new** rule 281—32.8(259A):

**281—32.8(259A) Admission to testing.** No one under 16 years of age is allowed to test. Testing of 16-year-olds is restricted to these conditions: (a) resident of an Iowa juvenile institution; or (b) under the supervision of a probation office. To take the high school equivalency test, anyone 17 years of age or older who is not enrolled in a secondary school or who is not a high school graduate may be admitted to testing. The only requirements for admission for testing are proof of age and, for an applicant 17 or 18 years of age, consent of the applicant's parent or guardian and verification of nonenrolled status. The applicant cannot receive a diploma until the applicant has reached 18 years of age and the applicant's class from ninth grade has graduated.

This rule is intended to implement Iowa Code section 259A.2.

**ARC 0530C**

## **ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**

### **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 542B.6, the Engineering and Land Surveying Examining Board proposes to amend Chapter 1, “Administration,” Chapter 4, “Engineering Licensure,” and Chapter 5, “Land Surveying Licensure,” Iowa Administrative Code.

The proposed amendment to Chapter 1 reflects the upcoming transition to a computer-based testing format. The proposed amendments to Chapter 4 and Chapter 5 reflect the new parameters of the examinations for licensure.

Any interested person may make written or oral suggestions or comments on the proposed amendments on or before January 2, 2013. Comments should be directed to Robert Lampe, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; by telephone at (515)281-7360; or by e-mail to [robert.lampe@iowa.gov](mailto:robert.lampe@iowa.gov). A public hearing will be held on Wednesday, January 2, 2013, from 9 to 11 a.m. at the offices of the Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any person who plans to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact the Board to discuss specific needs.

These proposed amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These proposed amendments were approved by the Board on November 1, 2012.

After analysis and review of this rule making, no adverse impact on jobs has been found. Although there should be no impact on jobs, the Board will continue to work with stakeholders to minimize any negative impact and maximize any positive impact towards jobs.

These amendments are intended to implement Iowa Code section 542B.2.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition in rule **193C—1.2(542B)**:

“*Written*,” when used to describe an examination, shall mean a computer-based format.

## ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

ITEM 2. Amend paragraphs 4.1(8)“a” and “b” as follows:

a. *Fundamentals of Engineering examination (fundamentals examination).* The Fundamentals of Engineering examination is a written, ~~eight-hour~~ examination covering general engineering principles and other subjects commonly taught in accredited engineering programs.

b. *Principles and Practice of Engineering examination (professional examination).* The Principles and Practice of Engineering examination is a written, ~~8-hour~~ examination designed to determine proficiency and qualification to engage in the practice of professional engineering only in a specific branch. The Principles and Practice of Engineering ~~16-hour~~ two-module Structural examination is a written, ~~16-hour~~ examination designed to determine proficiency and qualification to engage in the practice of structural engineering. A separate examination shall be required for each branch in which licensure is granted. An applicant may obtain a Structural branch license by passing either the Principles and Practice of Engineering Civil (Structural) examination or the Principles and Practice of Engineering ~~16-hour~~ two-module Structural examination.

ITEM 3. Amend paragraph 5.1(8)“a” as follows:

a. *Fundamentals examination.* The Fundamentals of Land Surveying examination is a written, ~~eight-hour~~ examination covering general surveying principles.

**ARC 0512C**

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

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division hereby gives Notice of Intended Action to amend Chapter 10, “Enhanced 911 Telephone Systems,” Iowa Administrative Code.

These amendments are intended to implement 2012 Iowa Acts, Senate File 2332, passed by the 84th General Assembly and signed by the Governor on May 2, 2012. The legislation provides for changes to Iowa Code chapter 34A.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before January 2, 2013. Such written materials should be sent to the Administrative Rules Coordinator, Iowa Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge Building W-4, Johnston, Iowa 50131.

Also, there will be a public hearing on January 3, 2013, at 1 p.m. in the Homeland Security and Emergency Management Division Conference Room in Building W-4 at Camp Dodge, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Homeland Security and Emergency Management Division and advise of 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 chapter 34A.

The following amendments are proposed.

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

ITEM 1. Adopt the following **new** definitions in rule **605—10.2(34A)**:

“*Communications service*” means a service capable of accessing, connecting with, or interfacing with a 911 system by dialing, initializing, or otherwise activating the system exclusively through the digits 911 by means of a local telephone device or wireless communications device.

“*Communications service provider*” means a service provider, public or private, that transports information electronically via landline, wireless, internet, cable, or satellite, including but not limited to wireless communications service providers, personal communications service, telematics and voice over internet protocol.

“*Prepaid wireless telecommunications service*” means a wireless communications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance, and that is sold in predetermined units or dollars of which the amount declines with use in a known amount.

“*Telematics*” means a vehicle-based mobile data application which can automatically call for assistance if the vehicle is in an accident.

“*Voice over internet protocol*” means a technology used to transmit voice conversations over a data network such as a computer network or internet.

“*Wireless communications service provider*” means a company that offers wireless communications service to users of wireless devices including but not limited to cellular, personal communications services, mobile satellite services, and enhanced specialized mobile radio.

“*Wire-line E911 service surcharge*” means a charge set by the E911 service operating authority and assessed on each wire-line access line which physically terminates within the E911 service area in accordance with Iowa Code section 34A.7.

ITEM 2. Amend rule **605—10.2(34A)**, definition of “Wireless communications service,” as follows:

“*Wireless communications service*” means ~~cellular, broadband PCS, and SMR which provide real-time two-way interconnected voice service, the networks of which utilize intelligent switching capability and offer seamless handoff to customers. This definition includes facilities-based service providers and non-facilities-based resellers. For purposes of wireless 911 surcharge, wireless communications service does not include services whose customers do not have access to 911, or a 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system~~ commercial mobile radio service. “Wireless communications service” includes any wireless two-way communications used in cellular telephone service, personal communications service, or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network access line. “Wireless communications service” does not include a service whose customers do not have access to 911 or 911-like service, a communications channel utilized only for data transmission, or a private telecommunications system.

ITEM 3. Rescind the definitions of “Emergency 911 notification device” and “Local exchange service provider” in rule **605—10.2(34A)**.

ITEM 4. Amend paragraph **10.4(1)“a”** as follows:

a. The state homeland security and emergency management division.

ITEM 5. Amend paragraph **10.4(2)“j”** as follows:

j. Information from telephone communications service providers detailing the current equipment operated by the provider to provide telephone service and additional central office equipment or technology upgrades, or both, necessary to implement E911 service.

ITEM 6. Adopt the following **new** paragraph **10.4(2)“q”**:

q. A plan to migrate to an internet protocol-enabled next generation network.

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

ITEM 7. Amend rule 605—10.5(34A) as follows:

**605—10.5(34A) Referendum and wire-line E911 service surcharge (~~wire-line~~).**

**10.5(1)** and **10.5(2)** No change.

**10.5(3)** The E911 program manager shall notify a local ~~exchange~~ communications service provider scheduled to provide exchange access E911 service within an E911 service area that implementation of an E911 service plan has been approved by the joint E911 service board, ~~by the E911 program manager,~~ and by the service area referendum, and that collection of the surcharge is to begin within ~~100~~ 60 days. The E911 program manager shall also provide notice to all affected public safety answering points. The 60-day notice to local exchange service providers shall also apply when an adjustment in the wire-line surcharge rate is made.

**10.5(4)** The local ~~exchange~~ communications service provider shall collect the surcharge as a part of its monthly billing to its subscribers. The surcharge shall appear as a single line item on a subscriber's monthly billing entitled "E911 emergency ~~telephone~~ communications service surcharge."

**10.5(5)** The local ~~exchange~~ communications service provider may retain 1 percent of the surcharge collected as compensation for the billing and collection of the surcharge. If the compensation is insufficient to fully recover a provider's costs for the billing and collection of the surcharge, the deficiency shall be included in the provider's costs for rate-making purposes to the extent it is reasonable and just under Iowa Code section 476.6.

**10.5(6)** The local ~~exchange~~ communications service provider shall remit collected surcharge to the joint E911 service board on a calendar-quarter basis within 20 days of the end of the quarter.

**10.5(7)** The joint E911 service board may request, not more than once each quarter, the following information from the local ~~exchange~~ communications service provider:

*a.* to *e.* No change.

*f.* The amount retained by the local ~~exchange~~ communications service provider from the 1 percent administrative fee.

Access line counts and surcharge remittances are confidential public records as provided in Iowa Code section 34A.8.

**10.5(8)** Collection for a surcharge shall terminate if E911 service ceases to operate within the respective E911 service area. The E911 program manager for good cause may grant an extension.

*a.* The administrator shall provide 100 days' prior written notice to the joint E911 service board or the operating authority and to the local ~~exchange~~ communications service provider(s) collecting the fee of the termination of surcharge collection.

*b.* and *c.* No change.

ITEM 8. Amend rule 605—10.7(34A) as follows:

**605—10.7(34A) Enhanced wireless E911 service plan.** Each joint E911 service board, the department of public safety, the E911 communications council, and wireless service providers shall cooperate with the E911 program manager in preparing an enhanced wireless E911 service plan for statewide implementation of enhanced wireless E911 phase I and phase II implementation service.

**10.7(1) Plan specifications.** The enhanced wireless 911 service plan shall include, at a minimum, the following information:

1. Maps showing geographic area to be served by each PSAP receiving enhanced wireless E911 telephone calls.

2. A list of all public and private safety agencies within the enhanced wireless E911 service area.

3. The geographic location of each PSAP receiving enhanced wireless E911 calls and the name of the person responsible for the management of the PSAP.

4. A set of guidelines for determining eligible cost ~~for wireless service providers, wire-line service providers, and public safety answering points as set forth in Iowa Code section 34A.7A.~~

5. ~~A statement of estimated charges for the implementation and operation of enhanced wireless 911 phase I and phase II service, detailing the equipment operated or needed to operate enhanced wireless 911 service, including any technology upgrades necessary to provide service. Charges must be directly~~

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

~~attributable to the implementation and operation of enhanced wireless 911 service. Charges shall be detailed showing item(s) or unit(s) of cost, or both, and include estimated charges from:~~

- ~~● Wireless service providers.~~
- ~~● Wire-line service providers for implementation and operation of enhanced wireless 911 service.~~
- ~~● Public safety answering points.~~

~~6. 5. A schedule for the implementation of and maintenance of the next generation 911 systems to provide enhanced wireless 911 phase I and phase II service.~~

~~10.7(2) Adoption by reference. The “Wireless Enhanced 911 Implementation and Operation Plan,” effective February 1, 2000 November 1, 2012, and available from the Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference with the following changes effective May 8, 2002 [insert effective date] : Section F, provide further clarification of eligible costs for public safety answering points and the Iowa department of public safety; Section G, provide further specification on the surplus payment process for local E911 service boards and the Iowa department of public safety; Attachment A, ensure that the application for surplus payments contains the language contained in Section G. Additional changes effective August 16, 2004: Sections A, D, E, I, J, K, and service area maps, update to reflect changes in the Code of Iowa and to represent the actual 911 operating conditions with the state; Sections F and G, provide further clarification of eligible costs and the payment of those costs.~~

ITEM 9. Amend rule 605—10.8(34A) as follows:

**605—10.8(34A) E911 Emergency communications service surcharge (wireless).**

**10.8(1)** The E911 program manager shall adopt a monthly surcharge of up to 65 cents to be imposed on each wireless communications service number provided in this state. The amount of wireless surcharge to be collected may be adjusted once yearly, but in no case shall the surcharge exceed 65 cents per month, per customer service number. The surcharge shall not be imposed on wire-line-based communications or prepaid wireless telecommunications service.

**10.8(2)** The amount of wireless surcharge to be collected during a fiscal year shall be determined by the administrator’s best estimation of enhanced wireless 911 costs for the ensuing fiscal year. The E911 program manager shall base the estimated cost on information provided by the E911 communications council, wireless service providers, vendors, public safety agencies, joint E911 service boards and any other appropriate parties or agencies involved in the provision or operation of enhanced wireless 911 service. The E911 communications council shall also provide a recommended monthly wireless surcharge for the ensuing fiscal year.

**10.8(3)** The E911 program manager shall order the imposition of surcharge uniformly on a statewide basis and simultaneously on all wireless communications service numbers by giving at least ~~100~~ 60 days’ prior notice to wireless carriers to impose a monthly surcharge as part of their periodic billings. The 60-day notice to wireless carriers shall also apply when making an adjustment in the wireless surcharge rate.

**10.8(4)** The wireless surcharge shall be 65 cents per month, per customer service number until changed by rule.

**10.8(5)** The wireless communications service provider shall list the surcharge as a separate line item on the customer’s billing indicating that the surcharge is for E911 emergency telephone service. The communications service provider is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber’s periodic billing. The wireless E911 surcharge is not subject to sales or use tax. In the case of prepaid wireless service, this surcharge shall be collected under one of two methods:

*a.* ~~The wireless service provider shall collect, on a monthly basis, the surcharge from each active prepaid customer whose account balance is equal to or greater than the surcharge; or~~

*b.* ~~The wireless service provider shall divide the total earned prepaid wireless telephone revenue received by the wireless service provider within the calendar month and divide by 50 dollars, and multiply the quotient by the surcharge.~~

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

The surcharge shall be remitted based upon the address associated with the point of purchase, the customer billing address, or the location associated with the mobile telephone number for each active prepaid wireless telephone that has a sufficient positive balance as of the last days of the information, if that information is available. If the wireless service provider receives a partial payment of a monthly bill, the payment shall first be applied to the amount owed the wireless carrier with the remainder being applied to the surcharge. The wireless carrier shall bill and collect for a full month's surcharge in cases of a partial month's service. The wireless carrier is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing. The wireless E911 surcharge is not subject to sales or use tax.

~~10.8(6)~~ Remaining surcharge Surcharge funds shall be remitted on a calendar-quarter basis within 20 days by the close of business on the twentieth day following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa 50131.

ITEM 10. Amend rule 605—10.9(34A) as follows:

**605—10.9(34A) Wireless E911 emergency communications fund.**

**10.9(1)** Wireless E911 surcharge money, collected and remitted by wireless service providers, shall be placed in a fund within the state treasury under the control of the administrator.

**10.9(2)** Iowa Code section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this subrule. However, moneys in the fund may be combined with other moneys in the state treasury for purposes of investment.

**10.9(3)** Moneys in the fund shall be expended and distributed in the order and manner as follows:

*a.* An amount as appropriated by the general assembly to the homeland security and emergency management division for implementation, support, and maintenance of the functions of the E911 program and to employ the auditor of the state to perform an annual audit of the wireless E911 emergency communications fund.

*b.* ~~The program manager shall allocate 21 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase 1 services as defined in the Federal Communications Commission docket 94-102 and further defined in their 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 of all 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 this paragraph.~~

*e. b.* The program manager shall reimburse local exchange communications service providers on a calendar quarter basis for their expenses for transport costs between the wireless E911 selective router and the public safety answering points related to the delivery of wireless E911 service.

~~*d. c.*~~ The program manager shall reimburse local exchange communications service providers and third-party E911 automatic location information (ALI) database providers on a calendar quarter basis for the costs of maintaining and upgrading the E911 components and functionalities between the input and output points of the wireless E911 selective router. This includes the wireless E911 selective router and the automatic location information (ALI) database.

~~*e.*~~ ~~The program manager shall apply an amount up to \$500,000 per calendar quarter to any outstanding wireless E911 phase 1 obligations incurred pursuant to this chapter prior to July 1, 2004.~~

~~*f. d.*~~ The program manager shall allocate an amount up to \$159,000 per calendar quarter equally to the joint E911 service boards and the department of public safety that have submitted a written request to the program manager. The written request shall be made with the "Request for Wireless E911 Funds" form contained in the "State of Iowa Wireless E911 Implementation and Operation Plan." The request is due to the program manager on May 15, or the next business day, of each year. A minimum of \$1,000

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

per calendar quarter shall be allocated for each public safety answering point with the E911 service area of the department of public safety or joint E911 service board that has submitted a written request to the program manager. The written request shall be made with the Request for Wireless E911 Fund form contained in the State of Iowa Wireless E911 Implementation and Operation Plan. The request is due to the program manager on May 15, or the next business day, of each year.

~~Upon retirement of the outstanding obligations referred to in 10.9(3)“e,”~~ The amount allocated under 10.9(3)“f”“d” shall be 25 46 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 service boards shall be \$1,000 per PSAP operated by the respective authority. 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 E911 service area to the total square miles in the state.

(2) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls answered at the public safety answering point in the E911 service area to the total of wireless E911 calls originating in the state.

(3) Funds allocated under 10.9(3)“d” shall be deposited in the E911 service fund and shall be used for communications equipment utilized by the public safety answering points for the implementation and maintenance of E911 services.

~~g. e.~~ If moneys remain after all obligations under subrule 10.9(3), paragraphs “a” to “f,” 10.9(3)“a” to “d,” as listed above, have been fully paid, the remainder may be accumulated as a carryover operating surplus. These moneys shall be used to fund future wireless phase 2 network improvements and public safety answering point improvements. These moneys may also be used for wireless service provider’s providers’ transport costs related to wireless E911 phase 2 services, if those costs are not otherwise recovered by the wireless service provider’s customer billing or other sources and are approved by the program manager. 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.

**10.9(4)** ~~Payments to wireless service providers and local exchange~~ communications service providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Payments to wireless service providers shall be made in accordance with these rules and the State of Iowa Accounting Policies and Procedures.

**10.9(5)** ~~Wireless service providers and local exchange~~ Local communications service providers shall be reimbursed for only those items and services that are defined as eligible in the enhanced wireless 911 service plan and when initiation of service has been ordered and authorized by the E911 program manager.

**10.9(6)** If it is found that an overpayment has been made to an entity, the E911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the state homeland security and emergency management division. If resolution of the debt does not occur and the debt is at least \$50, the state homeland security and emergency management division will then utilize the income offset program through the department of revenue. Until resolution of the debt has occurred, the state homeland security and emergency management division may withhold future payments to the entity.

ITEM 11. Amend rule 605—10.13(34A) as follows:

**605—10.13(34A) Limitations on use of funds.** Surcharge moneys in the E911 service fund may be used to pay recurring and nonrecurring costs including, but not limited to, network equipment, software, database, addressing, initial training, and other start-up, capital, and ongoing expenditures. E911 surcharge moneys shall be used only to pay costs directly attributable to the provision of E911 telephone systems and services and may include costs ~~for portable and vehicle radios, communication towers and associated equipment, and other radios and equipment permanently located inside the public safety answering point~~ directly attributable to the receipt and disposition of the 911 call. Funds allocated

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

~~under paragraph 10.9(3) “f” shall be used for communication equipment located inside the public safety answering point for the implementation and maintenance of wireless E911 phase 2 service.~~

ITEM 12. Amend paragraph **10.14(1)“d”** as follows:

*d.* Each PSAP shall provide two emergency seven-digit numbers arranged in rollover configuration for use by telephone company operators for transferring a calling party to the PSAP over the wire-line network. Wireless calls must be transferred to PSAPs that are capable of accepting ANI and ALI.

ITEM 13. Amend subrules 10.14(3) and 10.14(4) as follows:

**10.14(3)** ~~Service~~ Communications service providers shall adhere to the following minimum requirements:

*a.* The PSAP and E911 program manager shall be notified of all service interruptions in accordance with ~~the provisions of Iowa Administrative Code 199—paragraph 22.6(3)“c.”~~ 47 CFR Part 4.

*b.* All communications service providers shall submit separate itemized bills to the E911 program manager, the department of public safety, a joint E911 service board or PSAP operating authority, as appropriate.

*c.* The communications service provider shall respond, within a reasonable length of time, to all appropriate requests for information from the administrator, the department of public safety, a joint E911 service board or operating authority and shall expressly comply with the provisions of Iowa Code section 34A.8.

*d.* Access to the wireless E911 selective router shall be approved by the E911 program manager. Communications service providers must provide the company name, address and point of contact with their request. If the communications service provider utilizes a third-party vendor, the vendor must provide this information listing the vendor’s customer’s requested information.

**10.14(4)** Voluntary standards. Current technical and operational standards applying to E911 systems and services can be found in the “American Society for Testing and Materials Standard Guide for Planning and Developing 911 Enhanced Telephone Systems” and in publications issued by the National Emergency Number Association. Master street address guides are encouraged to be developed and maintained by using National Emergency Number Association technical standards 02-010 and 02-011. Standards contained in these documents shall be considered as guidance, and adherence thereto shall be voluntary. Notwithstanding the minimum standards published in these rules, it is intended that E911 ~~telephone~~ communications service providers and joint E911 service boards and operating authorities employ the best and most affordable technologies and methods available in providing E911 services to the public.

ITEM 14. Amend rule 605—10.15(34A) as follows:

**605—10.15(34A) Administrative hearings and appeals.**

**10.15(1)** E911 program manager decisions regarding the acceptance or refusal of an E911 service plan, in whole or in part, the implementation of E911 and the imposition of the E911 surcharge within a specific E911 service area may be contested by an affected party.

**10.15(2)** Request for a hearing shall be made in writing to the state homeland security and emergency management division ~~chief of staff administrator~~ within 30 days of the E911 program manager’s mailing or serving a decision and shall state the reason(s) for the request and shall be signed by the appropriate authority.

**10.15(3)** The ~~chief of staff administrator~~ shall schedule a hearing within 10 working days of receipt of the request for hearing. The ~~chief of staff administrator~~ shall preside over the hearing, at which time the appellant may present any evidence, documentation, or other information regarding the matter in dispute.

**10.15(4)** The ~~chief of staff administrator~~ shall issue a ruling regarding the matter within 20 working days of the hearing.

**10.15(5)** Any party adversely affected by the ~~chief of staffs administrator’s~~ ruling may file a written request for a rehearing within 20 days of issuance of the ruling. A rehearing will be conducted only

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

when additional evidence is available, the evidence is material to the case, and good cause existed for the failure to present the evidence at the initial hearing. The ~~chief of staff~~ administrator will schedule a hearing within 20 days after the receipt of the written request. The ~~chief of staff~~ administrator shall issue a ruling regarding the matter within 20 working days of the hearing.

**10.15(6)** Any party adversely affected by the ~~chief of staff's~~ administrator's ruling may file a written appeal to the administrator of the homeland security and emergency management division. The appeal request shall contain information identifying the appealing party, the ruling being appealed, specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief. The administrator shall issue a ruling regarding the matter within 90 days of the hearing. The administrator's ruling constitutes final agency action for purposes of judicial review.

ITEM 15. Amend rule 605—10.16(34A) as follows:

**605—10.16(34A) Confidentiality.** All financial or operations information provided by a wireless communications service provider to the E911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and Iowa Administrative Code 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said wireless communications service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the administrator if the aggregated information does not reveal any information attributable to an individual wireless communications service provider.

ITEM 16. Adopt the following new rule 605—10.17(34A):

**605—10.17(34A) Prepaid wireless E911 surcharge.** Administration of the prepaid wireless E911 surcharge is under the control of the Iowa department of revenue. To administer this function, the department has adopted rules that can be found in 701—paragraph 224.6(2)“b” and rule 701—224.8(34A), Iowa Administrative Code.

**ARC 0488C**

## 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 249.3 and 2012 Iowa Acts, Senate File 2336, section 18, the Department of Human Services proposes to amend Chapter 51, “Eligibility,” and Chapter 52, “Payment,” Iowa Administrative Code.

The purpose of these amendments is to implement cost-of-living increases to several State Supplementary Assistance program categories in accordance with 20 CFR 416.2095 and 416.2096 and 2012 Iowa Acts, Senate File 2336, section 18, amending 2011 Iowa Acts, chapter 129, section 124, subsections 2 and 3.

Effective January 1, 2013, the Supplementary Security Income (SSI) benefit will be increased according to the increase in the consumer price index from October 1, 2011, through September 30, 2012. The Social Security Administration has announced that this increase will be 1.7 percent. In order to comply with the federal maintenance-of-effort or “pass-along” requirement in calendar year 2013 using the payment levels method of compliance, Iowa must increase the payment amounts and income limits for each State Supplementary Assistance category (except In-Home Health-Related

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

Care (IHHRC) provider rates and the Supplement for Medicare and Medicaid Eligibles) effective January 1, 2013, to equal the minimum levels required by the federal government. The minimum levels are increased each time the SSI benefit is increased. Compliance with the maintenance-of-effort requirement for state supplements is a condition of eligibility for state participation in the federal Medicaid program. Also, the Iowa General Assembly has directed the Department to increase the personal needs allowance of clients in the residential care facility program by the same percentage and at the same time as the SSI cost-of-living increase.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 0489C**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before January 2, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations since the increases are required by federal and state law.

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

These amendments are intended to implement Iowa Code section 249.3 and 2012 Iowa Acts, Senate File 2336, section 18, amending 2011 Iowa Acts, chapter 129, section 124, subsections 2 and 3.

**ARC 0497C**

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

### **Notice of Intended Action**

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

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

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

These amendments will:

- Clarify dental coverage criteria.
- Reduce exception to policy requests by adding coverage for nitrous oxide under certain circumstances and establishing prior authorization requirements for tissue grafts, antimicrobial agents, denture replacements, and denture rebase.
- Increase the frequency with which topical fluoride applications provided by dentists are allowed.
- Add prior authorization requirements for crowns, anterior partial dentures, an oral appliance for obstructive sleep apnea, and occlusal guards.
- Remove prior authorization requirements for periodontal surgical procedures.

Any interested person may make written comments on the proposed amendments on or before January 2, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto: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).

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

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

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

The following amendments are proposed.

ITEM 1. Amend rule 441—78.4(249A) as follows:

**441—78.4(249A) Dentists.** Payment will be made for medical and surgical services furnished by a dentist to the extent these services may be performed under state law either by doctors of medicine, osteopathy, dental surgery or dental medicine and would be covered if furnished by doctors of medicine or osteopathy. Services must be reasonable, necessary, and cost-effective for the prevention, diagnosis, and treatment of dental disease or injuries or for oral devices necessary for a medical condition. Payment will also be made for the following dental procedures ~~subject to the exclusions for services to adults 21 years of age and older set forth in subrule 78.4(14):~~

**78.4(1) Preventive services.** Payment shall be made for the following preventive services:

a. Oral prophylaxis, including necessary scaling and polishing, is payable only once in a six-month period except for persons who, because of a physical or mental disability condition, need more frequent care. Documentation supporting the need for oral prophylaxis performed more than once in a six-month period must be maintained.

b. Topical application of fluoride is payable once ~~in a six-month period except for people who need more frequent applications because of physical or mental disability.~~ every 90 days. (This does not include the use of fluoride prophylaxis paste as fluoride treatment.)

c. Pit and fissure sealants are payable for placement on deciduous and permanent posterior teeth only. Reimbursement for sealants is restricted to work performed on members through 18 years of age and on members who have a physical or mental disability condition that impairs their ability to maintain adequate oral hygiene. Replacement sealants are covered when medically necessary, as documented in the patient record.

d. Space management services are payable in mixed dentition when premature loss of teeth would permit existing teeth to shift and cause a handicapping malocclusion or there is too little dental ridge to accommodate either the number or the size of teeth and significant dental disease will result if the condition is not corrected.

**78.4(2) Diagnostic services.** Payment shall be made for the following diagnostic services:

a. A comprehensive oral evaluation is payable once per ~~patient member~~ per dentist dental practice in a three-year period when the ~~patient member~~ has not been seen that by a dentist in the dental practice during the three-year period.

b. No change.

c. A ~~complete full~~ mouth radiograph survey, consisting of a minimum of 14 periapical films and bite-wing films, ~~or a panoramic radiograph with bite-wings~~ is a payable service once in a five-year period, except when medically necessary to evaluate development, and to detect anomalies, injuries and diseases. ~~Complete Full~~ mouth radiograph surveys are not payable under the age of six except when medically necessary. A panoramic-type radiography with bite-wings is considered the same as a ~~complete full~~ mouth radiograph survey.

d. to j. No change.

k. Diagnostic casts are payable only for orthodontic cases or dental implants or when requested by the Iowa Medicaid enterprise medical services unit's dental consultant.

l. Cone beam images are payable when medically necessary for situations including, but not limited to, detection of tumors, positioning of severely impacted teeth, supernumerary teeth or dental implants.

**78.4(3) Restorative services.** Payment shall be made for the following restorative services:

a. to c. No change.

d. ~~Two laboratory-fabricated crowns using nonprecious materials, other than stainless steel, are payable per member in a 12-month period. Additional laboratory-fabricated crowns using nonprecious materials, other than stainless steel, are payable when prior authorization has been obtained. Noble metals are payable for crowns when members are allergic to all other restorative materials. Stainless steel crowns are payable when a more conservative procedure would not be serviceable. (Cross-reference 78.28(2)“e”)~~

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

d. Crowns are payable when there is at least a fair prognosis for maintaining the tooth as determined by the Iowa Medicaid enterprise medical services unit and a more conservative procedure would not be serviceable.

(1) Stainless steel crowns are limited to primary and permanent posterior teeth and are covered when coronal loss of tooth structure does not allow restoration with an amalgam or composite restoration. Placement on permanent posterior teeth is allowed only for members who have a mental or physical condition that limits their ability to tolerate the procedure for placement of a different crown.

(2) Aesthetic coated stainless steel crowns and stainless steel crowns with a resin window are limited to primary anterior teeth.

(3) Laboratory-fabricated crowns, other than stainless steel, are limited to permanent teeth and require prior authorization. Approval shall be granted when coronal loss of tooth structure does not allow restoration with an amalgam or composite restoration or there is evidence of recurring decay surrounding a large existing restoration, a fracture, a broken cusp(s), or an endodontic treatment.

(4) Crowns with noble or high noble metals require prior authorization. Approval shall be granted for members who meet the criteria for a laboratory-fabricated crown, other than stainless steel, and who have a documented allergy to all other restorative materials.

e. Cast post and core, steel post and composite or post and amalgam in addition to a crown is payable when a tooth is functional and the integrity of the tooth would be jeopardized by no post support.

f. Payment as indicated will be made for the following restorative restoration procedures:

(1) Amalgam or acrylic buildups, including any pins, are considered part of the preparation for the completed restoration a core buildup.

(2) to (4) No change.

~~(5) A two-surface anterior composite restoration will be payable as a one-surface restoration if it involved the lingual surface.~~

(5) Two separate one-surface restorations are payable as a two-surface restoration (i.e., an occlusal pit restoration and a buccal pit restoration are a two-surface restoration).

(6) Tooth preparation, temporary restorations, cement bases, pulp capping, impressions, and local anesthesia and inhaled anesthesia are included in the restorative fee and may not be billed separately.

(7) and (8) No change.

(9) An amalgam or composite restoration is not payable following a sedative filling in the same tooth unless the sedative filling was placed more than 30 days previously.

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

a. Full-mouth debridement to enable comprehensive periodontal evaluation and diagnosis is payable once every 24 months. This procedure is not payable on the same date of service when other prophylaxis or periodontal services are performed.

b. Periodontal scaling and root planing is payable once every 24 months when prior approval has been received. A request for approval must be accompanied by a plan for treatment, a completed copy of a periodontal probe chart that exhibits pocket depths, history and radiograph(s). Payment for periodontal scaling and root planing will be approved when interproximal and subgingival calculus is evident in X-rays or when justified and documented that curettage, scaling or root planing is required in addition to routine prophylaxis. Prior approval shall be granted per quadrant when radiographs demonstrate subgingival calculus or loss of crestal bone and when the periodontal probe chart shows evidence of pocket depths of 4 mm or greater. (Cross-reference 78.28(2) "a"(1))

c. Periodontal surgical procedures which include gingivoplasty, osseous surgery, and osseous allograft are payable services when prior approval has been received. A request for approval must be accompanied by a plan for treatment, a completed copy of a periodontal probe chart that exhibits pocket depths, history and radiograph(s). Payment for these surgical procedures will be approved after periodontal scaling and root planing has been provided, a reevaluation examination has been completed, and the patient member has demonstrated reasonable oral hygiene, unless the patient is unable to demonstrate reasonable oral hygiene because of physical or mental disability or in cases which demonstrate gingival hyperplasia resulting from drug therapy. Payment is also allowed for members who are unable to demonstrate reasonable oral hygiene due to a physical or mental condition, or who

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

exhibit evidence of gingival hyperplasia, or who have a deep carious lesion that cannot be otherwise accessed for restoration. (Cross-reference 78.28(2)“a”(2))

d. Tissue grafts. Pedicle soft tissue graft, and free soft tissue graft, and subepithelial connective tissue graft are payable services with prior approval based on a written narrative describing medical necessity. Authorization shall be granted when the amount of tissue loss is causing problems such as continued bone loss, chronic root sensitivity, complete loss of attached tissue, or difficulty maintaining adequate oral hygiene. (Cross-reference 78.28(2)“a”(3)(2))

e. Periodontal maintenance therapy which includes oral prophylaxis, measurement of pocket depths and limited root planing and scaling is a payable service when prior approval has been received requires prior authorization. A request for approval must be accompanied by a periodontal treatment plan, a completed copy of a periodontal probe chart which exhibits pocket depths, periodontal history and radiograph(s). Payment for periodontal maintenance therapy may be approved after periodontal scaling and root planing or periodontal surgical procedures have been provided. Periodontal maintenance therapy may be approved once per three-month interval for moderate to advanced cases if the condition would deteriorate without treatment. Approval shall be granted for members who have completed periodontal scaling and root planing at least three months prior to the initial periodontal maintenance therapy and the periodontal probe chart shows evidence of pocket depths of 4 mm or greater. (Cross-reference 78.28(2)“a”(4)(3))

f. Payment as indicated will be made for the following periodontal services:

- (1) Periodontal scaling and root planing, gingivoplasty, osseous surgery will be paid per quadrant.
- (2) Gingivoplasty will be paid per tooth.
- (3) Osseous allograft will be paid as a single site if one site is involved, or if more than one site is involved, payment will be made for multiple sites.

f. Tissue regeneration procedures require prior authorization. Approval shall be granted when radiographs show evidence of recession in relation to the muco-gingival junction and the bone level indicates the tooth has a fair to good long-term prognosis.

g. Localized delivery of antimicrobial agents requires prior authorization. Approval shall be granted when at least one year has elapsed since periodontal scaling and root planing was completed, the member has maintained regular periodontal maintenance, and pocket depths remain at a moderate to severe depth with bleeding on probing. Authorization is limited to once per site every 12 months.

**78.4(5) Endodontic services.** Payment shall be made for the following endodontic services:

a. Root canal treatments on permanent anterior and posterior teeth when there is presence of extensive posttreatment restorative procedures are not necessary and when missing teeth do not jeopardize the integrity or function of the dental arches decay, infection, draining fistulas, severe pain upon chewing or applied pressure, prolonged sensitivity to temperatures, or a discolored tooth indicative of a nonvital tooth.

b. No change.

c. Surgical endodontic treatment is payable when prior approval has been received. Payment for, including an apicoectomy, performed as a separate surgical procedure; an apicoectomy, performed in conjunction with endodontic procedure; an apical curettage; a root resection; or excision of hyperplastic tissue will be approved is payable when nonsurgical treatment has been attempted and a reasonable time of approximately one year has elapsed after which failure has been demonstrated. Surgical endodontic procedures may be indicated when:

(1) Conventional root canal treatment cannot be successfully completed because canals cannot be negotiated, debrided or obturated due to calcifications, blockages, broken instruments, severe curvatures, and dilacerated roots.

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

d. Endodontic retreatment when prior authorization has been received. Authorization for retreatment of a tooth with previous endodontic treatment shall be granted when the conventional treatment has been completed, a reasonable time has elapsed since the initial treatment, and failure has

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

been demonstrated with a radiograph and narrative history. A reasonable period of time is approximately one year if the treating dentist is the same and may be less if the member must see a different dentist.

**78.4(6) Oral surgery—medically necessary.** Payment shall be made for medically necessary oral surgery services furnished by dentists to the extent that these services may be performed under state law either by doctors of medicine, osteopathy, dental surgery or dental medicine and would be covered if furnished by doctors of medicine or osteopathy, as defined in rule 441—78.1(249A). These services will be reimbursed in a manner consistent with the physician's reimbursement policy. The following surgical procedures are also payable when performed by a dentist:

*a. to h.* No change.

~~*i.* General anesthesia, intravenous sedation, and non-intravenous conscious sedation are payable services when the extensiveness of the procedure indicates it or there is a concomitant disease or impairment which warrants its use.~~

~~*j. i.* Routine postoperative care is considered part of the fee for surgical procedures and may not be billed separately.~~

~~*k. j.* Payment may be made for postoperative care where need is shown to be beyond normal follow-up care or for postoperative care where the original service was performed by another dentist.~~

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

~~*a.* An immediate denture and or a first-time complete denture including six. Six months' postdelivery care is included in the reimbursement for the denture. An immediate denture and a first-time complete denture are payable when the denture is provided to establish masticatory function. An immediate denture or a first-time complete denture is payable only once following the removal of teeth it replaces. A complete denture is payable only once in a five-year period except when the denture is broken beyond repair, lost or stolen, or no longer fits due to growth or changes in jaw structure and is required to prevent significant dental problems. Replacement of complete dentures due to resorption in less than a five-year period is not payable.~~

~~*b.* A removable partial denture replacing anterior teeth, including six months' postdelivery care when prior approval has been received. Approval shall be granted when radiographs demonstrate adequate space for replacement of a missing anterior tooth. Six months' postdelivery care is included in the reimbursement for the denture. A removable partial denture replacing anterior teeth is payable only once in a five-year period unless the removable partial denture is broken beyond repair, lost or stolen, or no longer fits due to growth or changes in jaw structure and is required to prevent significant dental problems. Replacement of a removable partial denture replacing anterior teeth due to resorption in less than a five-year period is not payable.~~

~~*c.* A removable partial denture replacing posterior teeth including six months' postdelivery care when prior approval has been received. A removable partial denture replacing posterior teeth Approval shall be approved granted when the member has fewer than eight posterior teeth in occlusion, excluding third molars, or the member has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one removable partial denture brings eight posterior teeth in occlusion, no additional removable partial denture will be approved. Six months' postdelivery care is included in the reimbursement for the denture. A removable partial denture replacing posterior teeth is payable only once in a five-year period unless the removable partial denture is broken beyond repair, lost or stolen, or no longer fits due to growth or changes in jaw structure and is required to prevent significant dental problems. Replacement of a removable partial denture replacing posterior teeth due to resorption in less than a five-year period is not payable. (Cross-reference 78.28(2)“e”“b”(1))~~

~~*d.* A fixed partial denture (including an acid etch fixed partial denture) replacing anterior teeth when prior approval has been received. A fixed partial denture (including an acid etch fixed partial denture) replacing anterior teeth shall be approved for members whose medical condition precludes the use of a removable partial denture. Approval shall be granted for members who:~~

- ~~(1) Have a physical or mental condition that precludes the use of a removable partial denture, or~~
- ~~(2) Have an existing bridge that needs replacement due to breakage or extensive, recurrent decay.~~

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

High noble or noble metals shall be approved only when the member is allergic to all other restorative materials. ~~A fixed partial denture replacing anterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.28(2)“e”“b”(2))~~

~~e. A fixed partial denture (including an acid etch fixed partial denture) replacing posterior teeth when prior approval has been received. A fixed partial denture (including an acid etch fixed partial denture) replacing posterior teeth Approval shall be approved granted for the member members who meet the criteria for a removable partial denture and:~~

~~(1) whose medical Have a physical or mental condition that precludes the use of a removable partial denture and who has fewer than eight posterior teeth in occlusion, or~~

~~(2) if the member has Have a full denture in one arch and a partial fixed denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one fixed partial denture brings eight posterior teeth in occlusion, no additional fixed partial denture will be approved.~~

High noble or noble metals will be approved only when the member is allergic to all other restorative materials. ~~A fixed partial denture replacing posterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.28(2)“e”(3))~~

~~f. Obturator for surgically excised palatal tissue or deficient velopharyngeal function of cleft palate patients.~~

~~g. Chairside relines and laboratory-processed relines are payable only once per prosthesis every 12 months, beginning six months after placement of the denture.~~

~~h. Laboratory processed relines are payable only once per prosthesis every 12 months.~~

~~i. h. Tissue conditioning is a payable service twice per prosthesis in a 12-month period.~~

~~j. i. Two repairs per prosthesis in a 12-month period are payable.~~

~~k. j. Adjustments to a complete or removable partial denture are payable when medically necessary after six months' postdelivery care. An adjustment consists of removal of acrylic material or adjustment of teeth to eliminate a sore area or to make the denture fit better. Warming dentures and massaging them for better fit or placing them in a sonic device does not constitute an adjustment.~~

~~l. k. Dental implants and related services when prior authorization has been received. Prior authorization shall be granted when the member is missing significant oral structures due to cancer, traumatic injuries, or developmental defects such as cleft palate and cannot use a conventional denture.~~

~~l. Replacement of complete or partial dentures in less than a five-year period requires prior authorization. Approval shall be granted once per denture replacement per arch in a five-year period when the denture has been lost, stolen or broken beyond repair or cannot be adjusted for an adequate fit. Approval shall also be granted for more than one denture replacement per arch within five years for members who have a medical condition that necessitates thorough mastication. Approval will not be granted in less than a five-year period when the reason for replacement is resorption.~~

~~m. A complete or partial denture rebase requires prior approval. Approval shall be granted when the acrylic of the denture is cracked or has had numerous repairs and the teeth are in good condition.~~

~~n. An oral appliance for obstructive sleep apnea requires prior approval and must be custom-fabricated. Approval shall be granted in accordance with Medicare criteria.~~

~~78.4(8) Orthodontic procedures. Payment may be made for the following orthodontic procedures:~~

~~a. Orthodontic services to treat handicapping malocclusions are payable with prior approval. A score of 26 or above on the index from "Handicapping Malocclusion Assessment to Establish Treatment Priority," by J. A. Salzman, D.D.S., American Journal of Orthodontics, October 1968, is required for approval.~~

~~(1) A handicapping malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the patient by causing impaired mastication, dysfunction of the temporomandibular articulation, susceptibility to periodontal disease, susceptibility to dental caries, and impaired speech due to malpositions of the teeth. Treatment of handicapping malocclusions will be approved only for the severe and the most handicapping. Assessment of the most handicapping malocclusion is determined by the magnitude of the following variables: degree of malalignment, missing teeth, angle classification, overjet and overbite, openbite, and crossbite.~~

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

~~(2) A request to perform an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the Iowa Medicaid enterprise.~~

~~(3) Approval may be made for eight units of a three-month active treatment period. Additional units may be approved by the Iowa Medicaid enterprise's orthodontic consultant if found to be medically necessary. Minor treatment to control harmful habits when prior approval has been received. Approval shall be granted when it is cost-effective to lessen the severity of a malformation such that extensive treatment is not required. (Cross-reference 78.28(2)“d”“c”)~~

~~b. Space management services shall be payable when there is too little dental ridge to accommodate either the number or the size of teeth and if not corrected significant dental disease will result. Interceptive orthodontic treatment of the transitional dentition when prior approval has been received. Approval shall be granted when it is cost-effective to lessen the severity of a malformation such that extensive treatment is not required.~~

~~c. Tooth guidance for a limited number of teeth or interceptive orthodontics is a payable service when extensive treatment is not required. Pretreatment records are not required. Comprehensive orthodontic treatment when prior approval has been received. Approval is limited to members under 21 years of age and shall be granted when the member has a severe handicapping malocclusion with a score of 26 or above using the index from the “Handicapping Malocclusion Assessment to Establish Treatment Priority,” by J.A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968.~~

~~**78.4(9) *Treatment in a hospital. Adjunctive general services.*** Payment will be approved for dental treatment rendered a hospitalized patient only when the mental, physical, or emotional condition of the patient prevents the dentist from providing necessary care in the office. Payment may be made for the following:~~

~~a. Treatment in a hospital. Payment will be approved for dental treatment rendered to a hospitalized member only when the mental, physical, or emotional condition of the member prevents the dentist from providing necessary care in the office.~~

~~b. Treatment in a nursing facility. Payment will be approved for dental treatment provided in a nursing facility. When more than one patient is examined during the same nursing home visit, payment will be made by the Medicaid program for only one visit to the nursing home.~~

~~c. Office visit. Payment will be approved for an office visit for care of injuries or abnormal conditions of the teeth or supporting structure when treatment procedures or examinations are not billed for that visit.~~

~~d. Office calls after hours. Payment will be approved for office calls after office hours in emergency situations. The office call will be paid in addition to treatment procedures.~~

~~e. Drugs. Payment will be made for drugs dispensed by a dentist only if there is no licensed retail pharmacy in the community where the dentist's office is located. If eligible to dispense drugs, the dentist should request a copy of the Prescribed Drugs Manual from the Iowa Medicaid enterprise provider services unit. Payment will not be made for the writing of prescriptions.~~

~~f. Anesthesia. General anesthesia, intravenous sedation, and nonintravenous conscious sedation are payable services when the extensiveness of the procedure indicates it or there is a concomitant disease or impairment which warrants use of anesthesia. Inhalation of nitrous oxide is payable when the age or physical or mental condition of the member necessitates the use of minimal sedation for dental procedures.~~

~~g. Occlusal guard. A removable dental appliance to minimize the effects of bruxism and other occlusal factors requires prior approval. Approval shall be granted when the documentation supports evidence of significant loss of tooth enamel, tooth chipping, headaches or jaw pain.~~

~~**78.4(10) *Treatment in a nursing facility. Orthodontic services to members 21 years of age or older.*** Payment will be approved for dental treatment provided in a nursing facility. When more than one patient is examined during the same nursing home visit, payment will be made by the Medicaid program for only one visit to the nursing home. Orthodontic procedures are not covered for members 21 years of age or older.~~

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

~~78.4(11) Office visit.~~ Payment will be approved for an office visit for care of injuries or abnormal conditions of the teeth or supporting structure when treatment procedures or exams are not billed for that visit.

~~78.4(12) Office calls after hours.~~ Payment will be approved for office calls after office hours in emergency situations. The office call will be paid in addition to treatment procedures.

~~78.4(13) Drugs.~~ Payment will be made for drugs dispensed by a dentist only if there is no licensed retail pharmacy in the community where the dentist's office is located. If eligible to dispense drugs, the dentist should request a copy of the Prescribed Drugs Manual from the Iowa Medicaid enterprise provider services unit. Payment will not be made for writing prescriptions.

~~78.4(14) Services to members 21 years of age or older.~~ Orthodontic procedures are not covered for members 21 years of age or older.

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

ITEM 2. Amend subrule 78.28(2) as follows:

**78.28(2)** Dental services. Dental services which require prior approval are as follows:

a. The following periodontal services:

(1) ~~Payment for periodontal~~ Periodontal scaling and root planing. ~~Payment will be approved when interproximal and subgingival calculus is evident in X-rays or when justified and documented that curettage, sealing or root planing is required in addition to routine prophylaxis. (Cross-reference 78.4(4) "b")~~ Payment will be approved pursuant to the criteria at 78.4(4) "b."

(2) ~~Payment for pedicle soft tissue graft and free soft tissue graft will be approved when the written narrative describes medical necessity. Payment for other periodontal surgical procedures will be approved after periodontal scaling and root planing has been provided, a reevaluation examination has been completed, and the patient has demonstrated reasonable oral hygiene, unless the patient is unable to demonstrate reasonable oral hygiene because of physical or mental disability or in cases which demonstrate gingival hyperplasia resulting from drug therapy. (Cross-reference 78.4(4) "c")~~

(3) ~~(2) Payment for pedicle~~ Pedicle soft tissue graft, ~~and free soft tissue graft, and subepithelial tissue graft. Payment will be approved when the written narrative describes medical necessity. (Cross-reference 78.4(4) "d")~~ Payment will be approved pursuant to the criteria at 78.4(4) "d."

(4) ~~(3) Periodontal maintenance therapy. Payment for periodontal maintenance therapy may be approved after periodontal scaling and root planing or periodontal surgical procedures have been provided. will be approved pursuant to the criteria at 78.4(4) "e."~~ Periodontal maintenance therapy may be approved once per three-month interval for moderate to advanced cases if the condition would deteriorate without treatment. (Cross-reference 78.4(4) "e")

(4) Tissue regeneration. Payment will be approved pursuant to the criteria at 78.4(4) "f."

(5) Localized delivery of antimicrobial agents. Payment will be approved pursuant to the criteria at 78.4(4) "g."

b. ~~Surgical endodontic treatment which includes an apicoectomy, performed as a separate surgical procedure; an apicoectomy, performed in conjunction with endodontic procedure; an apical curettage; a root resection; or excision of hyperplastic tissue will be approved when nonsurgical treatment has been attempted and a reasonable time has elapsed after which failure has been demonstrated. Surgical endodontic procedures may be indicated when:~~

(1) ~~Conventional root canal treatment cannot be successfully completed because canals cannot be negotiated, debrided or obturated due to calcifications, blockages, broken instruments, severe curvatures, and dilacerated roots.~~

(2) ~~Correction of problems resulting from conventional treatment including gross underfilling, perforations, and canal blockages with restorative materials. (Cross-reference 78.4(5) "e")~~

e. b. The following prosthetic services:

(1) A removable partial denture replacing posterior anterior teeth. Payment will be approved when the member has fewer than eight posterior teeth in occlusion or the member has a full denture in one arch, and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. pursuant to the criteria at 78.4(7) "b." ~~When one removable partial denture brings eight posterior teeth~~

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

~~in occlusion, no additional removable partial denture will be approved. A removable partial denture replacing posterior teeth is payable only once in a five-year period unless the removable partial denture is broken beyond repair, lost or stolen, or no longer fits due to growth or changes in jaw structure, and is required to prevent significant dental problems. Replacement of a removable partial denture replacing posterior teeth due to resorption in less than a five-year period is not payable. (Cross-reference 78.4(7) "e")~~

~~(2) A fixed partial denture (including an acid-etch fixed partial denture) replacing anterior teeth. Payment will be approved for members whose medical condition precludes the use of a removable partial denture. pursuant to the criteria at 78.4(7) "d." High noble or noble metals will be approved only when the member is allergic to all other restorative materials. A fixed partial denture replacing anterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.4(7) "d")~~

~~(3) A fixed removable partial denture replacing posterior teeth. (including an acid-etch fixed partial denture) replacing posterior teeth will be approved for members whose medical condition precludes the use of a removable partial denture and who have fewer than eight posterior teeth in occlusion or if the member has a full denture in one arch and a partial denture replacing posterior teeth is required in the opposing arch to balance occlusion. When one fixed partial denture brings eight posterior teeth in occlusion, no additional fixed partial denture will be approved. High noble or noble metals will be approved only when the member is allergic to all other restorative materials. A fixed partial denture replacing posterior teeth is payable only once in a five-year period unless the fixed partial denture is broken beyond repair. (Cross-reference 78.4(7) "e") Payment will be approved pursuant to the criteria at 78.4(7) "c."~~

~~(4) A fixed partial denture replacing posterior teeth. Dental implants and related services will be authorized when the member is missing significant oral structures due to cancer, traumatic injuries, or developmental defects such as cleft palate and cannot use a conventional denture. Payment will be approved pursuant to the criteria at 78.4(7) "e."~~

~~(5) Dental implants and related services. Payment will be approved pursuant to the criteria at 78.4(7) "k."~~

~~(6) Replacement of complete or partial dentures in less than a five-year period. Payment will be approved pursuant to the criteria at 78.4(7) "l."~~

~~(7) A complete or partial denture rebase. Payment will be approved pursuant to the criteria at 78.4(7) "m."~~

~~(8) An oral appliance for obstructive sleep apnea. Payment will be approved pursuant to the criteria at 78.4(7) "n."~~

~~d. c. Orthodontic The following orthodontic services: to treat a handicapping malocclusion are payable with prior approval. A score of 26 or above on the index from "Handicapping Malocclusion Assessment to Establish Treatment Priority," by J. A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968, is required for approval.~~

~~(1) A handicapping malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the patient by causing impaired mastication, dysfunction of the temporomandibular articulation, susceptibility to periodontal disease, susceptibility to dental caries, and impaired speech due to malpositions of the teeth. Treatment of handicapping malocclusions will be approved only for the severe and the most handicapping. Assessment of the most handicapping malocclusion is determined by the magnitude of the following variables:~~

- ~~1. Degree of malalignment;~~
- ~~2. Missing teeth;~~
- ~~3. Angle classification;~~
- ~~4. Overjet and overbite;~~
- ~~5. Openbite; and~~
- ~~6. Crossbite.~~

~~(1) Minor treatment to control harmful habits. Payment will be approved pursuant to the criteria at 78.4(8) "a."~~

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

~~(2) A request to perform an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the Iowa Medicaid enterprise medical services unit.~~

~~(2) Interceptive orthodontic treatment. Payment will be approved pursuant to the criteria at 78.4(8) "b."~~

~~(3) Approval may be made for eight units of a three-month active treatment period. Additional units may be approved by the department's orthodontic consultant if the additional units are found to be medically necessary. (Cross-reference 78.4(8) "a")~~

~~(3) Comprehensive orthodontic treatment. Payment will be approved pursuant to the criteria at 78.4(8) "c."~~

~~e. More than two laboratory-fabricated crowns will be approved in a 12-month period for anterior teeth that cannot be restored with a composite or amalgam restoration and for posterior teeth that cannot be restored with a composite or amalgam restoration or stainless steel crown. (Cross-reference 78.4(3) "d")~~

~~d. The following restorative services:~~

~~(1) Laboratory-fabricated crowns other than stainless steel. Payment will be approved pursuant to the criteria at 78.4(3) "d"(3).~~

~~(2) Crowns with noble or high noble metals. Payment will be approved pursuant to the criteria at 78.4(3) "d"(4).~~

~~f. e. Endodontic retreatment of a tooth will be authorized when the conventional treatment has been completed, a reasonable time has elapsed, and failure has been demonstrated with a radiograph and narrative history. Payment will be approved pursuant to the criteria at 78.4(5) "d."~~

~~f. Occlusal guard. Payment will be approved pursuant to the criteria at 78.4(9) "g."~~

**ARC 0496C**

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

### **Notice of Intended Action**

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

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

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

These amendments expand prior authorization requirements for diabetic equipment and supplies not covered by rebate agreements. If the Department has a current agreement for a rebate with at least one manufacturer of a particular category of diabetic equipment or supplies (such as blood glucose monitors, blood glucose test strips, lancing devices, lancets, or diabetic syringes), prior authorization will be required for any equipment or supplies in that category produced by manufacturers that have not contracted with the Department to provide a rebate. However, this requirement will not apply to supplies for members receiving care in a nursing facility or an intermediate care facility for persons with an intellectual disability. Prior authorization will be granted when medically necessary.

Any interested person may make written comments on the proposed amendments on or before January 2, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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These amendments do not provide for waivers in specified situations because prior authorization may be requested for products from manufacturers without rebate agreements. In addition, requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

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

The following amendments are proposed.

ITEM 1. Amend subrule 78.10(2) as follows:

**78.10(2) Durable medical equipment.** DME is equipment which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, and is appropriate for use in the home.

a. No change.

b. Only the following types of durable medical equipment can be covered through the Medicaid program:

Alternating pressure pump.

Automated medication dispenser. See ~~78.10(2)“d”~~ 78.10(5)“d” for prior authorization requirements.

Bedpan.

Blood glucose monitors, ~~subject to the limitation in 78.10(2)“e.”~~. See 78.10(5)“e” for prior authorization requirements.

Blood pressure cuffs.

Cane.

Cardiorespiratory monitor (rental and supplies).

Commode.

Commode pail.

Crutches.

Decubitus equipment.

Dialysis equipment.

Diaphragm (contraceptive device).

Enclosed bed. See ~~78.10(2)“d”~~ 78.10(5)“a” for prior authorization requirements.

Enuresis alarm system (bed-wetting alarm device) for members five years of age or older.

Hospital bed.

Hospital bed accessories.

Inhalation equipment.

Insulin infusion pump. See ~~78.10(2)“d”~~ 78.10(5)“b” and 78.10(5)“e” for prior authorization requirements.

Lymphedema pump.

Neuromuscular stimulator.

Oximeter.

Oxygen, subject to the limitations in 78.10(2)“a” and 78.10(2)“c.”

Patient lift (Hoyer).

Phototherapy bilirubin light.

Pressure unit.

Protective helmet.

Respirator.

Resuscitator bags and pressure gauge.

Seat lift chair.

Suction machine.

Traction equipment.

Urinal (portable).

Vaporizer.

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

Ventilator.

Vest airway clearance system. See 78.10(2) "~~d~~" 78.10(5) "~~c~~" for prior authorization requirements.

Walker.

Wheelchair—standard and adaptive.

Whirlpool bath.

c. No change.

~~d. Prior authorization is required for the following medical equipment and supplies (Cross-reference 78.28(1)):~~

~~(1) Enclosed beds. Payment for an enclosed bed will be approved when prescribed for a patient who meets all of the following conditions:~~

~~1. The patient has a diagnosis-related cognitive or communication impairment that results in risk to safety.~~

~~2. The patient's mobility puts the patient at risk for injury.~~

~~3. The patient has suffered injuries when getting out of bed.~~

~~(2) External insulin infusion pumps. Payment will be approved according to Medicare coverage criteria.~~

~~(3) Vest airway clearance systems. Payment will be approved for a vest airway clearance system when prescribed by a pulmonologist for a patient with a diagnosis of a lung disorder if all of the following conditions are met:~~

~~1. Pulmonary function tests for the 12 months before the initiation of the vest demonstrate an overall significant decrease of lung function.~~

~~2. The patient resides in an independent living situation or has a medical condition that precludes the caregiver from administering traditional chest physiotherapy.~~

~~3. Treatment by flutter device failed or is contraindicated.~~

~~4. Treatment by intrapulmonary percussive ventilation failed or is contraindicated.~~

~~5. All other less costly alternatives have been tried.~~

~~(4) Automated medication dispenser. Payment will be approved for an automated medication dispenser when prescribed for a member who meets all of the following conditions:~~

~~1. The member has a diagnosis indicative of cognitive impairment or age-related factors that affect the member's ability to remember to take medications.~~

~~2. The member is on two or more medications prescribed to be administered more than one time a day.~~

~~3. The availability of a caregiver to administer the medications or perform setup is limited or nonexistent.~~

~~4. Less costly alternatives, such as medisets or telephone reminders, have failed.~~

~~(5) Blood glucose monitors and diabetic test strips produced by a manufacturer that does not have a current agreement to provide a rebate to the department for monitors or test strips provided through the Medicaid program. Prior approval shall be granted when the member's medical condition necessitates use of a blood glucose monitor or diabetic test strips produced by a manufacturer that does not have a current rebate agreement with the department.~~

~~e. Blood glucose monitors are covered through the Medicaid program only if:~~

~~(1) The monitor is produced by a manufacturer that has a current agreement to provide a rebate to the department for monitors provided through the Medicaid program; or~~

~~(2) Prior authorization based on medical necessity is received pursuant to rule 441—79.8(249A) for a monitor produced by a manufacturer that does not have a current rebate agreement with the department.~~

ITEM 2. Amend subrule 78.10(4) as follows:

**78.10(4) Medical supplies.** Medical supplies are nondurable items consumed in the process of giving medical care, for example, nebulizers, gauze, bandages, sterile pads, adhesive tape, and sterile absorbent cotton. Medical supplies are payable for a specific medicinal purpose. This does not include food or drugs. However, active pharmaceutical ingredients and excipients that are identified as preferred on the preferred drug list published by the department pursuant to Iowa Code section 249A.20A are covered.

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

Medical supplies shall not be dispensed at any one time in quantities exceeding a 31-day supply for active pharmaceutical ingredients and excipients or a three-month supply for all other items. After the initial dispensing of medical supplies, the provider must document a refill request from the Medicaid member or the member's caregiver for each refill.

a. Only the following types of medical supplies and supplies necessary for the effective use of a payable item can be purchased through the medical assistance program:

Active pharmaceutical ingredients and excipients identified as preferred on the preferred drug list published pursuant to Iowa Code section 249A.20A.

Catheter (indwelling Foley).

Colostomy and ileostomy appliances.

Colostomy and ileostomy care dressings, liquid adhesive, and adhesive tape.

~~Diabetic blood glucose test strips, subject to the limitation in 78.10(4) "e."~~

Diabetic supplies, other than blood glucose test strips (including but not limited to blood glucose test strips, lancing devices, lancets, needles, syringes, and diabetic urine test supplies). See 78.10(5) "e" for prior authorization requirements.

Dialysis supplies.

Diapers (for members aged four and above).

Disposable catheterization trays or sets (sterile).

Disposable irrigation trays or sets (sterile).

Disposable saline enemas (e.g., sodium phosphate type).

Disposable underpads.

Dressings.

Elastic antiembolism support stocking.

Enema.

Hearing aid batteries.

Respirator supplies.

Surgical supplies.

Urinary collection supplies.

b. Only the following types of medical supplies will be approved for payment for members receiving care in a nursing facility or an intermediate care facility for the mentally retarded when prescribed by the physician, physician assistant, or advanced registered nurse practitioner:

Catheter (indwelling Foley).

Colostomy and ileostomy appliances.

Colostomy and ileostomy care dressings, liquid adhesive and adhesive tape.

Diabetic supplies (including but not limited to lancing devices, lancets, needles and syringes, blood glucose test strips, and diabetic urine test supplies).

Disposable catheterization trays or sets (sterile).

Disposable irrigation trays or sets (sterile).

Disposable saline enemas (e.g., sodium phosphate type).

~~e. Diabetic blood glucose test strips are covered through the Medicaid program only if:~~

~~(1) The strips are produced by a manufacturer that has a current agreement to provide a rebate to the department for test strips provided through the Medicaid program, or~~

~~(2) Prior authorization is received pursuant to rule 441—79.8(249A) for test strips produced by a manufacturer that does not have a current rebate agreement with the department, based on medical necessity.~~

ITEM 3. Adopt the following **new** subrule 78.10(5):

**78.10(5) Prior authorization requirements.** Prior authorization pursuant to rule 441—79.8(249A) is required for the following medical equipment and supplies (Cross-reference 78.28(1)):

a. Enclosed beds. Payment for an enclosed bed will be approved when prescribed for a patient who meets all of the following conditions:

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

(1) The patient has a diagnosis-related cognitive or communication impairment that results in risk to safety.

(2) The patient's mobility puts the patient at risk for injury.

(3) The patient has suffered injuries when getting out of bed.

*b.* External insulin infusion pumps. Payment will be approved according to Medicare coverage criteria.

*c.* Vest airway clearance systems. Payment will be approved for a vest airway clearance system when prescribed by a pulmonologist for a patient with a diagnosis of a lung disorder if all of the following conditions are met:

(1) Pulmonary function tests for the 12 months before the initiation of the vest demonstrate an overall significant decrease in lung function.

(2) The patient resides in an independent living situation or has a medical condition that precludes the caregiver from administering traditional chest physiotherapy.

(3) Treatment by flutter device failed or is contraindicated.

(4) Treatment by intrapulmonary percussive ventilation failed or is contraindicated.

(5) All other less costly alternatives have been tried.

*d.* Automated medication dispenser. Payment will be approved for an automated medication dispenser when prescribed for a member who meets all of the following conditions:

(1) The member has a diagnosis indicative of cognitive impairment or age-related factors that affect the member's ability to remember to take medications.

(2) The member is on two or more medications prescribed to be administered more than one time per day.

(3) The availability of a caregiver to administer the medications or perform setup is limited or nonexistent.

(4) Less costly alternatives, such as medisets or telephone reminders, have failed.

*e.* Diabetic equipment and supplies. If the department has a current agreement for a rebate with at least one manufacturer of a particular category of diabetic equipment or supplies (by Healthcare Common Procedure Coding System (HCPCS) code), prior authorization is required for any equipment or supplies in that category produced by a manufacturer that does not have a current agreement to provide a rebate to the department (other than supplies for members receiving care in a nursing facility or an intermediate care facility for persons with an intellectual disability). Prior approval shall be granted when the member's medical condition necessitates use of equipment or supplies produced by a manufacturer that does not have a current rebate agreement with the department.

ITEM 4. Amend paragraph **78.28(1)“k”** as follows:

*k.* ~~Prior authorization is required for blood glucose monitors and diabetic test strips produced by a manufacturer that does not have a current agreement to provide a rebate to the department for monitors or test strips provided through the Medicaid program. The department shall approve payment when a blood glucose monitor or diabetic test strips produced by a manufacturer that does not have a current rebate agreement with the department are medically necessary.~~ Diabetic equipment and supplies. Payment will be approved pursuant to the criteria at 78.10(5)“e.”

**ARC 0513C**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 10A.104(3) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 62, “Residential Care Facilities for Persons with Mental Illness (RCF/PMI),” Chapter 63, “Residential Care Facilities for the Mentally Retarded,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” Iowa Administrative Code.

The proposed amendments make technical changes to correspond to the adoption of 481—Chapter 59, “Tuberculosis (TB) Screening.” Chapter 59 outlines requirements and procedures to conduct tuberculosis screenings for health care workers and residents of Iowa-licensed health care facilities, including the screening process to be used, the risk classifications, and who may conduct TB screenings.

The Department does not believe that the proposed amendments impose any financial hardship on any regulated entity, body, or individual. Rather, the proposed amendments provide uniformity in the requirements and procedures to conduct TB screenings for health care workers and residents.

The Board of Health reviewed the proposed amendments at its November 14, 2012, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 2, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to [david.werning@dia.iowa.gov](mailto:david.werning@dia.iowa.gov).

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

The proposed amendments are intended to implement Iowa Code section 135C.14.

The following amendments are proposed.

ITEM 1. Amend subrule 57.11(3) as follows:

**57.11(3)** There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

- a. Employees shall have a physical examination ~~and tuberculin test~~ before employment. (I, II, III)
- b. Employees shall have a physical examination at least every four years; ~~including an assessment of tuberculosis status.~~ (I, II, III)
- c. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (I, II, III)

ITEM 2. Amend subrule 57.15(2) as follows:

**57.15(2)** Each resident admitted to a residential care facility shall have had a physical examination prior to admission. ~~If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident’s record.~~ (II, III)

a. ~~Each resident admitted to a residential care facility shall have had a physical examination prior to admission.~~ If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be a part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident’s record. (II, III)

b. The record of the admission physical examination and medical history shall portray the current medical status of the resident and shall include the resident’s name, sex, age, medical history, tuberculosis

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

~~status~~, physical examination, diagnosis, statement of chief complaints, and results of any diagnostic procedures. (II, III)

c. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (I, II, III)

ITEM 3. Amend subrule 58.10(3) as follows:

**58.10(3)** There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

a. Employees shall have a physical examination ~~and tuberculin test~~ before employment; (I, II, III)

b. Employees shall have a physical examination at least every four years, ~~including an assessment of tuberculosis status.~~ (I, II, III)

c. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (I, II, III)

ITEM 4. Amend subrule 62.9(2), introductory paragraph, as follows:

**62.9(2)** The facility shall require regular health examinations for all personnel, and examinations shall be required at the commencement of employment and thereafter at least every four years. The examination shall include, at a minimum, the health ~~and tuberculosis status~~ of the employee. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (III)

ITEM 5. Amend subrule 62.11(1) as follows:

**62.11(1)** Each resident admitted shall have had a physical examination prior to admission and annually thereafter. (II, III)

a. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be part of the record in lieu of an additional physical examination. (II, III)

b. The record of the admission physical examination shall portray the current medical status of the resident and shall include the resident's name, sex, age, medical history, ~~tuberculosis status~~, physical examination, diagnosis, statement of chief complaints, and results of any diagnostic procedure. (II, III)

c. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (II, III)

ITEM 6. Amend subrule 63.9(3) as follows:

**63.9(3)** There shall be written personnel policies for each facility. Personnel policies shall include the following requirements:

a. Employees shall have a physical examination ~~and tuberculin test~~ before employment. (I, II, III)

b. Employees shall have a physical examination at least every four years, ~~including an assessment of tuberculosis status.~~ (I, II, III)

c. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (I, II, III)

ITEM 7. Amend subrule 63.15(2) as follows:

**63.15(2)** Each resident admitted to a residential care facility for the mentally retarded shall have had a physical examination prior to admission. ~~If the resident is admitted directly from another health care facility, a copy of the admission physical and discharge summary may be part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be part of the resident's record.~~ (II, III)

a. ~~Each resident admitted to a residential care facility shall have had a physical examination prior to admission.~~ If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be a part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician, shall be a part of the resident's record. (II, III)

b. The record of the admission physical examination and medical history shall portray the current medical status of the resident and shall include the resident's name, sex, age, medical history, ~~tuberculosis status~~, physical examination, diagnosis, statement of chief complaints, and results of any diagnostic procedures. (II, III)

c. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (II, III)

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

ITEM 8. Amend subrule 65.9(2) as follows:

**65.9(2)** There shall be written personnel policies for each facility. ~~which~~ Personnel policies shall include the following requirements:

~~a.~~ Employees shall have a physical examination ~~and tuberculin test~~ before employment. ~~At and at least every four years after beginning employment, employees shall have a physical examination and assessment of tuberculin status.~~ (III)

~~b.~~ Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59. (I, II, III)

~~b. c.~~ No one shall provide services in a facility if the person has a disease:

- (1) Which is transmissible through required workplace contact; (I, II, III)
- (2) Which presents a significant risk of infecting others; (I, II, III)
- (3) Which presents a substantial possibility of harming others; (I, II, III)
- (4) For which no reasonable accommodation can eliminate the risk. (I, II, III)

Refer to Guidelines Guideline for Infection Control in Hospital Personnel, 1998, Centers for Disease Control, U.S. Department of Health and Human Services, ~~PB85-923402~~ to determine (1), (2), (3) and (4).

~~e. d.~~ There shall be written policies for emergency medical care for employees in case of sudden illness or accident. These policies shall include the administrative individuals to be contacted. (III)

~~d. e.~~ Health certificates for all employees shall be available for review by the department. (III)

**ARC 0514C**

## INSPECTIONS AND APPEALS DEPARTMENT[481]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to rescind Chapter 61, “Minimum Physical Standards for Nursing Facilities,” Iowa Administrative Code, and to adopt a new Chapter 61 with the same title.

The proposed amendment rescinds the current Chapter 61 and replaces it with a new Chapter 61, which incorporates by reference generally accepted design and construction standards for the construction and renovation of nursing facilities. The Department requested the assistance of the Building Code Bureau of the State Fire Marshal’s office to review the rules pertaining to minimum physical standards for nursing facilities. A full review of the rules has not been conducted for nearly 20 years, during which time most national building codes and standards have been significantly revised.

During the review process, the Building Code Bureau compared the provisions of existing Chapter 61 against the national building codes and standards and determined that many of the provisions were outdated, unenforceable, or irrelevant.

The proposed amendment incorporates the following building codes and standards as part of the rewrite of Chapter 61:

- Life Safety Code, 2000 edition.
- Iowa State Building Code—General Provisions, 661—Chapter 301.
- Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facilities Guidelines Institute.

Additionally, the proposed amendment incorporates references to the FDA Food Code, adopted pursuant to Iowa Code section 137F.2, and updates requirements pertaining to physical standards dealing with food preparation and service areas. Consideration is given to existing nursing facilities,

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

which are deemed to be in compliance if they were in compliance with prior versions of Chapter 61 at the time of their construction or renovation.

Essentially, the proposed amendment omits from new Chapter 61 all design and construction standards contained within the administrative rules of the Department of Public Safety, State Building Code Bureau. The proposed amendment, therefore, focuses on those physical standards directly related to the care of nursing home residents, including the preparation of foods and the maintenance of specialized units or rooms.

The Department does not believe that the proposed amendment poses a financial hardship on any regulated entity or individual. Rather, adoption of the proposed amendment eliminates redundant language from the Iowa Administrative Code and references minimum physical standards to national standards.

The State Board of Health initially reviewed the proposed amendment at the Board's November 14, 2012, meeting.

Any interested person may make written suggestions or comments on the proposed rules on or before January 2, 2013. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; faxed to (515)242-6863; or e-mailed to [David.Werning@dia.iowa.gov](mailto:David.Werning@dia.iowa.gov).

Additionally, there will be a public hearing on January 3, 2013, at 10 a.m. in Room 319 of the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any person who intends to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Department of Inspections and Appeals and advise of special needs.

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

These rules are intended to implement Iowa Code section 135C.14.

The following amendment is proposed.

Rescind 481—Chapter 61 and adopt the following **new** chapter in lieu thereof:

CHAPTER 61  
MINIMUM PHYSICAL STANDARDS FOR NURSING FACILITIES

**481—61.1(135C) Definitions.** Definitions in rule 481—58.1(135C) are incorporated by reference as part of this chapter. In addition, the following definition shall apply:

*“Responsible design professional”* means a registered architect or licensed professional engineer who signs the documents submitted pursuant to rule 481—61.3(135C).

**481—61.2(135C) General requirements.** Nursing facilities licensed under this chapter shall be built in accordance with the following construction standards:

**61.2(1)** Construction shall be in conformance with 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

**61.2(2)** Construction shall be in conformance with 661—Chapter 301, State Building Code—General Provisions.

EXCEPTION 1: Projects designed to meet the local building code shall be deemed to be in compliance with the state building code provided that the local jurisdiction has established a building department, has adopted a building code by ordinance and such code is enforced through a system which includes both plan review and inspection. The final plan approval and final occupancy shall be given by the state fire marshal's office.

EXCEPTION 2: Projects required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the project is in compliance with the provisions of 661—Chapter 205.

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

**61.2(3)** Construction shall be in accordance with the standards set forth in Part 4.2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facility Guidelines Institute.

**61.2(4)** Nothing in these rules shall relieve a nursing facility from compliance with fire and building codes, ordinances and regulations which are enforced by city, county, state or federal jurisdictions.

**61.2(5)** New equipment. Any alteration or installation of new equipment shall be accomplished as nearly as practical in conformance with all applicable codes, ordinances, regulations and standards required for new construction. Alteration or installation of new equipment shall not diminish the level of compliance with any codes, ordinances, regulations or standards below that which existed prior to the alteration. Any feature that does not meet the requirement for new buildings but exceeds the requirement for existing buildings shall not be further diminished. Features that exceed requirements for new construction need not be maintained. In no case shall any feature be less than that required for existing buildings. (III)

**61.2(6)** Existing nursing facilities built in compliance with prior versions of this chapter will be deemed in compliance, with the exception of any renovations, additions, functional alterations, changes of space utilization, or conversions to existing facilities for which construction documents are submitted pursuant to rule 481—61.3(135C) on or after July 1, 2013, which shall meet the standards specified in this chapter. Conversion of a building or any of the parts not currently licensed as a nursing facility must meet the rules governing construction of new facilities.

**481—61.3(135C) Submission of construction documents.**

**61.3(1)** Submissions of architectural technical documents, engineering documents, and plans and specifications to the state fire marshal's office shall be as required by rule 661—300.4(103A) and are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

**61.3(2)** Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the construction standards required by rule 481—61.2(135C).

**61.3(3)** Submittals to the state fire marshal's office shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of engineering as defined by Iowa Code section 542B.2.

**61.3(4)** The responsible design professional shall certify that the building plans meet the requirements specified in this chapter, unless a variance has been granted pursuant to rule 481—61.4(135C).

**481—61.4(135C) Variances.**

**61.4(1)** Procedures in rule 481—58.2(135C) for requesting a variance are incorporated by reference as part of this chapter.

**61.4(2)** Certain resident populations, conditions in the area, or the site may justify variances. In specific cases, variances to the rules may be granted by the director after the following conditions are met:

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

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

**481—61.5(135C) Additional notification requirements.**

**61.5(1)** When new construction or renovation, addition, functional alteration, change of space utilization, or conversion of an existing building is contemplated, the licensee or applicant for a license shall:

*a.* File a detailed and comprehensive program of care, as set forth in rule 481—58.3(135C), which includes a description of the specific needs of the residents to be served, and any other information the department may require. (III)

*b.* Receive written approval from the state fire marshal's office before starting construction. The applicant is responsible for ensuring that construction proceeds according to approved plans and specifications. If construction is not started within 12 months of the date of final approval of the working drawings and specifications, the approval shall be void and the plans and specifications shall be resubmitted. Multiphase projects shall be completed within a time period approved by the state fire marshal's office.

*c.* The total cost of renovation, addition, functional alteration, change of space utilization or conversion projects conducted within a three-year period shall be considered in determining whether the entire existing building must meet requirements for new construction.

**61.5(2) Inspections.**

*a.* For new construction or renovations, additions, functional alterations, change of space utilization or conversion of an existing building, it is the responsibility of the owner or an agent to notify the state fire marshal's office at all of the following intervals and wait for inspection before proceeding. Inspections shall be conducted in accordance with the following schedule:

- (1) Two days prior to the beginning of any construction or demolition.
- (2) After installation of any under-slab plumbing and before covering is installed.
- (3) After installation of electrical, mechanical and plumbing and prior to covering.
- (4) Five days prior to a final occupancy inspection.

*b.* The following must approve the project before final occupancy: the state fire inspector, the state building inspector and, in jurisdictions without electrical code enforcement, the state electrical inspector. Approval of local or county jurisdictions is as required by those jurisdictions.

**481—61.6(135C) Construction requirements.** This rule contains construction requirements for all areas of the building.

**61.6(1) General provisions.**

*a.* Projects shall be constructed in compliance with 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

*b.* Projects shall be constructed in compliance with 661—Chapter 301, State Building Code—General Provisions.

EXCEPTION 1: Projects designed to meet the local building code shall be deemed to be in compliance with the state building code provided that the local jurisdiction has established a building department, has adopted a building code by ordinance and such code is enforced through a system which includes both plan review and inspection. The final plan approval and final occupancy shall be given by the state fire marshal's office.

EXCEPTION 2: Projects required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the nursing facility is in compliance with the provisions of 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

*c.* Projects shall be constructed in compliance with the standards set forth in Part 4.2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, published by the Facility Guidelines Institute.

**61.6(2) Mechanical requirements.**

*a.* Projects shall be constructed in compliance with 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

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

*b.* Projects shall be constructed in compliance with the state mechanical code as provided in rule 661—301.4(103A).

EXCEPTION: Projects designed to meet the local mechanical code shall be deemed to be in compliance with the state mechanical code provided that the local jurisdiction has established a building department, has adopted a building code by ordinance and such code is enforced through a system which includes both plan review and inspection. The final plan approval and final occupancy shall be given by the state fire marshal's office.

**61.6(3) Electrical requirements.**

*a.* Projects shall be constructed in compliance with standards referenced in 661—Chapter 205, Fire Safety Requirements for Hospitals and Health Care Facilities.

*b.* Projects shall be constructed in compliance with the state electrical code as provided in rule 661—301.5(103A).

**61.6(4) Plumbing requirements.** Projects shall be constructed in compliance with 641—Chapter 25, State Plumbing Code.

**61.6(5) Accessibility requirements.** Projects shall be constructed in compliance with 661—Chapter 302, State Building Code—Accessibility of Buildings and Facilities Available to the Public.

**61.6(6) Lighting requirements.** Light shall be provided in the areas of the building as required in Table 1. Light in the resident care area, reading area, activities task area and dining area may be reduced to 30 foot-candles measured at the floor surface when tasks are not being performed in that area. (II, III)

Table 1

Area	Measured Site	Required Foot-candles
Resident rooms:		
General	floor	30
Resident care area	bed surface	100
Night light	floor below fixture	5
Staff areas:		
Nursing station	task surface	100
Medication room	task surface	100
Activities task area	task surface	75
Dining area	task surface	50
Corridor, stairway and hazardous area:		
General	floor	30
Night light	floor below fixture	10

**61.6(7) Exit door alarm system.** An exit door alarm system shall be installed on all designated fire exit doors. (I, II, III)

**481—61.7(135C) Nursing care unit.**

**61.7(1)** Each resident bedroom shall be designed so that the head of the bed is not in front of a window, heat register, or radiator. (III)

**61.7(2)** Soap holders shall be provided at showers and bathtubs. Soap holders in showers shall be recessed. (III)

**61.7(3)** Showers shall be equipped with a showerhead on the end of a flexible hose. (III)

**61.7(4)** A seclusion room may be used in an intermediate care facility for persons with mental illness. When a seclusion room is used, it must meet the following standards. A seclusion room shall:

- a.* Be located where direct care staff can provide direct supervision; (I, II, III)
- b.* Have only one door which swings out but does not swing into a corridor; (II, III)
- c.* Have only locking devices that are approved by the state fire marshal; (I, II, III)

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

- d.* Have unbreakable, fire-safe vision panels arranged to permit observation of the resident. The arrangement shall ensure resident privacy and prevent casual observation by visitors or other residents; (I, II, III)
- e.* House only one resident at a time; (I, II, III)
- f.* Have an area of at least 60 square feet, but not more than 100 square feet; (II, III)
- g.* Be constructed to protect against the possibility of hiding, escape, injury and suicide; (I, II, III)
- h.* Have construction of the room area, including floor, walls, ceilings, and all openings, approved in writing by the state fire marshal prior to construction or alteration of a room. Padding materials, if used, shall be approved in writing by the state fire marshal; (I, II, III)
- i.* Contain only vandal- and tamper-resistant fixtures and hardware; (I, II, III)
- j.* Contain no electrical receptacles; (I, II, III)
- k.* Have exterior windows or a second exit for fire safety; (I, II, III)
- l.* Have security screens with tamper-resistant locks on exterior windows. The locks must be approved in writing by the state fire marshal. Privacy of the resident shall be ensured; (I, II, III)
- m.* Contain an exhaust ventilation system with a fan located at the discharge end of the system; (II, III)
- n.* Have electrical switches for the light and exhaust ventilation systems installed outside the room; (I, II, III)
- o.* Have an emergency call system for staff located outside the room near the observation window; (II, III) and
- p.* Be built with materials that are easily maintained and sanitized. (III)

**481—61.8(135C) Dietetic and other service areas.**

**61.8(1)** *Dietetic service area.* The construction and installation of equipment of the dietetic service area shall comply with the requirements of the Food and Drug Administration Food Code adopted under provisions of Iowa Code section 137F.2. (III)

**61.8(2)** *General storage areas.* General storage areas totaling not less than 14 square feet per bed shall be provided. If each resident has a 4-foot wide closet in the bedroom, the general storage area per bed may be reduced from 14 square feet to 10 square feet per bed. Storage areas are not required to be located in only one room. (III)

*a.* Storage areas for linens, janitor's supplies, sterile nursing supplies, activities supplies, library books, office supplies, kitchen supplies and mechanical plant accessories shall not be included as part of the general storage area and are not required to be located in the same area. (III)

*b.* Thirty percent of the general storage area may be provided in a building outside the facility if the building is easily accessible to personnel. (III)

**481—61.9(135C) Specialized unit or facility for persons with chronic confusion or a dementing illness (CCDI unit or facility).** A CCDI unit or facility shall be designed in accordance with Section 4.2-2.2.3.2 and other applicable provisions of the Guidelines for Design and Construction of Health Care Facilities, 2010 edition, produced by the Facility Guidelines Institute. The following provisions shall also apply:

**61.9(1)** A CCDI unit or facility shall be designed so that residents, staff and visitors will not pass through the unit in order to reach exits or other areas of the facility unless in an emergency. (III)

**61.9(2)** If the unit or facility is to be a locked unit or facility, all locking devices shall meet the requirements of the state fire marshal. If the unit or facility is to be unlocked, a system of security monitoring is required. (I, II, III)

**61.9(3)** The outdoor activity area for the unit or facility shall be secure. Nontoxic plants shall be used in the secured outdoor activity area. (I, II)

**61.9(4)** There shall be no steps inside the CCDI unit or free-standing CCDI facility. (III)

**61.9(5)** Dining and activity areas for the unit or facility shall be located within the unit or facility and shall not be used as the primary dining or activity area by other facility residents. (III)

**61.9(6)** An area shall be provided to allow nurses to prepare daily resident reports. (III)

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

**61.9(7)** If the lounge and activity areas are not adjacent to resident rooms, there shall be in clear view of the lounge and activity area one unisex resident toilet room for each ten residents. (III)

These rules are intended to implement Iowa Code section 135C.14.

**ARC 0511C****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 sections 147.76 and 272C, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 2, “Pharmacist Licenses,” Iowa Administrative Code.

The amendments were approved at the November 9, 2012, regular meeting of the Board of Pharmacy.

The proposed amendments require that all pharmacists register with CPE Monitor, a free service jointly developed, implemented, and maintained by the National Association of Boards of Pharmacy (NABP) and the American Council on Pharmaceutical Education (ACPE) for the purpose of recording and maintaining evidence of pharmacists’ successful completion of ACPE-accredited provider continuing education activities. Beginning in 2013, ACPE-accredited providers will only report a pharmacist’s successful completion of continuing education activities to CPE Monitor and certificates of completion will no longer be issued to pharmacists by those providers. The pharmacist may review his or her record of completed continuing education activities by logging into the pharmacist’s CPE Monitor profile, and the Board will be able to verify a pharmacist’s successful completion of traditional ACPE-accredited provider continuing education activities by checking the pharmacist’s record with CPE Monitor. The proposed amendments clarify the recording and reporting requirements for non-ACPE provider activities that are not compatible with CPE Monitor.

The proposed amendments provide pharmacists with the option to complete and submit a continuing professional development (CPD) portfolio to fulfill the continuing education requirements for license renewal or license reactivation. Proposed rule 657—2.17(272C) establishes the requirements for a CPD portfolio including the required content of the portfolio and the process for declaring to the Board the pharmacist’s intention to complete and submit a CPD portfolio, identifies a prerequisite for a pharmacist’s participation in and submission of a CPD portfolio, and asserts the Board’s intention to review and respond to pharmacists who submit CPD portfolios.

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 2, 2013. 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](mailto: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 147.10, 147.11, 272C.2, and 272C.3.

The following amendments are proposed.

ITEM 1. Amend rule 657—2.12(272C) as follows:

**657—2.12(272C) Continuing education requirements.** Pharmacists shall complete continuing education for license renewal pursuant to the requirements of this rule. For purposes of this rule,

## PHARMACY BOARD[657](cont'd)

“continuing education” means a structured educational activity that is applicable to the practice of pharmacy, that promotes problem solving and critical thinking, and that is designed or intended to support the continuing development of pharmacists to maintain and enhance their competence in the practice of pharmacy. Nothing in these rules precludes the board from requiring an applicant for renewal to submit to a relicensure examination.

**2.12(1) Continuing education unit required.** The nationally accepted measurement of continuing education is referred to as CEU (continuing education unit), and the board employs that measurement. Ten contact hours of approved continuing education are equivalent to one CEU.

*a.* The board will require 3.0 CEUs each renewal period except as provided in subrule 2.12(5) or rule 657—2.17(272C). For purposes of this rule, “renewal period” means the 27-month period commencing April 1 prior to the previous license expiration and ending June 30, the date of current license expiration.

*b.* A pharmacist who fails to complete the required CEUs within the renewal period shall be required to complete one and one-half times the number of delinquent CEUs prior to reactivation of the license.

*c.* CEUs that are used to satisfy the continuing education requirement for one renewal period shall not be used to satisfy the requirement for a subsequent renewal period.

*d.* Failure to receive a license renewal application or notice of license renewal shall not relieve the pharmacist of the responsibility of meeting continuing education requirements.

**2.12(1) 2.12(2) Continuing education activity attendance completion.** Continuing education activities that carry the seal of an Accreditation Council for Pharmacy Education (ACPE)-accredited provider will automatically qualify for continuing education credit. ~~Attendance~~ Successful completion and record of continuing education activities in CPE Monitor is mandated in order for a pharmacist to receive credit ~~unless the activity is an ACPE-accredited correspondence course~~ for ACPE-accredited provider continuing education activities.

*a. Non-ACPE provider activity.* A maximum of 1.3 CEUs (13 contact hours) of the total 3.0 CEUs of continuing education credits required pursuant to subrule 2.12(4) may be obtained through completion of non-ACPE provider activities if such activities are provided by an accredited health-professional continuing education provider, such as a continuing medical education (CME) provider, and if the activity content directly relates to the pharmacist’s professional practice. Non-ACPE provider activity completion shall be recorded, evaluated, and reported pursuant to the provisions of rule 657—2.17(272C) regarding continuing professional development.

(1) The pharmacist is responsible for ensuring that the activity content directly relates to the pharmacist’s professional practice.

(2) ~~In addition, if~~ If one or more non-ACPE provider activities are intended to fulfill the requirement in paragraph 2.12(4) “c,” the pharmacist is responsible for ensuring the activity content relates to patient or medication safety.

(3) If the non-ACPE provider is not able to transmit the activity record to CPE Monitor, the provider shall provide to the pharmacist a statement of credit that indicates the pharmacist’s participation in and successful completion of the continuing education activity. The statement of credit shall include all information identified in subrule 2.12(3), except for the pharmacist’s CPE Monitor e-profile identification number.

*b. Exemption for health-related graduate studies.* A pharmacist who is continuing formal education in a health-related graduate ~~programs~~ program, including participation in a pharmacy residency program, may be exempted from meeting the continuing education requirements during the period of such enrollment or participation. As an alternative to requesting exemption from meeting the continuing education requirements, the pharmacist may complete a CPD portfolio pursuant to rule 657—2.17(272C).

(1) An applicant for this exemption shall petition the board, as soon as possible following enrollment in the qualifying graduate program or commencement of the pharmacy residency program and prior to completion of the qualifying program, on forms provided by the board office.

## PHARMACY BOARD[657](cont'd)

(2) At the discretion of the board, exemption during part-time or short-term enrollment in a health-related graduate program may be prorated for the actual period of such enrollment.

~~2.12(2) Continuing education unit required.~~ The nationally accepted measurement of continuing education is referred to as CEU (continuing education unit), and the board of pharmacy employs that measurement. Ten contact hours of approved continuing education are equivalent to one CEU. The board of pharmacy will require 3.0 CEUs each renewal period. For purposes of this rule, “renewal period” means the 27-month period commencing April 1 prior to the previous license expiration and ending June 30, the date of current license expiration. A pharmacist who fails to complete the required CEUs within the renewal period shall be required to complete one and one-half times the number of delinquent CEUs prior to reactivation of the license. CEUs that are used to satisfy the continuing education requirement for one renewal period shall not be used to satisfy the requirement for a subsequent renewal period.

~~2.12(3) Continuing education activity statement record of credit.~~

~~a.~~ An accredited ACPE-accredited provider will be required to make available to transmit to CPE Monitor information regarding an individual pharmacist a statement of credit that indicates pharmacist’s participation in and successful completion of and participation in a continuing education activity. The statement of credit will carry record shall be accessible to the board and shall include the following information:

- (1) a. Pharmacist’s full name and CPE Monitor e-profile identification number.
- (2) b. Number of contact hours or CEUs awarded for activity completion.
- (3) c. Date of live activity or date of completion of home study activity.
- (4) d. Name of accredited provider.
- (5) e. Activity title and universal activity number.

~~b.~~ A pharmacist must retain statements of credit in the pharmacist’s personal files for four years.

~~2.12(4) Continuing education activity topics.~~ Each pharmacist is required to obtain continuing education by completing activities in the topics specified in this subrule.

~~a. Drug therapy.~~ A minimum of 1.5 CEUs (15 contact hours) of the pharmacist’s required 3.0 CEUs shall be in ACPE-accredited provider activities dealing with drug therapy. Activities qualifying for the drug therapy requirement will include the ACPE topic designator “01” or “02” in the last two digits followed by the letter “P” at the end of the universal activity number.

~~b. Pharmacy law.~~ A minimum of 0.2 CEUs (2 contact hours) of the pharmacist’s required 3.0 CEUs shall be in ACPE-accredited provider activities dealing with pharmacy law. Activities qualifying for the pharmacy law requirement will include the ACPE topic designator “03” in the last two digits followed by the letter “P” at the end of the universal activity number.

~~c. Patient or medication safety.~~ A minimum of 0.2 CEUs (2 contact hours) of the pharmacist’s required 3.0 CEUs shall be in activities dealing with patient or medication safety. Activities completed to fulfill this requirement may be ACPE-accredited provider activities, in which case the last two digits of the universal activity number will include end with the ACPE topic designator “05,” or followed by the letter “P.” A pharmacist may complete non-ACPE provider activities as provided in subrule 2.12(1) paragraph 2.12(2) “a” to fulfill this topic requirement.

~~2.12(5) New license holders licensed by examination.~~ After the initial license is issued by examination, the new license holder is exempt from meeting continuing education requirements for the first license renewal. However, if the licensee qualifies as a mandatory abuse reporter, the licensee shall not be exempt from mandatory training for identifying and reporting abuse pursuant to rule 657—2.16(235B,272C). Regardless of when the license is first issued, the new license holder will be required to obtain, prior to the second renewal, 30 contact hours (3.0 CEUs) of continuing education pursuant to subrules 2.12(1) through 2.12(4) or to complete a CPD portfolio pursuant to rule 657—2.17(272C).

~~2.12(6) New license holders licensed by license transfer/reciprocity.~~ After the initial license is issued by license transfer, the new license holder will be required to obtain, prior to the first license renewal, 30 contact hours (3.0 CEUs) of continuing education credits pursuant to subrules 2.12(1) through 2.12(4) or to complete a CPD portfolio pursuant to rule 657—2.17(272C).

## PHARMACY BOARD[657](cont'd)

**2.12(7) Reporting continuing education credits.**

~~a. A pharmacist shall submit on or with the renewal application form documentation that the continuing education requirements have been met. Documentation shall be in a format that includes the following: provide or report to the board, in the format specified on or with the pharmacist license renewal application, evidence that the continuing education requirements have been met.~~

- ~~(1) The total number of credits accumulated for the renewal period;~~
- ~~(2) The individual activities completed, including activity title and universal activity number;~~
- ~~(3) The dates of completion;~~
- ~~(4) The credits awarded for each activity;~~
- ~~(5) The name of the provider of each activity; and~~
- ~~(6) Identification of the activities completed to comply with the drug therapy requirements in subrule 2.12(4).~~

~~b. The board may require a pharmacist to submit the activity statements of credit that document or other documented evidence of successful completion of the activities included with or on the renewal application reported as fulfilling the continuing education requirements.~~

~~c. Failure to receive the renewal application shall not relieve the pharmacist of the responsibility of meeting continuing education requirements.~~

~~**2.12(8) Relicensure examination.** Nothing in these rules precludes the board from requiring an applicant for renewal to submit to a relicensure examination.~~

~~**2.12(9) 2.12(8) Physical disability or illness.** The board may, in individual cases involving physical disability or illness, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application is made and signed by the licensee and the licensee's physician. The board may grant waivers of the minimum continuing education requirements for physical disability or illness for any period of time not to exceed one renewal period. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the licensee to make up all or any portion of the waived continuing education requirements by any method prescribed by the board.~~

ITEM 2. Amend rule 657—2.13(272C) as follows:

**657—2.13(272C) Active and inactive license status.**

**2.13(1) Active license.** Active license status applies to a pharmacist who has submitted the renewal application and fee and has met Iowa requirements for continuing education or has completed a CPD portfolio pursuant to rule 657—2.17(272C). Active license status also applies to a pharmacist who has submitted the renewal application and fee and who is a resident of another state, is licensed to practice pharmacy in that state, and has met the continuing education requirements of that state. A pharmacist who meets the continuing education requirements of another state shall provide documentation on the renewal application of the pharmacist's license status in that state. An Iowa licensee actively practicing in a state that does not require continuing education for license renewal shall be required to meet Iowa continuing education or CPD requirements.

**2.13(2) Inactive license.** Failure of a pharmacist to comply with the continuing education or CPD requirements during the renewal period ~~will~~ shall result in the issuance of a renewal card marked "inactive" upon submission of the renewal application and fee. Reactivation of an inactive pharmacist license shall be accomplished by the appropriate method described below. Internship, in each instance where internship is mentioned below, shall be in a pharmacy approved by the board. The pharmacist ~~will~~ may be required to obtain a pharmacist-intern registration, including payment of the appropriate registration fee, and be issued an intern registration certificate.

~~a. An inactive pharmacist who wishes to become active and who has been actively practicing pharmacy during the last five years in any state or states which required continuing education during that five-year period shall submit proof of continued licensure in good standing in the state or states of such practice.~~

## PHARMACY BOARD[657](cont'd)

b. An inactive pharmacist who wishes to become active and who has been actively practicing pharmacy during the last five years in a state which does not require continuing education shall submit proof of continued licensure in good standing in the state or states of such practice. The pharmacist shall also complete one of the following options:

- (1) Take and successfully pass the MPJE, Iowa Edition, as provided in subrule 2.1(1);
- (2) Complete 160 hours of internship for each year the pharmacist was on inactive status (not to exceed 1,000 hours); ~~or~~
- (3) Obtain one and one-half times the number of continuing education credits required under ~~2.12(2)~~ subrule 2.12(1) for each renewal period the pharmacist was inactive; ~~or~~
- (4) Complete a CPD portfolio pursuant to rule 657—2.17(272C) identifying a minimum of 45 learning outcomes for each renewal period the pharmacist was inactive.

c. An inactive pharmacist who wishes to become active and who has not been actively practicing pharmacy during the past five years, and whose license has been inactive for not more than five years, shall complete one of the following options:

- (1) Successfully pass all components of the licensure examination as required in rule 657—2.1(147,155A);
- (2) Complete 160 hours of internship for each year the pharmacist was on inactive status; ~~or~~
- (3) Obtain one and one-half times the number of continuing education credits required under ~~2.12(2)~~ subrule 2.12(1) for each renewal period the pharmacist was inactive; ~~or~~
- (4) Complete a CPD portfolio pursuant to rule 657—2.17(272C) identifying a minimum of 45 learning outcomes for each renewal period the pharmacist was inactive.

d. An inactive pharmacist who wishes to become active and who has not been actively practicing pharmacy for more than five years shall petition the board for reactivation of the license to practice pharmacy under one or more of the following options:

- (1) Successfully pass all components of the licensure examination as required in rule 657—2.1(147,155A);
- (2) Complete 160 hours of internship for each year the pharmacist was on inactive status (not to exceed 1,000 hours); ~~or~~
- (3) Obtain one and one-half times the number of continuing education credits required under ~~2.12(2)~~ subrule 2.12(1) for each renewal period the pharmacist was inactive; ~~or~~
- (4) Complete a CPD portfolio pursuant to rule 657—2.17(272C) identifying a minimum of 45 learning outcomes for each renewal period the pharmacist was inactive.

ITEM 3. Adopt the following new rule 657—2.17(272C):

**657—2.17(272C) Continuing professional development portfolio.** A pharmacist may complete and submit with the pharmacist's license renewal a continuing professional development (CPD) portfolio to fulfill the continuing education requirements in rule 657—2.12(272C). For purposes of these rules, "CPD" means a self-directed, ongoing, systematic, and outcomes-focused approach to learning and professional development including active participation in learning activities that assist a pharmacist in developing and maintaining continuing competence in the practice of pharmacy, enhancing the pharmacist's professional practice, and supporting achievement of the pharmacist's career goals. Definitions and descriptions of the terms "continuing education," "CEU," and "renewal period" included in rule 657—2.12(272C) shall apply to those terms as used in this rule.

**2.17(1) Declaration of intent.** A pharmacist shall declare on or with the previous license renewal, or shall notify the board no later than January 1 of the year the pharmacist's license is scheduled for renewal, of the pharmacist's intent to complete a CPD portfolio for the next license renewal.

a. The pharmacist's declaration of intent shall be in writing. Oral declaration of intent to complete a CPD portfolio will not be accepted.

b. A declaration of intent may be delivered to the board office via E-mail, facsimile transmission, or alternate hard-copy delivery.

**2.17(2) Prerequisite.** A pharmacist, prior to submitting the pharmacist's initial CPD portfolio, shall complete an ACPE-accredited provider activity regarding the objectives and processes relating to CPD.

## PHARMACY BOARD[657](cont'd)

Record of the pharmacist's participation in this prerequisite activity shall be included in the pharmacist's initial CPD portfolio.

**2.17(3) CPD portfolio requirements.** A pharmacist shall combine traditional continuing education activities with professional development activities. The pharmacist shall incorporate the record of completion and evaluation of any traditional continuing education activities into the CPD portfolio.

*a.* The pharmacist is responsible for ensuring that the activity content identified in the CPD portfolio directly relates to the pharmacist's professional practice and career goals.

*b.* The pharmacist is responsible for ensuring that the activities identified in the CPD portfolio comply with the continuing education topic requirements identified in subrules 2.12(4) and 2.17(4).

**2.17(4) CPD portfolio content.** In addition to the record of completion of the one-time prerequisite activity identified in subrule 2.17(2), a completed CPD portfolio shall include or identify the following:

*a.* A minimum of 30 documented learning outcomes in the form of completed learning statements. The learning statement form or format shall be provided by the board.

*b.* Documented learning outcomes shall include a minimum of two outcomes relating to patient or medication safety, two outcomes relating to pharmacy law, and 15 outcomes relating to drug therapy.

*c.* Documented learning outcomes shall include any number of continuing education activities that carry the seal of an ACPE-accredited provider. Successful completion and record of these continuing education activities in CPE Monitor as provided in subrule 2.12(2), in addition to the documented CPD learning outcomes, is required for the pharmacist to receive credit for these activities.

*d.* Documented learning outcomes shall include any continuing education activities provided by non-ACPE, accredited, health-professional continuing education providers pursuant to subrule 2.12(2).

**2.17(5) CPD portfolio review.** The board shall review or may contract for peer review of CPD portfolios submitted for pharmacist license renewal. The board shall respond to a submitting pharmacist with comments, suggestions, and recommendations regarding the pharmacist's CPD portfolio and processes.

**ARC 0528C**

**SECRETARY OF STATE[721]**

**Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code sections 17A.4 and 47.1, the Secretary of State hereby amends the Notice of Intended Action published in the Iowa Administrative Bulletin on August 8, 2012, as **ARC 0271C**, proposing amendments to Chapter 21, "Election Forms and Instructions," and Chapter 28, "Voter Registration File (I-VOTERS) Management," Iowa Administrative Code.

The Secretary of State amends the Notice published on August 8, 2012, to propose removal of rule 721—21.100(39A,47), which, in addition to being proposed under Notice of Intended Action, was Adopted and Filed Emergency and published in **ARC 0272C** in the August 8, 2012, Iowa Administrative Bulletin. Removal of this rule is proposed because the rule was misinterpreted as attempting to provide a mechanism to circumvent Iowa Code sections 48A.14 through 48A.16 and caused concern that registered voters would be removed from the voter registration rolls following anonymous complaints. Although that was not the Secretary's intent when adopting the rule, the number of concerns that have been raised regarding that provision resulted in the Secretary's determination that the rule should be rescinded.

In order to ensure the integrity of Iowa elections and to protect the rights of voters, the Secretary of State also proposes to replace rule 721—28.5(47,48A), which also was Adopted and Filed Emergency in **ARC 0272C** and which establishes procedures for the Secretary of State to identify and communicate with noncitizens who may be registered to vote in Iowa, with a new rule 721—28.5(47,48A) which incorporates revisions to address concerns that were raised in the public comments submitted to the Secretary of State's office and during the Administrative Rules Review Committee meeting on September 11, 2012. New rule 721—28.5(47,48A) proposed in Item 2 herein extends the time frame for registrants to respond to a notice from the Secretary of State and adds specificity to clarify the procedure that will

## SECRETARY OF STATE[721](cont'd)

be followed by the Secretary of State's office when completing the match and communicating with registrants affected by the rule.

Any interested person may make written suggestions or comments on the proposed rule on or before January 3, 2013. Written suggestions or comments should be directed to Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

The Secretary of State also gives notice that a public hearing will be held on Thursday, January 3, 2013, from 2 to 4 p.m. in order to receive oral or written comments on rule 721—28.5(47,48A) published herein. The hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN at the following locations. 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 rule.

Iowa Department of Public Health (Origination Site)  
Lucas State Office Building  
Sixth Floor (Check in with receptionist  
in NW corner of hall.)  
321 E. 12th St.  
Des Moines, Iowa

North Iowa Area Community College - 1  
Activity Center, Room 106  
500 College Drive  
Mason City, Iowa

Iowa Lakes Community College  
Spencer Attendance Center, Fiber Optic Room 118  
1900 North Grand Avenue  
Spencer, Iowa

Kirkwood Community College  
Room 117  
1816 Lower Muscatine Road  
Iowa City, Iowa

Scott Community College  
500 Belmont Road, Room 210  
Bettendorf, Iowa

Iowa Western Community College - 1  
Looft Hall, Room 024  
2700 College Road  
Council Bluffs, Iowa

Western Iowa Tech Community College  
Room D201  
4647 Stone Avenue  
Sioux City, Iowa

Iowa Central Community College  
Liberal Arts Building, Room 204  
One Triton Circle  
Fort Dodge, Iowa

National Guard Armory  
2858 N. Court Road  
Ottumwa, Iowa

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Department of Human Services  
Pinecrest Office Building  
1407 Independence Avenue  
Waterloo, Iowa

Keystone Area Education Agency  
Room #2  
2310 Chaney Road  
Dubuque, Iowa

Kirkwood Community College  
Jones Hall, Room 123  
6301 Kirkwood Boulevard SW  
Cedar Rapids, Iowa

Matilda J. Gibson Memorial Library  
200 W. Howard Street  
Creston, Iowa

Any person who intends to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Secretary of State's office at (515)242-5071 and advise of 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 chapters 39 through 53.

The following amendments are proposed.

ITEM 1. Rescind rule **721—21.100(39A,47)**.

ITEM 2. Rescind rule 721—28.5(47,48A) and adopt the following new rule in lieu thereof:

**721—28.5(47,48A) Noncitizen registered voter identification and removal process.**

**28.5(1)** *Matching of foreign national files and the voter registration list.* Matches between lists of foreign nationals obtained by the secretary of state from a federal or state agency and the voter registration list shall be based on predetermined search criteria, including a combination of a registrant's name, driver's license number, date of birth or last four digits of the registrant's social security number. The match may be completed as often as the secretary of state deems necessary, but not more than once a quarter.

**28.5(2)** *Confirming matches between the foreign national file and the voter registration list.* After producing a list of probable matches based on the predetermined search criteria listed in subrule 28.5(1), the secretary of state shall determine whether the registrant has obtained citizenship status subsequent to the date on which the record in the file obtained from the other federal or state agency was generated. This determination shall be made by obtaining access to the Systematic Alien Verification Entitlement (SAVE) program administered by the United States Department of Homeland Security or to an equivalent database administered by the United States Department of Homeland Security.

Following verification that a registrant is not a United States citizen, the secretary of state shall send the registrant a letter and a response form that the registrant may use to respond to the information received by the secretary of state. The letter shall inform the registrant of the source of the information received by the secretary of state (e.g., driver's license files from the Iowa department of transportation), provide the registrant with information regarding how to dispute the information obtained by the secretary of state, and provide the registrant with information regarding how to voluntarily remove the registrant's name from the voter registration list. A postage-paid return envelope shall be included with the letter and response form. The response form shall include spaces for the registrant to indicate that the information received by the secretary of state is either correct or incorrect and a space for the registrant to indicate that the registrant needs more time to provide a response. In the event a registrant indicates that the registrant needs more time to provide a response, the secretary of state shall not proceed under subrule 28.5(3) for a minimum of 60 days from the date the letter was originally mailed.

## SECRETARY OF STATE[721](cont'd)

**28.5(3) Registered voter notification.** Upon receipt of information indicating that a noncitizen is registered to vote, the secretary of state shall take the following steps.

*a. Subsequent notice.* If the registrant does not respond to the initial letter from the secretary of state sent pursuant to subrule 28.5(2) within 30 days from the date the letter was originally mailed, the secretary of state shall send the registrant a subsequent notice informing the registrant of the source of the information received by the secretary of state (e.g., driver's license files from the Iowa department of transportation). The subsequent notice shall also provide the registrant with information regarding how to dispute the information obtained by the secretary of state, provide the registrant with information regarding how to voluntarily remove the registrant's name from the voter registration list, and list the penalty for being registered to vote while knowing oneself not qualified. A postage-paid return envelope shall be included with the notice and response form. The response form shall include spaces for the registrant to indicate that the information received by the secretary of state is either correct or incorrect and a space for the registrant to indicate that the registrant needs more time to provide a response. In the event a registrant indicates that the registrant needs more time to provide a response, the secretary of state shall not proceed under paragraph 28.5(3) "b" for a minimum of 60 days from the date the notice was originally mailed.

*b. County auditor notification.*

(1) If a registrant receives a notice from the secretary of state pursuant to paragraph 28.5(3) "a" and fails to respond to the notice within 30 days from the date the notice was originally mailed, the secretary of state shall notify the county auditor that the secretary of state has received information indicating that the registrant may not be a citizen of the United States and may be illegally registered to vote. The county auditor shall notify the precinct election officials working at the polling places on election day that the secretary of state has indicated that a registrant appearing on the election register for an election may not be a United States citizen and shall be challenged by the precinct election officials if that registrant attempts to vote.

(2) The county auditor shall notify the secretary of state when any registrant who is the subject of one of these notices voluntarily requests cancellation of the registrant's record.

*c. Noncitizen registrant with active absentee ballot request.* If a county auditor receives notice pursuant to this rule from the secretary of state for a registrant who has an active absentee ballot request on the registrant's record, the county auditor shall attach the notice from the secretary of state regarding the registrant to the voter's absentee ballot affidavit envelope if the absentee ballot is returned to the auditor's office. The county auditor shall instruct the precinct election officials to challenge the voter's absentee ballot as provided in Iowa Code section 53.31.

*d. Noncitizen registrant with voting history on voter record.* If a county auditor receives notice pursuant to this rule from the secretary of state for a registrant who has a previous voting history on the voter's record, the county auditor shall immediately print a copy of the voter's voting history, make copies of any signed election registers or absentee ballot affidavit envelopes that are still in the custody of the county auditor and make a copy of the notice received by the county auditor pursuant to this rule. The foregoing list of documents shall be forwarded to the secretary of state within 30 days of receipt of the notice.

**28.5(4) Removing confirmed matches from the voter registration list.** A registered voter shall only be removed from the voter registration list following the voter's request for removal or the completion of the legal process set forth in Iowa Code sections 48A.14 through 48A.16.

This rule is intended to implement Iowa Code chapters 39A, 48A, 49 and 53.

## USURY

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

## USURY(cont'd)

December 1, 2011 — December 31, 2011	4.25%
January 1, 2012 — January 31, 2012	4.00%
February 1, 2012 — February 29, 2012	4.00%
March 1, 2012 — March 31, 2012	4.00%
April 1, 2012 — April 30, 2012	4.00%
May 1, 2012 — May 31, 2012	4.25%
June 1, 2012 — June 30, 2012	4.00%
July 1, 2012 — July 31, 2012	3.75%
August 1, 2012 — August 31, 2012	3.50%
September 1, 2012 — September 30, 2012	3.50%
October 1, 2012 — October 31, 2012	3.75%
November 1, 2012 — November 30, 2012	3.75%
December 1, 2012 — December 31, 2012	3.75%

ARC 0499C

## AGING, DEPARTMENT ON[17]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 231.14 and 231.23 and 2012 Iowa Acts, House File 2320, the Iowa Department on Aging hereby adopts new Chapter 29, "Reduction of Area Agencies on Aging," Iowa Administrative Code.

These rules establish the procedure to be followed by area agencies on aging during the process to reduce area agencies on aging, as mandated by 2012 Iowa Acts, House File 2320.

Pursuant to 2012 Iowa Acts, House File 2320, the Department is mandated to implement a reduction in the number of area agencies on aging in the state to be effective beginning July 1, 2013. In implementing the reduction, existing and new area agencies on aging (the latter meaning those in place effective July 1, 2013) must ensure the safe and orderly transfer of services to individuals who receive and rely on the assistance provided by and through area agencies on aging. Existing and new area agencies on aging must also ensure the timely and appropriate transfer of documents, files, records, and assets from the existing area agencies on aging to the new area agencies on aging.

Time frames have been established to ensure safe and orderly transfer of services, documents, files, records, and assets. Pursuant to these rules, plans are due to the Department by February 15, 2013. Plans due by this date include the plan to assume services provided to individuals within the planning and service area, the plan to transfer assets, and the plan to transfer client files and records. These plans are due to the Department by February 15, 2013, to allow the Department to amend the plan, if necessary, and to monitor these events leading up to July 1, 2013.

These rules must be enacted on an emergency basis to ensure that the needs of Iowans served by area agencies on aging are met and that new and existing area agencies on aging have accomplished a safe and orderly reduction by July 1, 2013.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable due to the immediate need to establish rules to protect the public safety and welfare and to comply with 2012 Iowa Acts, House File 2320. Reports outlining process and procedures to be used in transitioning services, assets, documents, and files are due to the Department by February 15, 2013.

The Department further finds that the normal effective date of these rules should be waived and these rules should be made effective upon filing. The Department's finding is based upon the fact that procedures surrounding the reduction and dedesignation of area agencies on aging must be established immediately and are necessary to protect the safety and welfare of Iowans receiving services through the area agencies on aging. Individuals receiving services through area agencies on aging rely on services including but not limited to case management, home-delivered meals, and a variety of home- and community-based services to meet basic needs of daily living. Any disruption to these vital services could result in imminent danger to a served individual's health, safety, and welfare. These emergency rules are promulgated to create procedures and processes that require existing and new area agencies on aging to carefully plan for this transition to ensure a safe and orderly transfer of services, public funds, assets, and records. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(3).

The Department adopted these rules on November 19, 2012.

These rules are also published herein under Notice of Intended Action as **ARC 0498C** to allow public comment.

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

These rules are intended to implement Iowa Code chapter 231 and 2012 Iowa Acts, House File 2320.

These rules became effective on November 19, 2012.

The following amendment is adopted.

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

Adopt the following **new** 17—Chapter 29:

CHAPTER 29  
REDUCTION OF AREA AGENCIES ON AGING

**17—29.1(231) General.** The Iowa department on aging is mandated, pursuant to 2012 Iowa Acts, House File 2320, to reduce the number of area agencies on aging effective July 1, 2013. These rules shall be used to supplement current department rules. If these rules conflict with another rule of the department, these rules shall be given priority. These rules shall terminate on July 1, 2014.

**17—29.2(231) Definitions.** Words and phrases used in this chapter shall be as defined in 17—Chapter 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter:

“*Assets*” means any funds, goods, property, or equipment that is owned, operated, maintained, or in the possession of an area agency on aging and that has been acquired by said area agency on aging with public funds obtained due to designation as an area agency on aging.

“*Dedesignated area agencies on aging*” means area agencies on aging that have been dedesignated by the commission effective June 30, 2013.

“*Designated area agencies on aging*” means area agencies on aging designated by the commission to serve the newly designated planning and service areas effective July 1, 2013.

**17—29.3(231) Dedesignation—identification of organization.**

**29.3(1)** Dedesignated area agencies on aging shall cease all business and operations conducted pursuant to designation as an area agency on aging as of 11:59 p.m. on June 30, 2013. Ceasing all business and operations conducted pursuant to designation as an area agency on aging does not include any remaining actions that must be taken to accomplish complete closure of the dedesignated area agency on aging, including but not limited to satisfying debts, completing a final audit, and filing a final tax return.

**29.3(2)** After 11:59 p.m. on June 30, 2013, dedesignated area agencies on aging shall not operate as an area agency on aging and shall not take any actions that create the appearance of operating as an area agency on aging.

**29.3(3)** After 11:59 p.m. on June 30, 2013, dedesignated area agencies on aging shall cease to use the term “area agency on aging” in any manner for purposes of entity identification.

**17—29.4(231) Cooperation mandated.** Dedesignated area agencies on aging shall cooperate in good faith with designated area agencies on aging to accomplish a safe, orderly, and uninterrupted transfer of services to individuals receiving services within the newly designated planning and service areas and to accomplish a safe and orderly transfer of files, records, and assets. Cooperation includes, but is not limited to, providing necessary documents and assets and adhering to federal and state laws, rules, and regulations governing transfer of files, records, and assets.

**17—29.5(231) Assumption of services provided to individuals.**

**29.5(1)** Designated area agencies on aging shall submit information to the department outlining the plan to assume the role of providing services in a safe and orderly manner to all individuals currently receiving services from the dedesignated area agencies on aging located within the counties that comprise the designated area agency on aging’s planning and service area.

**29.5(2)** The plan shall be received by the department by the close of business on February 15, 2013. The plan shall be submitted to the department in writing and sent to the following address: Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

**29.5(3)** The plan shall include at a minimum the following information:

*a.* The full plan to ensure that services received by individuals through the dedesignated area agency on aging shall be transitioned to the designated area agency on aging in a safe and orderly manner;

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

*b.* The full plan to ensure that individuals receiving services from the dedesignated area agency on aging shall continue to receive services at the designated area agency on aging that are, at a minimum, consistent with the services the individual received at the dedesignated area agency on aging;

*c.* The full plan to ensure that individuals receiving services from the dedesignated area agency on aging will be transitioned to the designated area agency on aging without a disruption of services;

*d.* The location of the main office for the designated area agency on aging and the location of all satellite offices; and

*e.* The signature of the executive director and board chairperson of the designated area agency on aging attesting that the designated area agency on aging is able to meet the needs of individuals receiving services within the newly designated planning and service area and that the needs of these individuals will be met without a disruption of services during the transition period.

**29.5(4)** The department, in its discretion, may request additional information from the dedesignated area agency on aging, the designated area agency on aging, or both, as it deems required by the circumstances.

**29.5(5)** The department, in its discretion, shall accept or reject the plan to assume services. If the department rejects the plan to assume services, the department shall provide the designated area agency on aging with a plan of correction and shall require the designated area agency on aging to resubmit the plan to assume services according to the plan of correction.

**29.5(6)** Failure to comply with this rule may result in one or more of the following:

*a.* The designated area agency on aging may be required to accept and follow technical assistance provided by the department.

*b.* The designated area agency on aging may be subject to additional monitoring, including but not limited to desk and on-site monitoring.

*c.* The designated area agency on aging may be subject to dedesignation pursuant to 17—Chapter 4.

**17—29.6(231) Transfer of assets.**

**29.6(1)** Dedesignated area agencies on aging shall submit information to the department outlining the dedesignated area agency on aging's plan to transfer all assets to the designated area agency on aging that will provide services to the same counties served by the dedesignated area agency on aging.

**29.6(2)** The plan shall be received by the department by the close of business on February 15, 2013. The plan shall be submitted to the department in writing and sent to the following address: Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

**29.6(3)** The plan shall include at a minimum the following information:

*a.* A list of all assets that will be transferred to the designated area agency on aging that will provide services to the same counties served by the dedesignated area agency on aging;

*b.* The estimated fair market value of each item provided in the list of assets and the basis for the estimated value;

*c.* The date of purchase, purchase price, and funding source for each asset;

*d.* The name and address of the designated area agency on aging that will receive the assets upon transfer;

*e.* The manner in which each of the assets will be transferred;

*f.* An explanation of how the dedesignated area agency on aging will comply with federal and state laws, rules, and regulations pertaining to the transfer of assets;

*g.* The projected date on which the transfers will occur; and

*h.* The signature of the executive director and board chairperson of the dedesignated area agency on aging attesting that the dedesignated area agency on aging has cooperated in good faith with the designated area agency on aging to accomplish the transfer and that the list of assets is accurate as of the date of submission of the plan.

**29.6(4)** The department, in its discretion, may request additional information from the dedesignated area agency on aging, the designated area agency on aging, or both, as it deems required by the circumstances.

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

**29.6(5)** The department, in its discretion, shall accept or reject the plan to transfer assets. If the department rejects the plan to transfer assets, the department shall provide the dedesignated area agency on aging with a plan of correction and shall require the dedesignated area agency on aging to resubmit the plan to transfer assets according to the plan of correction.

**29.6(6)** Failure to comply with this rule may result in one or more of the following:

*a.* The dedesignated area agency on aging may be required to accept and follow technical assistance provided by the department.

*b.* The dedesignated area agency on aging may be subject to additional monitoring, including but not limited to desk and on-site monitoring.

*c.* The dedesignated area agency on aging may be subject to dedesignation pursuant to 17—Chapter 4. This dedesignation is a distinct and separate procedure and would be effective prior to June 30, 2013.

**29.6(7)** The designated area agency on aging shall accept all assets provided by the dedesignated area agency on aging and shall determine appropriate disposition of all assets pursuant to federal and state laws, rules, and regulations.

**17—29.7(231) Transfer of client files and records.**

**29.7(1)** Dedesignated area agencies on aging shall submit information to the department outlining the dedesignated area agency on aging's plan to transfer all client files and records to the designated area agency on aging that will provide services to the same counties served by the dedesignated area agency on aging.

**29.7(2)** The plan shall be received by the department by the close of business on February 15, 2013. The plan shall be submitted to the department in writing and sent to the following address: Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

**29.7(3)** The plan regarding the transfer of client files and records shall include at a minimum the following:

*a.* An explanation of how the dedesignated area agency on aging will comply with federal and state laws, rules, and regulations pertaining to the transfer of client files and records;

*b.* The projected date on which the transfer will occur; and

*c.* The signature of the executive director and board chairperson of the dedesignated area agency on aging attesting that the dedesignated area agency on aging has cooperated in good faith with the designated area agency on aging to accomplish the transfer.

**29.7(4)** The department, in its discretion, may request additional information from the dedesignated area agency on aging, the designated area agency on aging, or both, as it deems required by the circumstances.

**29.7(5)** The department, in its discretion, shall accept or reject the plan to transfer client files and records. If the department rejects the plan to transfer client files and records, the department shall provide the dedesignated area agency on aging with a plan of correction and shall require the dedesignated area agency on aging to resubmit the plan to transfer client files and records according to the plan of correction.

**29.7(6)** Failure to comply with this rule may result in one or more of the following:

*a.* The dedesignated area agency on aging may be required to accept and follow technical assistance provided by the department.

*b.* The dedesignated area agency on aging may be subject to additional monitoring, including but not limited to desk and on-site monitoring.

*c.* The dedesignated area agency on aging may be subject to dedesignation pursuant to 17—Chapter 4. This dedesignation is a distinct and separate procedure and would be effective prior to June 30, 2013.

**29.7(7)** The designated area agency on aging shall accept all files and records provided by the dedesignated area agency on aging and shall determine appropriate disposition of all files and records pursuant to federal and state laws, rules, and regulations.

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

**29.7(8)** The designated area agency on aging shall keep and maintain files and records for a minimum of three years, or for a time period otherwise determined by federal and state laws, rules, and regulations, whichever period of time is longer.

**17—29.8(231) Closing audit and interim financial statements.**

**29.8(1)** Dededesignated area agencies on aging shall provide the year-end audit for state fiscal year 2013 to the department no later than December 31, 2013.

**29.8(2)** Each dedesignated area agency on aging shall provide interim financial statements, bank statements, and notification of any significant purchase or disposition of assets, as related to state and federal funds, to the department for the fiscal quarters ending December 31, 2012, March 31, 2013, and June 30, 2013, within 30 days after the end of each fiscal quarter. The interim financial statements shall include the balance sheet, the income statement, and the statement of cash flows. In its discretion, the department may request additional supporting documentation, which shall be provided by the dedesignated area agency on aging according to guidelines and time frames supplied by the department.

**29.8(3)** Failure to comply with any provision of this rule may result in one or more of the following:

*a.* The dedesignated area agency on aging may be required to accept and follow technical assistance provided by the department.

*b.* The dedesignated area agency on aging may be subject to additional monitoring, including but not limited to desk and on-site monitoring.

*c.* The dedesignated area agency on aging may be subject to dedesignation pursuant to 17—Chapter 4. This dedesignation is a distinct and separate procedure and would be effective prior to June 30, 2013.

These rules are intended to implement 2012 Iowa Acts, House File 2320.

[Filed Emergency 11/19/12, effective 11/19/12]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0489C**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249.3 and 2012 Iowa Acts, Senate File 2336, section 18, the Department of Human Services amends Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

The purpose of these amendments is to implement cost-of-living increases to several State Supplementary Assistance program categories in accordance with 20 CFR 416.2095 and 416.2096 and 2012 Iowa Acts, Senate File 2336, section 18, amending 2011 Iowa Acts, chapter 129, section 124, subsections 2 and 3.

Effective January 1, 2013, the Supplementary Security Income (SSI) benefit will be increased according to the increase in the consumer price index from October 1, 2011, through September 30, 2012. The Social Security Administration has announced that this increase will be 1.7 percent. In order to comply with the federal maintenance-of-effort or "pass-along" requirement in calendar year 2013 using the payment levels method of compliance, Iowa must increase the payment amounts and income limits for each State Supplementary Assistance category (except In-Home Health-Related Care (IHHRC) provider rates and the Supplement for Medicare and Medicaid Eligibles) effective January 1, 2013, to equal the minimum levels required by the federal government. The minimum levels are increased each time the SSI benefit is increased. Compliance with the maintenance-of-effort requirement for state supplements is a condition of eligibility for state participation in the federal Medicaid program. Also, the Iowa General Assembly has directed the Department to increase the

HUMAN SERVICES DEPARTMENT[441](cont'd)

personal needs allowance of clients in the residential care facility program by the same percentage and at the same time as the SSI cost-of-living increase.

The Council on Human Services adopted these amendments on November 14, 2012.

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary and impracticable. These amendments increase payment amounts and income limits under the State Supplementary Assistance program in accordance with cost-of-living increases in SSI benefits to meet federal pass-along requirements and state statutory requirements passed by the Iowa General Assembly. In addition, the recent announcement of SSI cost-of-living increases, effective January 1, 2013, does not allow time for notice and public comment before the amendments must become effective.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Department further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective January 1, 2013. These amendments confer a benefit on the public and are in compliance with 2012 Iowa Acts, Senate File 2336, section 18, amending 2011 Iowa Acts, chapter 129, section 124, subsections 2 and 3.

These amendments are also published herein under Notice of Intended Action as **ARC 0488C** to allow for public comment.

These amendments do not provide for waivers in specified situations since the increases are required by federal and state law.

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

These amendments are intended to implement Iowa Code section 249.3 and 2012 Iowa Acts, Senate File 2336, section 18, amending 2011 Iowa Acts, chapter 129, section 124, subsections 2 and 3.

These amendments will become effective January 1, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 51.4(1) as follows:

**51.4(1) Income.** Income of a dependent relative shall be less than ~~\$357~~ \$364. When the dependent’s income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249) as follows:

**441—51.7(249) Income from providing room and board.** In determining profit from furnishing room and board or providing family life home care, ~~\$357~~ \$364 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

ITEM 3. Amend subrule 52.1(1) as follows:

**52.1(1) Protective living arrangement.** The following assistance standards have been established for state supplementary assistance for persons living in a family life home certified under rules in 441—Chapter 111.

<del>\$765</del> <u>\$774</u>	Care allowance
<del>\$95</del> <u>\$98</u>	Personal allowance
<del>\$860</del> <u>\$872</u>	Total

ITEM 4. Amend subrule 52.1(2) as follows:

**52.1(2) Dependent relative.** The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient’s home.

<i>a.</i> Aged or disabled client and a dependent relative . . . . .	<del>\$1,055</del> <u>\$1,074</u>
<i>b.</i> Aged or disabled client, eligible spouse, and a dependent relative . . . . .	<del>\$1,405</del> <u>\$1,430</u>
<i>c.</i> Blind client and a dependent relative . . . . .	<del>\$1,077</del> <u>\$1,096</u>
<i>d.</i> Blind client, aged or disabled spouse, and a dependent relative . . . . .	<del>\$1,427</del> <u>\$1,452</u>
<i>e.</i> Blind client, blind spouse, and a dependent relative . . . . .	<del>\$1,449</del> <u>\$1,474</u>

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Amend subrule 52.1(3) as follows:

**52.1(3) Residential care.** Payment to a recipient in a residential care facility shall be made on a flat per diem rate of \$17.86 or on a cost-related reimbursement system with a maximum per diem rate of ~~\$28.92~~ \$29.30. The department shall establish a cost-related per diem rate for each facility choosing this method of payment according to rule 441—54.3(249).

The facility shall accept the per diem rate established by the department for state supplementary assistance recipients as payment in full from the recipient and make no additional charges to the recipient.

*a.* All income of a recipient as described in this subrule after the disregards described in this subrule shall be applied to meet the cost of care before payment is made through the state supplementary assistance program.

Income applied to meet the cost of care shall be the income considered available to the resident pursuant to supplemental security income (SSI) policy plus the SSI benefit less the following monthly disregards applied in the order specified:

- (1) No change.
  - (2) An allowance of ~~\$95~~ \$98 to meet personal expenses and Medicaid copayment expenses.
  - (3) to (6) No change.
- b.* to *g.* No change.

[Filed Emergency 11/15/12, effective 1/1/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0500C**

## **IOWA FINANCE AUTHORITY[265]**

### **Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.5(1)“m,” the Iowa Finance Authority hereby amends Chapter 39, “HOME Partnership Program,” Iowa Administrative Code.

These amendments accommodate changes in proposed federal regulations that are anticipated to be effective by the end of the calendar year.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 22, 2012, as **ARC 0296C**. The Authority received three public comments from one individual on the proposed amendments and made no changes to the amendments as noticed.

The Authority finds that adoption of these amendments confers a benefit on the public in that these amendments promote job creation and promote housing opportunities for low-income Iowans. The Authority finds that these amendments should be implemented as soon as feasible in order to facilitate the awarding of allocations under the program and to permit coordination with the Low-Income Housing Tax Credit Program. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

The Authority adopted these amendments on November 14, 2012.

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

These amendments are intended to implement Iowa Code sections 16.5(1)“r” and 16.5(1)“m.”

IOWA FINANCE AUTHORITY[265](cont'd)

These amendments became effective on November 19, 2012, upon filing with the Administrative Rules Coordinator.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 39] is being omitted. These amendments are identical to those published under Notice as **ARC 0296C**, IAB 8/22/12.

[Filed Emergency After Notice 11/19/12, effective 11/19/12]

[Published 12/12/12]

[For replacement pages for IAC, see IAC Supplement 12/12/12.]

## ARC 0525C

## 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 12, "General Accreditation Standards," Iowa Administrative Code.

This chapter sets accreditation standards for all Iowa school districts and accredited nonpublic schools. The amendment conforms to 2012 Iowa Acts, Senate File 2284, section 1, by adding that school districts and accredited nonpublic schools have authority to award high school credit to a student who demonstrates mastery of course content regardless of time spent by the student in the course (the traditional concept of "seat time").

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

Notice of Intended Action was published in the August 22, 2012, Iowa Administrative Bulletin as **ARC 0297C**. Public comments were allowed until 4:30 p.m. on September 11, 2012. A public hearing was held on that date; no person attended. No written or oral comments were received. This amendment is identical to that published under Notice.

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

This amendment is intended to implement 2012 Iowa Acts, Senate File 2284, sections 1 and 4.

This amendment shall become effective January 16, 2013.

The following amendment is adopted.

Amend subrule 12.5(15) as follows:

**12.5(15) Credit.** A student shall receive a credit or a partial credit upon successful completion of a course which meets one of the criteria in subrule 12.5(14). The board may award high school credit on a performance basis through the administration of an examination, provided the examination covers the content ordinarily included in the regular course to a student who demonstrates required competencies for a course or content area in accordance with assessment methods approved by the local board.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

## ARC 0522C

## EDUCATION DEPARTMENT[281]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 15, "Use of Telecommunications for Instruction by Schools," and adopts new Chapter 15, "Use of Online Learning and Telecommunications for Instruction by Schools," Iowa Administrative Code.

This amendment rescinds Chapter 15 and adopts a new chapter in lieu thereof. Existing Chapter 15 solely governs telecommunications in compliance with Iowa Code section 256.7, subsections 7 through 9. The current rules are incorporated into Division I. Divisions II and III are added pursuant to 2012 Iowa Acts, Senate File 2284, sections 13 through 17.

Division II provides guidance and direction for the use of online learning as an instructional tool for students enrolled in kindergarten through grade 12. Division III provides guidance for students and school districts regarding enrollment of students in one or more courses offered by Iowa Learning Online.

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

Notice of Intended Action was published in the August 22, 2012, Iowa Administrative Bulletin as **ARC 0302C**. Public comments were allowed until 4:30 p.m. on September 11, 2012. A public hearing was held on that date, at which time no persons attended to provide comment. Two written comments were received in a timely manner. These rules have been revised since publication under Notice in

EDUCATION DEPARTMENT[281](cont'd)

response to a concern raised in one of the written comments received during the public comment period and to address a question raised by a member of the Administrative Rules Review Committee during the Committee's September 11, 2012, meeting. In subparagraphs 15.8(2)"a"(3) and 15.8(3)"a"(3), references to a student's health condition were changed by removing the term "medically fragile," and in paragraph 15.8(2)"b," explanation of the lottery under the cap was clarified.

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

These rules are intended to implement 2012 Iowa Acts, Senate File 2284, sections 13 to 17.

These rules will become effective January 16, 2013.

The following amendment is adopted.

Rescind 281—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15  
USE OF ONLINE LEARNING AND TELECOMMUNICATIONS  
FOR INSTRUCTION BY SCHOOLS

**281—15.1(256) Purpose.** It is the purpose of this chapter to give guidance and direction for the use of online learning or the use of telecommunications as an instructional tool for students enrolled in kindergarten through grade 12. It is a further purpose of this chapter to provide guidance for students and school districts regarding enrollment of students in one or more courses offered by Iowa Learning Online.

**281—15.2(256) Definitions.**

*"Appropriately licensed and endorsed"* means possession of current and valid licensure by the Iowa board of educational examiners to practice at a prescribed educational level in a specified content area.

*"Class size"* refers to the total group taught during a time period by a teacher or teaching team with students at one or more sites.

*"Delivered primarily over the Internet"* means more than 50 percent of the course content or instruction or both is delivered using the global computer network of the World Wide Web or Internet.

*"Department"* means the department of education.

*"Exclusive instruction"* means without the use of any other form of instructional delivery.

*"Iowa Learning Online"* or *"ILO"* means the department's digital learning initiative to provide online courses to students enrolled or dually enrolled in participating school districts and accredited nonpublic schools. ILO is more specifically explained in Division III herein.

*"Online learning"* or *"online coursework"* means educational instruction and content delivered primarily over the Internet. "Online learning" or "online coursework" does not include print-based correspondence curricula, broadcast television or radio, videocassettes, or stand-alone educational software programs that lack a significant Internet-based instructional component.

*"Participating school district or accredited nonpublic school"* means a school district or accredited nonpublic school that has registered a student in an ILO course and has agreed to provide the student with access, during the school day, to a computer that has Internet connectivity through a direct connection as well as access to a telephone or an ICN classroom and transportation to periodic laboratory components, if needed or required. The district has also agreed to provide a staff member to serve as a site coordinator and contact for the ILO teacher, to monitor progress, and to serve as the student's advocate by providing academic coaching and technical support. Further, the district has agreed to award a grade and credit on the student's district-level transcript, based on the end-of-course evaluation by the ILO teacher.

*"Telecommunications"* means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications. "Telecommunications" does not include online learning.

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DIVISION I  
USE OF TELECOMMUNICATIONS FOR INSTRUCTION BY SCHOOLS

**281—15.3(256) Interactivity.** Courses delivered primarily via telecommunications shall employ live interactive systems which allow, at a minimum, one-way video and two-way audio communication. An annual waiver may be granted by the department for a telecommunications system that does not include audio but has alternative contemporaneous, interactive communication ability and is consistent with sound instructional practice.

**281—15.4(256) Course eligibility.** Telecommunications may be employed as a means to deliver any course, including a course required for accreditation by the department, provided it is not the exclusive means of instructional delivery.

**281—15.5(256) Teacher preparation and accessibility.** A teacher appropriately licensed and endorsed for the educational level and content area being taught shall be present and responsible for the instructional program at the receiving site if a presenter of material transmitted via telecommunications is not an appropriately licensed and endorsed teacher for the educational level and content area. If a presenter of material transmitted via telecommunications is an appropriately licensed and endorsed teacher for the educational level and content area, a supervising teacher, or aide to whom a supervising teacher is readily available for consultation, shall supervise and monitor the curriculum and students and be readily accessible to the students. Prior to being assigned initially to deliver instruction via telecommunications, a teacher shall receive training regarding effective practices which enhance learning by telecommunications.

**281—15.6(256) School responsibilities.** Each board of a school district or an accredited nonpublic school employing telecommunications for instruction shall develop policies relative to the use of telecommunications in the delivery of the educational program that are consistent with effective clinical practice. The school district or accredited nonpublic school shall report its use of telecommunications for instruction annually to the department on forms provided by the department. This report shall include:

1. To whom the instruction was delivered including class size, type of class (such as seminar or lecture), and grade level;
2. The course description and schedule of instruction;
3. The number, assignment, licensure including the licensing folder number, and the training received regarding effective practices which enhance learning by telecommunications of all staff involved in the teaching/learning process at both the origination and the receiving sites; and
4. The type of telecommunications used for course delivery, e.g., Internet, ICN, Polycom, etc.

DIVISION II  
ONLINE LEARNING OFFERED BY A SCHOOL DISTRICT

**281—15.7(256) School district responsibilities.** Subject to the prohibition in rule 281—15.8(256), any online coursework offered by a school district shall be offered solely to resident students of the school district, or students attending the school district through a sharing agreement with another school district, and shall be taught by a teacher appropriately licensed and endorsed for the educational level and content area being taught. The teacher may be employed directly by the school district or by a third-party provider of the online curricula used by the school district. Teachers employed by the school district shall be subject to the provisions of Iowa Code chapters 272, 279, and 284. Teachers employed by a third-party provider shall be subject to the provisions of Iowa Code chapter 272; these teachers must be given access to appropriate professional development by the school district, but otherwise are not subject to the provisions of Iowa Code chapters 279 and 284.

EDUCATION DEPARTMENT[281](cont'd)

**281—15.8(256) Prohibition regarding open enrollment.** Open enrollment of students to a school district that offers online coursework is limited to open enrollment to the receiving school districts of Cumberland-Anita-Massena (CAM) and Clayton Ridge. Participation in online learning at the CAM and Clayton Ridge school districts by means of open enrollment is limited to enrollment during the 2014-2015, 2015-2016, and 2016-2017 school years. Such open enrollments are further restricted as follows:

**15.8(1)** All applicable open enrollment deadlines set forth in Iowa Code section 282.18 and 281—Chapter 17 apply.

**15.8(2)** No more than eighteen one-hundredths of one percent (00.18%) of the most recent statewide certified enrollment of all publicly enrolled elementary and secondary students, as published in the department's current annual condition of education report, may participate in online learning by means of open enrollment. In order for the department to determine which students shall be awarded open enrollment if the number of open enrollment requests exceeds this limitation, the sending district shall contact the department and CAM and Clayton Ridge shall provide the specific information on student enrollment to the department.

*a.* The department shall apply the following priorities in awarding open enrollment.

(1) Highest priority shall be given to students already open enrolled to CAM or Clayton Ridge and to students with a sibling already open enrolled to CAM or Clayton Ridge.

(2) Priority shall be given to students who have been the documented victims of harassment or bullying at school, as defined in Iowa Code section 280.28.

(3) Priority shall be given to students who are suffering from a serious health condition and for whom an online learning environment would be in the students' best educational interests.

*b.* Once the priorities listed in subparagraphs 15.8(2) "a"(1) to (3) have been considered and applied, approval of any remaining student requests for open enrollment shall be determined by lottery. In granting open enrollment requests by lottery, the statewide percentage of open enrollment requests to attend CAM and the percentage of open enrollment requests to attend Clayton Ridge shall be maintained.

**15.8(3)** No more than one percent of a resident district's certified enrollment may participate in online learning by means of open enrollment. If any resident district has cumulative open enrollment applications to the CAM and Clayton Ridge school districts in excess of one percent of the resident district's certified enrollment, the resident district shall contact the department and provide the specific information on student enrollment to the department.

*a.* In determining which students shall be awarded open enrollment, the department shall apply the following priorities:

(1) Highest priority shall be given to students already open enrolled to CAM or Clayton Ridge and to students with a sibling already open enrolled to CAM or Clayton Ridge.

(2) Priority shall be given to students who have been the documented victims of harassment or bullying at school, as defined in Iowa Code section 280.28.

(3) Priority shall be given to students who are suffering from a serious health condition and for whom an online learning environment would be in the students' best educational interests.

*b.* Once the above priorities have been considered and applied, approval of any remaining student requests for open enrollment shall be determined by lottery.

**281—15.9(256) Special education services.** Children with disabilities may not be categorically excluded from admission to online learning programs or from enrollment in online coursework.

**15.9(1)** Whether an online course or online learning is appropriate to a child with a disability must be determined by the child's needs, not by the child's weightedness. If a child's individualized education program (IEP) goals cannot be met in online learning, with or without supplementary aids and services or modifications, online learning is not appropriate to the child.

**15.9(2)** If a child's IEP team determines that online learning is inappropriate to the child, the child's parents are entitled to prior written notice pursuant to rule 281—41.503(256B,34CFR300) and to have available to them the procedural safeguards provided under rule 281—41.504(256B,34CFR300).

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**15.9(3)** When a child with an IEP seeks enrollment into an online learning program by means of open enrollment, the child's IEP team shall determine that the child meets the open enrollment requirements under 281—Chapter 17. In addition, the child's IEP team, together with representatives of the resident and receiving districts and the relevant area education agencies, shall determine whether the receiving district is able to provide an appropriate online education to the child, either with or without supplementary aids and services or modifications. Any dispute about whether the receiving district's program is appropriate shall be resolved by the director of special education of the area education agency in which the receiving district is located. The child shall remain in the child's resident district while any dispute about the appropriateness of the receiving district's program is pending.

DIVISION III  
IOWA LEARNING ONLINE (ILO)

**281—15.10(256) Appropriate applications of ILO coursework.** ILO courses are intended to help Iowa school districts expand learning opportunities by providing opportunities for individual students to take one or more courses offered “at a distance” using technologies such as the Internet and interactive videoconferencing. Participating school districts and accredited nonpublic schools may also enroll students in ILO courses if online learning is more suited to a specific student's circumstances.

**281—15.11(256) Inappropriate applications of ILO coursework; criteria for waiver.** 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. 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. The subject and grading period or periods for which waiver is requested.
2. 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. 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. Approval of the request by the local school board.

**281—15.12(256) School and school district responsibilities.** Each participating school district and accredited nonpublic school shall submit its online curricula, excluding coursework provided by ILO, to the department for review. Each participating school district and accredited nonpublic school shall include in its comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7, subsection 21, a list and description of the online coursework offered by the school or school district, excluding coursework provided by ILO. Each participating school district and accredited nonpublic school is responsible for recording grades received for ILO coursework in a student's permanent record and for awarding graduation credit for ILO coursework. Each participating school district and accredited nonpublic school shall identify a site coordinator to serve as a student advocate and as a liaison between the initiative staff and teachers and the school district or accredited nonpublic school.

**281—15.13(256) Department responsibilities.** The department shall annually evaluate the quality of courses offered under ILO to ensure that coursework is rigorous and of high quality and is aligned with Iowa's core curriculum and core content requirements and standards as well as with national standards of quality for online courses issued by an internationally recognized association for elementary and secondary online learning. The department shall ensure that all ILO coursework is taught by a teacher who is appropriately licensed and endorsed for the educational level and content area being taught and who has completed an online-learning-for-Iowa-educators professional development course offered by an area education agency, a teacher preservice program, or comparable coursework.

EDUCATION DEPARTMENT[281](cont'd)

**281—15.14(256) Enrollment in an ILO course.** A student must be enrolled in a participating school district or accredited nonpublic school. The student's school of enrollment registers the student for the desired ILO course. Students may not enroll or be enrolled by their parents or guardians in ILO courses directly. Students under competent private instruction may access ILO coursework on the same basis as regularly enrolled students of the school district by dual enrollment in the school district in which the student is a resident.

These rules are intended to implement Iowa Code sections 256.2, 256.7, 256.9, and 256.42.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0521C**

## **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 17, "Open Enrollment," Iowa Administrative Code.

2012 Iowa Acts, Senate File 2284, section 37, amends Iowa Code section 257.11(3) to clarify that courses offered by a school district through collaboration with a community college in partnership with a nationally recognized, not-for-profit provider of rigorous and innovative science, technology, engineering, and mathematics curriculum are courses eligible for supplementary weighting. Such courses are commonly known as "Project Lead the Way" courses. The amendment implements this legislation.

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

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Bulletin as **ARC 0384C**. Public comments were allowed until 4:30 p.m. on October 23, 2012. A public hearing was held on that date; no person attended. No written or oral comments were received. This amendment is identical to that published under Notice.

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

This amendment is intended to implement Iowa Code section 257.11 as amended by 2012 Iowa Acts, Senate File 2284, section 37.

This amendment shall become effective January 16, 2013.

The following amendment is adopted.

Amend subrule 17.10(8) as follows:

**17.10(8)** A student under open enrollment is eligible to be counted for supplementary weighting pursuant to 281—subrule 97.2(5) for qualifying concurrent enrollment classes in which the student is enrolled, including concurrent enrollment classes provided via the ICN, or supplementary weighting for project lead the way (PLTW) enrollment through sharing with a community college pursuant to 281—subrule 97.2(6). An open enrolled student who is under competent private instruction (CPI) shall be weighted in the student's receiving district, and no tuition shall be billed to the resident district. An open enrolled student who is not under CPI shall be weighted in the resident district, and the funding shall be sent to the receiving district in addition to open enrollment tuition.

*a.* If the open enrolled student is present in the resident district on October 1 of the school year, the resident district shall count the student, excluding a student under CPI, for supplementary weighting.

*b.* The concurrent enrollment course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(5), and the PLTW course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(6).

*c.* The resident district shall forward the weighting generated for the concurrent or PLTW enrollment for that student using the district cost per pupil of the school year. The amount generated is calculated as the supplementary weighting full-time-equivalency for that one student for each qualified

## EDUCATION DEPARTMENT[281](cont'd)

concurrent or PLTW enrollment course multiplied by the current school year's district cost per pupil in the resident district.

*d.* The receiving district shall pay the community college the tuition negotiated for the course. The tuition negotiated may cost the receiving district a different amount than that received from the resident district. No additional amount may be charged to the resident district, the student, or the parent, guardian, or legal custodian.

*e.* If the student was not present in the resident district on October 1 of the school year and is a late transfer, the receiving district bears all the tuition cost and shall not bill the resident district in the first year pursuant to subrule 17.10(7).

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0526C**

**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 22, "Senior Year Plus Program," Iowa Administrative Code.

2012 Iowa Acts, Senate File 2284, section 38, exempts a high school student enrolled in a concurrent enrollment career and technical course pursuant to Iowa Code section 261E.8 from the proficiency requirements of Iowa Code section 261E.1(1)"e." The amendment in Item 1 conforms to that legislative change. Item 2 implements 2012 Iowa Acts, Senate File 2284, section 4, and clarifies that access to advanced placement courses is not dependent on whether a student meets proficiency requirements.

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

Notice of Intended Action was published in the August 22, 2012, Iowa Administrative Bulletin as **ARC 0298C**. Public comments were allowed until 4:30 p.m. on September 11, 2012. A public hearing was held on that date; no person attended. No written or oral comments were received. These amendments are identical to those published under Notice.

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

These amendments are intended to implement 2012 Iowa Acts, Senate File 2284, sections 4 and 38.

These amendments shall become effective January 16, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 281—22.2(261E), introductory paragraph, as follows:

**281—22.2(261E) Student eligibility.** A student shall meet all of the following criteria as a condition of participation in the programs described in Divisions IV and V of this chapter, except that a student enrolled in a career and technical course under Division IV does not have to meet the proficiency requirements set forth in paragraph 22.2(2) "b." To the extent that postsecondary credit is available to a student under the programs described in Divisions III and VI, the student shall meet all of the following criteria. A student who desires to participate in the postsecondary enrollment options program under Division V of these rules also shall meet the eligibility requirements set forth in rule 281—22.16(261E).

ITEM 2. Amend paragraph **22.2(2)"b"** as follows:

*b.* The student shall have demonstrated proficiency in all of the content areas of reading, mathematics, and science as evidenced by achievement scores on the most recent administration of the Iowa tests of basic skills (ITBS) or the Iowa tests of educational development (ITED) Iowa assessments for which scores are available for the student. If the student was absent for the most recent administration of either the ITBS or ITED the Iowa assessments, and such absence was not excused by the student's school of enrollment, the student is deemed not to be proficient in any of the content areas.

## EDUCATION DEPARTMENT[281](cont'd)

The school district may determine whether such student is eligible for qualification under an equivalent qualifying performance measure.

(1) If a student is not proficient in one or more of the content areas of reading, mathematics, and science, the school board may establish alternative but equivalent qualifying performance measures. The school board is not required to establish equivalent performance measures, but if it does so, such measures may include but are not limited to additional administrations of the state assessment, portfolios of student work, student performance rubric, or end-of-course assessments. A school board that establishes equivalent performance measures shall also establish criteria by which its district personnel shall determine comparable student proficiency.

(2) A student who attends an accredited nonpublic school and desires to access ~~advanced placement coursework~~ or postsecondary enrollment options shall meet the same eligibility criteria as students in the school district in which the accredited nonpublic school is located.

(3) A student under competent private instruction shall meet the same proficiency standard as students in the school district in which the student is dually enrolled and shall have the approval of the school board in that school district to register for the postsecondary course. In lieu of ~~ITBS or ITED~~ Iowa assessments scores as the state assessment, a school district shall allow a student under competent private instruction to demonstrate proficiency in reading, mathematics, and science by any one of the following means:

1. to 6. No change.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0519C**

## **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 22, "Senior Year Plus Program," Iowa Administrative Code.

2012 Iowa Acts, Senate File 2284, section 37, amends Iowa Code section 257.11(3) to clarify that courses offered by a school district through collaboration with a community college in partnership with a nationally recognized, not-for-profit provider of rigorous and innovative science, technology, engineering, and mathematics curriculum are courses eligible for supplementary weighting. Such courses are commonly known as "Project Lead the Way" courses. The amendment implements this legislation.

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

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Bulletin as **ARC 0386C**. Public comments were allowed until 4:30 p.m. on October 23, 2012. A public hearing was held on that date; no person attended. No written or oral comments were received. This amendment is identical to that published under Notice.

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

This amendment is intended to implement Iowa Code section 257.11 as amended by 2012 Iowa Acts, Senate File 2284.

This amendment shall become effective on January 16, 2013.

The following amendment is adopted.

EDUCATION DEPARTMENT[281](cont'd)

Adopt the following new rule 281—22.32(261E):

DIVISION IX  
PROJECT LEAD THE WAY

**281—22.32(261E) Project lead the way.**

**22.32(1) Program established.** A project lead the way program is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits.

**22.32(2) Notification.** A school district shall provide descriptions of the project lead the way courses available to students using a course registration handbook. The handbook shall identify which courses, if successfully completed, generate college credit under the program. Information about available project lead the way courses shall be provided to every junior high school student or middle school student prior to the development of a core curriculum plan pursuant to Iowa Code section 279.61.

**22.32(3) Access.** Students from accredited nonpublic schools and students receiving competent private instruction under Iowa Code chapter 299A may access the program through the school district in which the accredited nonpublic school or private institution is located.

**22.32(4) Curriculum.** A school district offering a project lead the way program must offer the curriculum developed by the national organization that administers the project lead the way program.

**22.32(5) Instructor.** A school district shall ensure that a teacher or instructor employed to provide instruction under this rule meets the following additional criteria:

*a.* The teacher shall have successfully completed the training required by the national organization that administers the project lead the way program.

*b.* The teacher shall meet the minimum requirements of the national organization that administers the project lead the way program.

**22.32(6) Accreditation standards.** A project lead the way course may apply toward high school program accreditation standards pursuant to 281—subrule 12.5(5). To meet the requirement, the instructor must be appropriately licensed and endorsed by the board of educational examiners to teach the subject area of the accreditation standard.

**22.32(7) Shared district-to-community college courses.**

*a.* A district-to-community college sharing program for project lead the way courses is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits at or through community colleges established under Iowa Code chapter 260C. The program shall be made available to all resident students in grades 9 through 12.

*b.* A comparable course, as defined in rules adopted by the board of directors of the school district consistent with department administrative rule, must not be offered by the school district or accredited nonpublic school the student attends.

*c.* A school district shall be certified by the national organization that administers the project lead the way program and have a signed agreement with that organization.

*d.* To be eligible, institutions, instructors, and students shall meet the requirements of Iowa Code section 261E.3.

*e.* A school district may set additional eligibility requirements to ensure student readiness to achieve success. All students in the shared course shall meet the expectations of the national organization that administers the project lead the way program and shall be registered for college credit.

*f.* A student may make application to a community college and the school district to allow the student to enroll for college credit in a project lead the way course offered by the community college.

*g.* A district-to-community college sharing program for project lead the way courses that meets the requirements of 281—subrule 97.2(6) is eligible for funding under that provision for shared college credit career and technical education courses.

**22.32(8) Credit.**

*a.* The school district shall grant high school credit to a student enrolled in a project lead the way course not offered by a community college. At a school district's discretion, a project lead the way course

EDUCATION DEPARTMENT[281](cont'd)

may count toward a school district's graduation requirements provided that the teacher is licensed by the board of educational examiners and endorsed within the subject area of the graduation requirement.

*b.* The school district shall grant high school credit to a student enrolled in a project lead the way course for college credit under this chapter if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to Iowa Code subsection 261E.8(3) and paragraph 22.2(2)“a.” If a student is not successful in completing a project lead the way course as determined by the community college, the student's high school transcript shall reflect the failing grade. The board of directors of the school district shall determine the number of high school credits that shall be granted to a student who successfully completes a project lead the way course.

*c.* The school district may offer a project lead the way course as an articulated course. Articulated courses shall be offered through an agreement between the district and postsecondary institution which allows students to receive college credit at the postsecondary institution upon matriculation based on the demonstrated mastery of concepts in the high school course. An articulated course shall not be delivered by a postsecondary institution or through a sharing agreement with a community college and shall not generate supplementary weighting.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0517C**

## **EDUCATION DEPARTMENT[281]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 256.7(5) and 321.376(1), the State Board of Education hereby amends Chapter 43, “Pupil Transportation,” Iowa Administrative Code.

Recent legislation requires that local school districts examine the driving record of all current school bus drivers pursuing recertification and all school bus driver applicants on the Iowa court information system available to the general public. In addition, any driver or applicant who is listed on the state sex offender registry, dependent adult abuse registry or child abuse registry is prohibited from being employed by any Iowa school district as a bus driver. These amendments comply with that new legislation.

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

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Bulletin as **ARC 0388C**. Public comments were allowed until October 23, 2012. A public hearing was held on that date; no person attended. No written or oral comments were received. No substantive changes have been made since publication of the Notice. However, a citation to 2012 Iowa Acts in Item 2 has been converted to a citation to the 2013 Code of Iowa.

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

These amendments are intended to implement 2012 Iowa Acts, Senate File 2221, sections 3 and 4.

These amendments shall become effective January 16, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 281—43.21(285) as follows:

**281—43.21(285) Experience, traffic law knowledge and driving record.** No driver applicant shall be employed or allowed to transport students until the board determines that the applicant has an acceptable driving record, demonstrates the ability to safely operate the vehicle(s) representative of the vehicle(s) required to be operated during employment and is knowledgeable of traffic laws and regulations pertaining to the operation of a school bus. Each local district, or the district's contracted transportation service, must, at a minimum, check the driving record of each applicant or renewing

EDUCATION DEPARTMENT[281](cont'd)

driver on the Iowa court information system available to the general public. The local district shall determine what an acceptable driving record is based upon the district's review and must maintain records of the review of each driver. Nothing in this rule precludes the district from examining other records to determine whether the driver has an acceptable driving record nor does it restrict the district to such examinations only at the time of hiring and renewal.

ITEM 2. Amend rule 281—43.24(321) as follows:

**281—43.24(321) Authorization denials and revocations.** A person who believes that a school bus driver who holds an authorization issued by the department of education or who seeks a school bus authorization has committed acts in violation of Iowa Code subsection 321.375(2) or rule 281—43.12(285) may file a complaint with the department against the driver or applicant. The department shall notify the driver or applicant that a complaint has been filed and shall provide the driver or applicant with a copy of the complaint. A hearing shall be set for the purpose of determining whether the bus driver's authorization shall be denied, suspended, or revoked, or whether the bus driver should receive a reprimand or warning. Hearing procedures in 281—Chapter 6 shall be applicable to such proceedings. No school bus driver or applicant shall retain or obtain employment if the local district finds that the individual is listed on the sex offender registry under Iowa Code section 692A.121 available to the general public, the central registry for child abuse information established under Iowa Code section 235A.14, or the central registry for dependent adult abuse information established under Iowa Code section 235B.5. A hearing conducted pursuant to Iowa Code section 321.375(3) or 321.376 shall be limited to the question of whether the school bus driver or applicant was incorrectly listed on the registry. The driver or applicant shall not serve in the capacity of a school bus driver while the appeal process is being conducted.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0479C**

## **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 81, "Standards for School Business Official Preparation Programs," Iowa Administrative Code.

This chapter provides standards and procedures for the approval of training programs for individuals who seek authorization issued by the Board of Educational Examiners for employment as school business officials responsible for the financial operations of a school district. After initial adoption of Chapter 81 in March 2011, the Department continued discussions with stakeholder groups to refine the appropriate standards and criteria that should be met by a school business official. The standards and criteria in this rule making promote the value of the school business official's fiduciary responsibility to the taxpayer as well as effective governmental transparency and accountability.

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

Notice of Intended Action was published in the May 2, 2012, Iowa Administrative Bulletin as **ARC 0112C**. Public comments were allowed until 4:30 p.m. on May 22, 2012. A public hearing was held on that date; no person attended. No written or oral comments were received.

Since publication of the Notice, the word "candidate" has been added to the catchwords for new rule 281—81.7(256).

After analysis and review of this rule making, no impact on jobs has been found because this rule making impacts public employees only and because changes to the qualifications of school business officials do not impact the number of persons employed in those positions by school districts.

This amendment is intended to implement Iowa Code section 256.7(30).

EDUCATION DEPARTMENT[281](cont'd)

This amendment shall become effective January 16, 2013.

The following amendment is adopted.

Rescind rule 281—81.7(256) and adopt the following new rule in lieu thereof:

**281—81.7(256) School business official candidate knowledge and skills standards and criteria.** School business officials shall demonstrate content knowledge, professional knowledge, and skills in accordance with the following standards and supporting criteria. In addition, each school business official candidate shall meet all requirements established by the board of educational examiners for an authorization for which the candidate is recommended. Programs shall submit curriculum exhibit sheets for approval by the board of educational examiners and the department.

**81.7(1) Standard 1.** Each school business official shall demonstrate an understanding of Uniform Financial Accounting, governmental GAAP accounting, and statutory concepts. The school business official:

*a.* Is responsible for understanding and adhering to the Uniform Financial Accounting Manual and the current, accepted chart of accounts.

(1) Codes all salaries and benefits to the appropriate function, program, and project (if applicable) on a monthly basis;

(2) Ensures revenues, expenditures, and expenses are appropriately coded to the correct account on a monthly basis; and

(3) Ensures balance sheet items are properly coded as directed.

*b.* Understands and ensures implementation of state and federal law related to employment, personnel, and payroll.

*c.* Has an understanding of all projects and grants for which the district receives funding.

*d.* Understands the certified budgeting process and the content and purpose of each section of the aid and levy worksheet as well as other certified budget forms.

*e.* Understands the concept of spending authority.

**81.7(2) Standard 2.** Each school business official shall demonstrate the ability to implement effective internal controls and accounting processes. The school business official:

*a.* Provides data on a monthly basis in sufficient detail as to be informative and useful for decision makers and stakeholders in providing educational and co- and extracurricular programs.

*b.* Ensures delivery, on a monthly basis, of a statement of receipts, disbursements, and amount on hand for every fund.

*c.* Ensures reconciliation of bank statements on a monthly basis.

*d.* Consistently follows the procedure by which products and services may be purchased (state bidding requirements, purchase orders, and purchasing processes).

*e.* Ensures that an annual line item budget that aligns with the district-certified budget revenues and expenditures is completed in a timely manner for each fund.

*f.* Maintains an itemized statement no more than five years old of the appraised value of all buildings and other capital assets and a list of historical costs.

*g.* Invests moneys not needed as authorized under Iowa Code and district policy.

*h.* Uses only depositories approved by the local school board.

*i.* Makes payments only to the person entitled to the payment and only for verified bills.

*j.* Understands and implements the various mechanisms by which to borrow money as well as the appropriate account coding and repayment processes.

*k.* Is able to produce budget forecasts and analyses of spending.

*l.* Is capable of preparing employee collective bargaining costing models and estimates.

**81.7(3) Standard 3.** Each school business official shall demonstrate an understanding of and compliance with federal, state, and local reporting requirements. The school business official:

*a.* Produces for the local school board periodic reports reflecting a financial statement in relation to spending authority and published budget control lines.

*b.* Ensures that an accurate and separate account of each fund is maintained.

## EDUCATION DEPARTMENT[281](cont'd)

*c.* Ensures the filing of all quarterly and annual payroll taxes and reports in a timely fashion, including but not limited to IRS Forms 941, 1099, W-2, and W-3 and OMB Circular A-87.

*d.* Files with the department of education, the department of management, and the state auditor all required reports in a timely fashion.

*e.* Understands the local collective bargaining agreement as well as nonemployee contracts.

**81.7(4) Standard 4.** Each school business official shall demonstrate compliance with applicable federal, state, and local laws. The school business official:

*a.* Understands the district board's policies and procedures and effectively implements applicable policies and procedures.

*b.* Implements effective records management processes and procedures.

*c.* Has a working knowledge of laws applicable to school districts and area education agencies.

*d.* Understands and implements employment laws.

*e.* Understands and implements bidding and construction laws.

*f.* Understands and implements pension processes, including but not limited to retirement plans, IPERS, and 403B investments.

*g.* Ensures that the school board president's and secretary's signatures are on all checks and that the school board president's signature is on all contracts.

*h.* Ensures that billing for all tuition items is completed on the current prescribed timeline.

*i.* Manages scheduling and preparation for the local audit, including any request for proposals for audit services as applicable.

**81.7(5) Standard 5.** Each school business official shall demonstrate competence in technology appropriate to the school business official position. The school business official:

*a.* Effectively manages an integrated accounting system for fund accounting by the district and is able to assess technology needs for fiscal management issues.

*b.* Maintains all funds in one integrated accounting system.

*c.* Displays a working knowledge of other software programs if required to be used by the school business official.

*d.* Is able to use Word, database, and spreadsheet documents effectively to meet the needs of the district.

*e.* Displays competence in using the department's secured Web site for reporting purposes and has attended applicable training sessions on its use.

*f.* Is able to upload the chart of accounts and understands the relationship of the chart of accounts to the other reports, including but not limited to the special education supplement, the annual report on use of sales tax revenue, and the annual transportation report. This duty includes testing the functionality of accounts used for accuracy. The testing is carried out in a manner that allows for identification of issues prior to the actual submission deadline.

**81.7(6) Standard 6.** Each school business official shall demonstrate appropriate personal skills. The school business official:

*a.* Is an effective communicator with all stakeholders, including but not limited to colleagues, policy makers, community members, and parents.

*b.* Works effectively with employees and stakeholders.

*c.* Ensures the timely flow of information.

*d.* Maintains confidentiality with personal, restricted and embargoed information.

*e.* Is able to analyze, evaluate, and solve problems.

*f.* Timely and accurately performs the duties of a school business official.

*g.* Maintains an environment of mutual respect, rapport, and fairness.

*h.* Participates in and contributes to a school culture that focuses on improved student learning.

**81.7(7) Standard 7.** Each school business official shall engage in professional growth. The school business official:

*a.* Stays current with accounting technologies and the department's financial reporting system.

*b.* Demonstrates habits and skills of continuous inquiry and learning.

*c.* Works collaboratively to improve professional practice.

## EDUCATION DEPARTMENT[281](cont'd)

*d.* Applies research, knowledge, and skills acquired from professional development opportunities to improve practice.

*e.* Engages with administration on an annual review of the effectiveness of district accounting and reporting processes and on an individual performance evaluation consistent with district policy.

*f.* If the school business official has not earned full authorization as a school business official, participates in the school business official mentoring program.

**81.7(8) Standard 8.** Each school business official shall fulfill professional responsibilities established by the school district. The school business official:

*a.* Adheres to school board policies, district procedures, and contractual obligations and ensures that applicable district policies are not in conflict with state law.

*b.* Demonstrates professional and ethical conduct as defined by state law and district policy.

*c.* Contributes to efforts to achieve district goals.

*d.* Is able to contribute to cost/benefit analyses.

*e.* Participates in the board of educational examiners ethics program.

*f.* Follows the code of professional conduct and ethics and the rights and responsibilities described in 282—Chapters 25 and 26 of the Iowa Administrative Code.

**81.7(9) Standard 9.** If a school business official is also employed as the secretary or treasurer of the school board, the school business official shall:

*a.* Take the oath of office within ten days following appointment.

*b.* File a bond and ensure the level of coverage is adequate.

*c.* Hold office until a successor has been appointed and qualified.

*d.* Publish minutes, bills, and salaries on a timely basis.

*e.* Ensure that the department, the county auditor, and the treasurer are informed timely of the names and addresses for board officers as well as any changes therein.

*f.* File and preserve copies of all required reports and all papers transmitted pertaining to the business of the school corporation, including all certificates, reports, and proofs related to compulsory education.

*g.* Maintain separate books for minutes and elections and ensure that the records are complete.

*h.* Deliver all claims to the board for audit and allowance.

[Filed 11/14/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0524C**

**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 83, "Teacher and Administrator Quality Programs," Iowa Administrative Code.

The rules in this chapter implement teacher and school administrator quality programs. These amendments conform to sections 6 and 7 of 2012 Iowa Acts, Senate File 2284, which changes the frequency of the reviews of the performance of teachers and school administrators.

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

Notice of Intended Action was published in the August 22, 2012, Iowa Administrative Bulletin as **ARC 0300C**. Public comments were allowed until 4:30 p.m. on September 11, 2012. A public hearing was held on that date; no person attended. No written or oral comments were received. No substantive changes were made to the amendments published under Notice. However, in subparagraph 83.5(3)"c"(2), the citation to 2012 Iowa Acts has been omitted and the reference now reflects the soon-to-be published 2013 Code of Iowa.

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

## EDUCATION DEPARTMENT[281](cont'd)

These amendments are intended to implement 2012 Iowa Acts, Senate File 2284, sections 6 and 7. These amendments shall become effective January 16, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **83.5(3)“c”** as follows:

~~c. Provisions for the performance reviews of the performance of teachers other than beginning teachers once every three years that include, at a minimum, classroom observation of the teacher, a review of the teacher’s progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and additional standards and criteria if established under subrule 83.4(9), a review of the implementation of the teacher’s individual professional development plan, and supporting documentation from other evaluators, teachers, parents, and students; as follows:~~

(1) Review once every three years by an evaluator to include, at a minimum, classroom observation of the teacher, a review of the teacher’s progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and additional standards and criteria if established under subrule 83.4(9), a review of the implementation of the teacher’s individual professional development plan, and supporting documentation from other evaluators, teachers, parents, and students; and

(2) Review annually, other than the third-year review by an evaluator, by a peer group of teachers in accordance with Iowa Code section 284.8(1);

ITEM 2. Amend rule 281—83.11(284A) as follows:

**281—83.11(284A) Evaluation.** The board of directors of a school district shall conduct an annual evaluation of an administrator who holds a professional administrator license issued under Iowa Code chapter 272 ~~at least once every three years~~ for purposes of assisting the administrator in making continuous improvements, documenting continued competence in the Iowa standards for school administrators adopted pursuant to ~~2007~~ Iowa Code ~~Supplement~~ section 256.7(27), and determining whether the administrator’s practice meets the board’s expectations for the school district. ~~The review evaluation~~ shall include, at a minimum, an assessment of the administrator’s competence in meeting the Iowa standards for school administrators and the goals of the administrator’s individual professional development plan, including supporting documentation or artifacts aligned to the Iowa standards for school administrators and the individual administrator’s professional development plan.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0523C**

**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 84, “Financial Incentives for National Board Certification,” Iowa Administrative Code.

Recent legislation reinstated the financial incentives provided to Iowa teachers who become certified by the National Board for Professional Teaching Standards (NBPTS) that had been phased out by previous legislation in 2007. Any Iowa teacher who registered for such certification after December 31, 2007, now qualifies for the reimbursement award under rule 281—84.3(256) and annual award under rule 281—84.4(256).

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

Notice of Intended Action was published in the August 22, 2012, Iowa Administrative Bulletin as **ARC 0301C**. Public comments were allowed until 4:30 p.m. on September 11, 2012. A public hearing was held on that date; no person attended. No written or oral comments were received. These amendments are identical to those published under Notice.

## EDUCATION DEPARTMENT[281](cont'd)

After analysis and review of this rule making, no impact on jobs has been found. These amendments are intended to implement 2012 Iowa Acts, Senate File 2284, sections 29 and 30. These amendments shall become effective January 16, 2013. The following amendments are adopted.

ITEM 1. Amend rule 281—84.1(256) as follows:

**281—84.1(256) Purpose.** National Board Certification (NBC) is available to teachers nationwide and requires candidates to demonstrate their teaching practice as measured against high and rigorous standards. NBC teachers enhance the educational experience of their students and motivate fellow teachers toward excellence in classroom teaching. These rules implement the two financial incentive pilot programs enacted by the Iowa legislature to increase the number of NBC teachers in Iowa.

~~NOTE: Pursuant to Iowa Code Supplement section 256.44, the financial incentives for NBC teachers are available only to teachers who registered for National Board Certification on or before December 31, 2007. Funds are available to honor the registration reimbursements in rule 84.3(256) and the annual awards in rule 84.4(256) for eligible individuals.~~

ITEM 2. Amend subrule 84.3(1) as follows:

**84.3(1) Eligibility.** Teachers who registered with NBPTS after December 31, 2007, but before July 1, 2012, shall apply to the department by May 1, 2013. All other teachers seeking reimbursement shall apply to the department within one year of registration with NBPTS. Teachers eligible for the registration fee reimbursement program shall meet all of the following qualifications:

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

*e.* The individual completes the department's application process, which includes submitting verification of NBC registration. ~~The teacher must have registered with NBPTS no later than December 31, 2007.~~

*f.* No change.

ITEM 3. Amend subrule 84.4(1) as follows:

**84.4(1) Eligibility.** In addition to having registered with NBPTS ~~no later than December 31, 2007,~~ and achieving certification within NBPTS-established timelines and policies, individuals eligible for the NBC annual award shall meet all of the following qualifications:

*a.* to *h.* No change.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0520C**

**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 97, "Supplementary Weighting," Iowa Administrative Code.

2012 Iowa Acts, Senate File 2284, section 37, amends Iowa Code section 257.11(3) to clarify that courses offered by a school district through collaboration with a community college in partnership with a nationally recognized, not-for-profit provider of rigorous and innovative science, technology, engineering, and mathematics curriculum are courses eligible for supplementary weighting. Such courses are commonly known as "Project Lead the Way" courses. These amendments implement this legislation.

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

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Bulletin as **ARC 0385C**. Public comments were allowed until 4:30 p.m. on October 23, 2012. A public hearing was

## EDUCATION DEPARTMENT[281](cont'd)

held on that date; no person attended. No written or oral comments were received. These amendments are identical to those published under Notice.

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

These amendments are intended to implement Iowa Code section 257.11 as amended by 2012 Iowa Acts, Senate File 2284, section 37.

These amendments shall become effective on January 16, 2013.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [97.1, 97.2] is being omitted. These amendments are identical to those published under Notice as **ARC 0385C**, IAB 10/3/12.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

[For replacement pages for IAC, see IAC Supplement 12/12/12.]

**ARC 0518C**

**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 98, "Financial Management of Categorical Funding," Iowa Administrative Code.

This chapter provides standards and procedures for proper management of public moneys for educational categorical funds. Changes in 2012 Iowa Acts, Senate File 451, require changes in the usage of dropout prevention funding. In addition, changes in 2012 Iowa Acts, House File 2465, change the requirements concerning how funds connected to the statewide voluntary four-year-old preschool program would be distributed from the state to community-based providers through the local district. Additionally, those providers will be reimbursed for up to 5 percent of those funds for documented program administration costs.

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

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Code as **ARC 0387C**. Public comments were allowed until 4:30 p.m. on October 23, 2012. A public hearing was held on that date; no person attended. No written or oral comments were received. These amendments are identical to those published under Notice.

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

These amendments are intended to implement 2012 Iowa Acts, Senate File 451 and House File 2465.

These amendments will become effective on January 16, 2013.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [98.13, 98.21] is being omitted. These amendments are identical to those published under Notice as **ARC 0387C**, IAB 10/3/12.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

[For replacement pages for IAC, see IAC Supplement 12/12/12.]

**ARC 0529C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.173, the Environmental Protection Commission hereby amends Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 2012, as **ARC 0270C**. Five public hearings were held throughout the state with notice of the hearings sent to various individuals, organizations, and associations, and to statewide news network organizations. During the public comment period, comments were received from four persons and organizations. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources.

Three modifications were made to the Noticed amendments as follows:

- Added statements that analyses may be submitted for consideration of a disadvantaged community loan interest rate under the Clean Water State Revolving Fund.
- Specified that communities and entities are only required to submit analyses if they wish to be considered for disadvantaged status.
- Inserted "unsewered" in appropriate places in new subrule 64.7(6), disadvantaged unsewered communities.

These changes were made due to recent changes in the Clean Water State Revolving Fund (CWSRF) loan interest rates and for clarification purposes. The Commission approved updates to the CWSRF Intended Use Plans in September of 2012, and this approval included an update to the loan interest rates for communities that qualify as disadvantaged in accordance with the adopted amendments. As the CWSRF program will use the criteria in the adopted amendments to determine disadvantaged status for loan interest rates, these amendments have been changed to allow communities to submit a disadvantaged community analysis for the purposes of a CWSRF loan.

The amendments proposed in the Notice implied that all communities and entities needed to submit a disadvantaged community analysis, and the adopted amendments were changed to clarify that only communities and entities that wish to qualify as disadvantaged need to submit an analysis. These amendments were also changed to clarify that new subrule 64.7(6) applies only to unsewered communities by inserting the word "unsewered" in several places in the subrule.

The primary purpose of these amendments is to implement the provisions of Iowa Code section 455B.199B, which provides economically disadvantaged communities with relief from costs related to compliance with state and federal water pollution control laws. Pursuant to Iowa Code section 455B.173(3), the Commission is required to establish, modify, or repeal rules relating to disposal systems and specifying the conditions under which the Department shall issue, revoke, suspend, modify, or deny permits for discharges of any pollutant. The adopted amendments fulfill the Commission's and the Department's requirements pursuant to Iowa Code section 455B.173(3).

Iowa Code section 455B.199B establishes the following basic principles:

1. A community cannot be required to install a wastewater treatment system if the installation causes substantial and widespread economic and social impact (i.e., the system is unaffordable).
2. Such a community must continue to make reasonable progress toward compliance.
3. The alternative pursued must comply with state and federal law. There is no waiver of other legal requirements or prohibitions.

Iowa Code section 455B.186 prohibits the discharge of a pollutant except as authorized by a permit from the Department. Section 301 of the Clean Water Act contains a similar prohibition. These amendments are intended to implement 2011 Iowa Code section 455B.199B and to maintain compliance with Iowa Code section 455B.186. To ensure that no community is required to install a wastewater treatment system that causes substantial and widespread economic and social impact, and to ensure that pollutants are not discharged except as authorized by a permit, the final amendments allow a

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

community or entity that qualifies as disadvantaged more time to consider other treatment options and to seek funding. This additional time allowance, as included in a compliance schedule or agreement, ensures that the community or entity will be able to explore affordable treatment options.

After analysis and review of this rule making, no fiscal impact on the State of Iowa has been found. The rule making will have a positive fiscal impact on communities and regulated entities that qualify as disadvantaged, as the additional time allotted by disadvantaged status will translate into cost savings. As intended by the statutes, disadvantaged communities will delay expenditures on goods and services provided by private engineering firms, construction companies, and wastewater treatment plant operators.

After analysis and review of this rule making, a positive impact on jobs and the economy in both rural and urban communities exists. The provisions in this rule making allow disadvantaged communities more time and more financial options in regards to water or wastewater treatment. Qualified communities and entities will experience a positive fiscal impact that will allow for a cost savings to local residents and businesses in the form of lower utilities costs and other forms of expenses. This will help support local job growth and economic development.

#### Summary

The adopted amendments correct three cross references to ensure that new subrules 64.7(5) and 64.7(6) for disadvantaged communities and the existing subrules that are being renumbered are referenced properly. The time frame for interim compliance schedule dates in subrule 64.7(4) is changed from nine months to one year, in accordance with 40 CFR 122.47. Paragraph “b” of renumbered subrule 64.7(8) regarding plans of action for permitted facilities is changed to allow for the submittal of a disadvantaged community analysis as part of a plan of action.

Two new subrules are adopted: 64.7(5) for schedules of compliance in NPDES permits for disadvantaged communities and 64.7(6) for disadvantaged unsewered communities. The criteria for the evaluation of disadvantaged community status from Iowa Code section 455B.199B are included in both new subrules. Both new subrules require communities or entities that wish to be considered disadvantaged to submit an analysis to the Department. The information in the analyses will be used by the Department to determine disadvantaged status. A community or entity that qualifies as disadvantaged will receive either a compliance schedule in an NPDES permit or a schedule in an administrative order. The disadvantaged community schedule requires the exploration of alternative treatment methods and funding options and either the implementation of an alternative or the submittal of a future compliance plan.

These amendments are intended to implement Iowa Code sections 455B.173, 455B.174, 455B.175, 455B.199A and 455B.199B.

These amendments will become effective January 16, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 64.3(9) as follows:

**64.3(9)** When necessary to comply with present standards which must be met at a future date, an operation permit shall include a schedule for the alteration of the permitted facility to meet said standards in accordance with 64.7(4) and 64.7(5). Such schedules shall not relieve the permittee of the duty to obtain a construction permit pursuant to 567—64.2(455B). When necessary to comply with a pretreatment standard or requirement which must be met at a future date, a significant industrial user will be given a compliance schedule for meeting those requirements.

ITEM 2. Amend subparagraph **64.3(11)“b”(5)** as follows:

(5) Failure or refusal of an NPDES permittee to carry out the requirements of ~~64.7(5)“e.”~~ 64.7(7)“c.”

ITEM 3. Amend subparagraph **64.5(1)“a”(2)** as follows:

(2) If necessary, a proposed schedule of compliance, including interim dates and requirements, identified pursuant to 64.7(4) and 64.7(5), for meeting the effluent limitations and other permit requirements.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 4. Amend paragraph **64.7(4)“b”** as follows:

b. In any case where the period of time for compliance specified in paragraph **64.7(4)“a”** of this subrule exceeds ~~nine months~~ one year, a schedule of compliance shall be specified in the permit which ~~will~~ shall set forth interim requirements and the dates for their achievement; in no event shall more than ~~nine months~~ one year elapse between interim dates. If the time necessary for completion of the interim requirements (such as the construction of a treatment facility) is more than ~~nine months~~ one year and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.

[COMMENT. Certain interim requirements such as the submission of preliminary or final plans often require less than ~~nine months~~ one year, and thus a shorter interval should be specified. Other requirements such as the construction of treatment facilities may require several years for completion and may not readily subdivide into ~~nine-month~~ one-year intervals. Long-term interim requirements should nonetheless be subdivided into intervals not longer than ~~nine months~~ one year at which the permittee is required to report progress to the director pursuant to 64.7(4)“c.”]

ITEM 5. Renumber subrules **64.7(5)** and **64.7(6)** as **64.7(7)** and **64.7(8)**.

ITEM 6. Adopt the following **new** subrules 64.7(5) and 64.7(6):

**64.7(5) Schedules of compliance in issued NPDES permits for disadvantaged communities.** If compliance with federal regulations, applicable requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department will result in substantial and widespread economic and social impact (SWESI) to the ratepayers and the affected community, the director may establish in an NPDES permit a schedule of compliance that will result in an improvement of water quality and reasonable progress toward complying with the applicable requirements but does not result in SWESI. Schedules of compliance established under this subrule are intended to result in compliance with the applicable federal and state regulations and requirements by the regulated entity and the affected community.

a. *Disadvantaged community status.* The director shall find that a regulated entity and the affected community are a disadvantaged community by evaluating all of the following:

- (1) The ability of the regulated entity and the affected community to pay for a project based on the ratio of the total annual project costs per household to median household income (MHI),
- (2) MHI in the community and the unemployment rate of the county in which the community is located, and
- (3) The outstanding debt of the system and the bond rating of the community.

b. *Disadvantaged community analysis (DCA).* A regulated entity or affected community must submit a disadvantaged community analysis (DCA) to the director to be considered for disadvantaged status. A DCA may only be submitted when new requirements in a proposed or reissued NPDES permit may result in SWESI.

(1) A DCA may be submitted by any of the following:

1. A wastewater disposal system owned by a municipal corporation or other public body created by or under Iowa law and having jurisdiction over disposal of sewage, industrial wastes or other wastes, or a designated and approved management agency under Section 208 of the Act (a POTW);

2. A wastewater disposal system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary sewer district, or a designated and approved management agency under Section 208 of the Act (33 U.S.C. 1288) (a semipublic system); or

3. Any other owner of a wastewater disposal system that is not a private sewage disposal system and does not discharge industrial wastes. “Private sewage disposal system” and “industrial waste” are defined in rule 567—60.2(455B).

(2) A DCA may be submitted prior to the issuance of an initial NPDES permit if the facility does not discharge industrial wastes and is not a new source or new discharger. “New source” is defined in rule 567—60.2(455B). “New discharger” means any building, structure, facility, or installation from which there is or may be a discharge of pollutants; that did not commence the discharge of pollutants at

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a particular site prior to August 13, 1979; that is not a new source; and that has never received a finally effective NDPEs permit for discharges at that site.

(3) A DCA may be submitted by the entities noted in subparagraph 64.7(5)“b”(1) above for consideration of a disadvantaged community loan interest rate under the clean water state revolving fund.

*c. Contents of a DCA.*

(1) A DCA must contain all of the following:

1. Proposed total annual project costs as defined in paragraph 64.7(5)“d”;
2. The number of households in the affected community or, if the entity is not serving households, the number of ratepayers;
3. A description of the bond rating of the affected community over the last year, if available;
4. The user rates, as follows:
  - If the DCA is submitted by or for a municipality or other community, the current sewer rate ordinances, including the sewer rates of any industrial users;
  - If the DCA is submitted by or for a water treatment facility, the water rate schedules or tables;
- or
  - If the DCA is submitted by or for an entity other than a municipality, community, or water treatment facility, the monthly ratepayer charge for wastewater treatment;
5. An explanation of why the regulated entity or affected community believes that compliance with the proposed requirements will result in SWESI.

(2) If the DCA is submitted by or for an entity other than a municipality, community, or water treatment facility, the DCA must also contain either:

1. For entities with more than ten households or ratepayers, the median household or ratepayer income, as determined by an income survey conducted by the regulated entity based on the Iowa community development block grant income survey guidelines (the survey must be included in the DCA); or
2. For entities with ten or fewer households or ratepayers, an estimate of median household or ratepayer income.

*d. Definition of total annual project costs.* “Total annual project costs” means the current costs of wastewater treatment in the community (if any) plus the future costs of proposed wastewater system improvements that will meet or exceed all applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or requirements of an order of the department. Total annual project costs shall include any current and proposed facility operation and maintenance costs and any existing (outstanding) and proposed system debt, as expressed in current and proposed sewer rates. The costs of the proposed wastewater treatment shall assume a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the total annual project costs.

The formula for the calculation of total annual project costs for a regulated entity and affected community is: total annual project costs = [(Estimated costs to design and build proposed project - Awarded grant funding) amortized over 30 years] + Current annual system budget (if any), including operation and maintenance (O&M) and existing debt service + Future annual O&M costs.

*e. Disadvantaged community matrix (DCM).* The department hereby incorporates by reference “Disadvantaged Community Matrix,” DNR Form 542-1246, effective January 16, 2013. This document may be obtained on the department’s NPDES Web site.

Upon receipt of a complete DCA, the director shall use the disadvantaged community matrix (DCM) to evaluate the disadvantaged status of the community. Compliance with the applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department shall be considered to result in SWESI, and the regulated entity and affected community shall be considered a disadvantaged community, if the point total derived from the DCM is equal to or greater than 12. The following data sources shall be used to derive the point total in the DCM:

- (1) The total annual project costs as stated in the DCA;
- (2) The number of households or ratepayers in a community as stated in the DCA;

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- (3) The bond rating of the community, if available, as stated in the DCA;
- (4) The MHI of either:

1. The community, as found in the most recent American Community Survey or United States Census or as stated in an income survey that is conducted by the regulated entity or community and is based on the Iowa community development block grant income survey guidelines; or

2. The ratepayer group, as stated in an income survey that is conducted by the regulated entity and is based on the Iowa community development block grant income survey guidelines; and

- (5) The unemployment rate of the county where the community is located and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

The ratio of the total annual project costs per household or per ratepayer to MHI shall be calculated in the DCM as follows: The total annual project costs shall be divided by the number of households or ratepayers to obtain the costs per household or per ratepayer, and the costs per household or per ratepayer shall be divided by the MHI to obtain the ratio.

*f. Ratio.* The director shall not consider a regulated entity or affected community a disadvantaged community if the ratio of compliance costs to MHI is less than 1 percent. The director shall consider a regulated entity or affected community a disadvantaged community if the ratio of compliance costs to MHI is greater than or equal to 2 percent. If the ratio of compliance costs to MHI is greater than or equal to 1 percent and less than 2 percent, the director shall use the DCM to determine if the community is disadvantaged. The ratio of compliance costs to MHI shall be the ratio of the total annual project costs per household to MHI as calculated in the DCM.

*g. Compliance schedule for a disadvantaged community.* A schedule of compliance established in an NPDES permit for a disadvantaged community as a result of SWESI may contain one or two parts as necessary to comply with the applicable federal regulations and requirements in 567—Chapters 60, 61, 62, 63, and 64.

- (1) The first part of a schedule of compliance for a disadvantaged community shall encompass one five-year NPDES permit cycle and shall require the permit holder to submit an alternatives report, an alternatives implementation compliance plan (AICP), and annual reports of progress that contain brief updates regarding the completion of the alternatives report and the AICP.

1. Alternatives report. The alternatives report must detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department without creating SWESI. The alternatives report must describe which measures will be evaluated for feasibility and affordability during the next portion of the compliance schedule. Alternative pollution control measures may include, but are not limited to, facility upgrades, construction of a new facility, relocation of the discharge point(s), regionalization, or outfall consolidation. Other appropriate measures may include, but are not limited to, mixing zone studies, consideration of seasonal limitations or site-specific data, alteration of current facility operations, intermittent discharges, source reduction, effluent recycling or reuse, or renegotiation of treatment agreements. The alternatives report must also include a plan for pursuing funding options, including grants and low-interest loans. The alternatives report shall be submitted no later than two years after permit issuance.

2. Alternatives implementation compliance plan (AICP). The AICP shall include the results of the investigation detailed in the alternatives report, a description of any feasible and affordable alternative(s) that will be implemented, a schedule of the time necessary to implement the alternative(s), and an updated DCA. The AICP shall be submitted no later than 4½ years after permit issuance.

- (2) If the entity or community continues to qualify as disadvantaged according to the DCM evaluation based on the DCA submitted with the AICP, the entity or community may receive a second schedule of compliance as specified in this subrule. The second schedule of compliance for a disadvantaged community may contain either the implementation schedule from the AICP or a schedule for submittal of a future compliance plan (FCP).

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

1. AICP implementation schedule. If the AICP proposes a schedule for implementation of one or more feasible alternatives, the proposed schedule shall be included in the reissued NPDES permit for the disadvantaged community.

2. Future compliance plan (FCP). The submittal of an FCP will be necessary only if the AICP concludes that the disadvantaged community cannot feasibly implement any alternatives and if the community is still disadvantaged according to the updated information in the DCA submitted with the AICP. The FCP shall detail how the disadvantaged community will meet the applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department and the period necessary to do so. An FCP shall review the types of technology capable of treating the pollutant of concern, as well as the costs of installing and operating each type of technology. All technically feasible alternatives shall be explored. The FCP shall be submitted no later than three years after permit issuance. A schedule of compliance requiring the submittal of an FCP shall also require the submittal of annual reports of progress that contain updated financial information, an updated DCA, and a brief update regarding the completion or implementation of the FCP. If the DCM evaluation determines that an entity or community is no longer disadvantaged based on the most recent DCA, the NPDES permit may be amended to change the schedule of compliance.

3. Schedule extension. The second part of a schedule of compliance for a disadvantaged community may be extended at the discretion of the director.

(3) Schedules of compliance issued in accordance with this subrule shall comply with paragraphs 64.7(4)“b” through “e.”

**64.7(6) *Disadvantaged unsewered communities.*** If compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department will result in substantial and widespread economic and social impact (SWESI) to the ratepayers of an unsewered community, the director may negotiate a compliance agreement that will result in an improvement of water quality and reasonable progress toward complying with the applicable requirements but does not result in SWESI.

*a. Disadvantaged unsewered community status.* The director shall find that an unsewered community is a disadvantaged unsewered community by evaluating all of the following:

- (1) The ability of the unsewered community to pay for a project based on the ratio of the total annual project costs per household to MHI,
- (2) The unemployment rate in the county where the unsewered community is located, and
- (3) The MHI of the unsewered community.

*b. Disadvantaged unsewered community analysis (DUCA).* To be considered for disadvantaged unsewered community status, an unsewered community may submit a disadvantaged unsewered community analysis (DUCA) to the director prior to the issuance of or amendment to an administrative order with requirements that could result in SWESI and that are based on applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department. Only unsewered communities may submit a DUCA under this subrule. For the purposes of this subrule, an unsewered community is defined as a grouping of ten or more residential houses with a density of one house or more per acre and with either no wastewater treatment or inadequate wastewater treatment. An entity defined in rule 567—60.2(455B) as a private sewage disposal system may not submit a DUCA or qualify for a disadvantaged unsewered community compliance agreement under paragraph 64.7(6)“g.” A DUCA may also be submitted for consideration of a disadvantaged community loan interest rate under the clean water state revolving fund.

*c. Contents of a DUCA.* A DUCA must contain:

- (1) Proposed total annual project costs as defined in paragraph 64.7(6)“d”;
- (2) The number of households in the unsewered community and source of household information;
- (3) Total amount of any awarded grant funding;
- (4) An explanation of why the unsewered community believes that compliance with the proposed requirements will result in SWESI.

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If no MHI information is available for the unsewered community, the community should conduct a rate survey to determine the MHI. The survey must be conducted in accordance with the Iowa community development block grant income survey guidelines. In addition, the survey must be attached to the DCA.

*d. Definition of total annual project costs.* “Total annual project costs” means the future costs of proposed wastewater system installation or improvements that will meet or exceed all applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or requirements of an order of the department. Total annual project costs shall include the proposed facility operation and maintenance (O&M) costs and the proposed debt of the system as expressed in the proposed sewer rates. The costs of the proposed wastewater treatment shall assume a 30-year loan period at an interest rate equal to the current state revolving fund interest rate. Awarded grant funding must be subtracted from the total annual project costs.

The formula for the calculation of total annual project costs for an unsewered community is: total annual project costs = [(Estimated costs to design and build proposed project - Awarded grant funding) amortized over 30 years] + Future annual O&M costs.

*e. Disadvantaged unsewered community matrix (DUCM).* The department hereby incorporates by reference “Disadvantaged Unsewered Community Matrix,” DNR Form 542-1247, effective January 16, 2013. This document may be obtained on the department’s NPDES Web site.

Upon receipt of a complete DUCA, the director shall use the disadvantaged unsewered community matrix (DUCM) to evaluate the disadvantaged status of the unsewered community. Compliance with applicable federal regulations, requirements in 567—Chapters 60, 61, 62, 63, and 64, or an order of the department shall be considered to result in SWESI, and the unsewered community shall be considered a disadvantaged unsewered community, if the point total derived from the DUCM is equal to or greater than 10. The following data sources shall be used to derive the point total in the DUCM:

- (1) The total annual project costs as stated in the DUCA;
- (2) The number of households in the unsewered community as stated in the DUCA;
- (3) The MHI of the unsewered community as found in the most recent American Community Survey or United States Census or as stated in an income survey that is conducted by the regulated entity or community and is based on the Iowa community development block grant income survey guidelines; and
- (4) The unemployment rate of the county where the unsewered community is located and of the state as found in the most recent Iowa Workforce Information Network unemployment data.

The ratio of the total annual project costs per household to MHI shall be calculated in the DUCM as follows: the total annual project costs shall be divided by the number of households in the unsewered community to obtain the costs per household, and the costs per household shall be divided by MHI to obtain the ratio.

*f. Ratio and other considerations.* The director shall not consider an unsewered community a disadvantaged unsewered community if the ratio of compliance costs to MHI is below 1 percent. The director shall consider an unsewered community a disadvantaged unsewered community if the ratio of compliance costs to MHI is greater than or equal to 2 percent. If the ratio of compliance costs to MHI is greater than or equal to 1 percent, and less than 2 percent, the director shall use the DUCM to determine if the unsewered community is disadvantaged. The ratio of compliance costs to MHI shall be the ratio of the total annual project costs per household to MHI as calculated in the DUCM. The director shall not require installation of a wastewater treatment system by an unsewered community if the director determines that such installation would create SWESI.

*g. Compliance agreement for a disadvantaged unsewered community.* A compliance agreement negotiated with a disadvantaged unsewered community as a result of SWESI shall require the unsewered community to submit an alternatives report and an alternatives implementation compliance plan (AICP).

(1) Alternatives report. The alternatives report must detail the alternative pollution control measures that will be investigated and contain an examination of all other appropriate measures that may achieve compliance with the water quality standards without creating SWESI. The alternatives report must describe which measures will be evaluated for feasibility and affordability after the report submittal. Alternative pollution control measures may include, but are not limited to,

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upgrades of existing infrastructure, construction of a new facility, relocation of the discharge point(s), regionalization, or outfall consolidation. Other appropriate measures may include, but are not limited to, mixing zone studies, consideration of seasonal limitations or site-specific data, alteration of current facility operations, intermittent discharges, source reduction, effluent recycling or reuse, or renegotiation of treatment agreements. The alternatives report shall also include a plan for pursuing funding options, including grants and low-interest loans. The alternatives report shall be submitted no later than two years after an unsewered community has been determined to be a disadvantaged unsewered community.

(2) Alternatives implementation compliance plan (AICP). The AICP shall include the results of the investigation detailed in the alternatives report, a description of any feasible and affordable alternative(s) that will be implemented, a schedule of the time necessary to implement the alternative(s), and an updated DUCA. The AICP shall be submitted no later than 4½ years after an unsewered community has been determined to be a disadvantaged unsewered community.

(3) AICP implementation schedule. If the AICP proposes a schedule for implementation of one or more feasible alternatives, the proposed schedule shall be included in an administrative order between the department and the unsewered community. If the feasible alternative that will be implemented requires a construction permit, an operation permit, or an NPDES permit, the unsewered community shall comply with the rules regarding those permits in this chapter.

(4) Future compliance plan (FCP). The submittal of an FCP will be necessary only if the AICP concludes that the unsewered community cannot feasibly implement any alternatives and if the community is still disadvantaged according to the updated information in the DUCA submitted with the AICP. The FCP shall detail how the unsewered community will meet the water quality standards and the period necessary to do so. An FCP shall review the types of technology capable of treating the pollutant of concern, as well as the costs of installing and operating each type of technology. All technically feasible alternatives shall be explored. The FCP shall be submitted no later than seven years after an unsewered community has been determined to be a disadvantaged unsewered community. An administrative order requiring the submittal of an FCP shall also require the submittal of biennial progress reports that contain an updated DUCA. If the DUCM evaluation determines that an unsewered community is no longer disadvantaged based on the most recent DUCA, the order may be amended at the discretion of the director.

ITEM 7. Amend renumbered paragraph **64.7(8)“b,”** introductory paragraph, as follows:

*b.* The plan of action will vary in length and complexity depending on the compliance history and physical status of the particular POTW. It must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures (including an implementation schedule) that will be taken to correct the deficiencies or meet the needs, and discuss the method of financing the improvements proposed in the plan of action. A plan may include the submittal of a disadvantaged community analysis in accordance with subrule 64.7(5), at the discretion of the POTW.

[Filed 11/21/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0487C**

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

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 235A.18, subsection 3, and 2012 Iowa Acts, House File 2226, the Department of Human Services amends Chapter 7, “Appeals and Hearings,” and Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments require a perpetrator’s name to be removed from the child abuse registry after ten years so long as the perpetrator has had no subsequent founded child abuse report within that ten-year period.

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

These amendments will allow only a person alleged responsible for the abuse to file an appeal regarding a child abuse report. If a person alleged responsible files an appeal, then all other subjects are notified of their right to file a motion to intervene in the appeal proceedings. All parties have the right to request that the administrative law judge (ALJ) stay the hearing if adjudication or district court decisions related to the data or findings are pending. All parties have the right to appeal the ALJ's decision to the Director of the Department within ten days of the proposed decision. Only a person alleged responsible for the abuse may appeal the final decision to the higher courts.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0325C** on September 5, 2012. The Department received two comments on the Notice of Intended Action. In response to these comments, the Department has not made any changes to the amendments as published under Notice of Intended Action.

The first comment stated that there was agreement with the proposed rule making to remove a perpetrator's name from the child abuse registry after ten years so long as the perpetrator has had no subsequent founded child abuse report within that ten-year period. There was a suggestion, however, that one additional criterion be met. Along with the ten-year rule, it was proposed that the Department add a stipulation that all victims of the perpetrator must meet the legal age of 18 prior to removal of the perpetrator's name from the registry.

In response to this comment, the Department stated that the change in Iowa Code section 235A.18 requires a perpetrator's name to be removed from the child abuse registry after ten years so long as the person had no subsequent founded child abuse report within that ten-year period. Iowa Code section 235A.18 does not allow the Department of Human Services to create administrative rules that require additional criteria, such as the comment suggested. A perpetrator's name must be removed from the child abuse registry as set forth in the law.

The second comment stated that these amendments eliminate the provision about an appellant's having an opportunity during the prehearing conference to examine the contents of the case record plus all documents and records to be used by the Department at the hearing in accordance with 441—Chapter 9. This comment also requested that the Department include written notice to the appellant in a timely manner, before the hearing, of the appellant's right to request a prehearing conference, as well as the appellant's right to examine the contents of the case record and all documents and records to be used by the Department at the hearing. Finally, the commenter stated that the notice should also inform the appellant how to request a prehearing conference and how to request access to the contents of the case record and all documents and records to be used by the Department at the hearing.

In response to the second comment, the Department noted that at the prehearing conference, the procedural matters include the establishment of a discovery deadline to allow all parties to formally request documents and examine the case file. This practice is highly encouraged by the Department and actually resolves many issues that led to the appeal. These amendments do not eliminate the appellant's opportunity to examine the case records. Regarding notice to the appellant, the Department does send notice to all subjects of a child protection assessment at the conclusion of all assessments. In addition to providing the outcome of the assessment, the notice very clearly informs a person alleged responsible for the abuse of the person's right to file an appeal and includes instructions on how to do so. An appellant does not need to request a prehearing conference. The prehearing conference is an automatic part of the appeal process, and the appellant receives notification of the prehearing conference by the Department of Inspections and Appeals. It is at this prehearing conference that the appellant would be granted the opportunity to examine the case file and request documents.

Since publication of these amendments under Notice of Intended Action, citations to the 2011 Iowa Code Supplement and to 2012 Iowa Acts have been converted, where appropriate, to citations to the 2013 Code of Iowa. In addition, new Item 12 has been added to update the implementation sentence for Chapter 175.

These amendments do not provide for waivers in specified situations because no waiver provisions are necessary. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

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These amendments are intended to implement Iowa Code section 235A.18, subsection 3, and 2012 Iowa Acts, House File 2226.

These amendments will become effective February 1, 2013.

The following amendments are adopted.

ITEM 1. Amend rule **441—7.1(17A)**, definition of “Aggrieved person,” as follows:

“*Aggrieved person*” means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. to 7. No change.

8. For the child or dependent adult abuse registry, juvenile sex offender registry or criminal record check evaluation, a person:

- Who is a person alleged responsible for child abuse.

- Who has requested correction of ~~child abuse or~~ dependent adult abuse information.

- Who has been restricted from or denied employment in a health care facility, state institution, or other facility based on a record check. “Employment” includes, but is not limited to, service as an employee, a volunteer, a provider, or a contractor. “Facilities” include, but are not limited to, county or multicounty juvenile detention homes and juvenile shelter care homes, child-placing agencies, substance abuse treatment programs, group living foster care facilities, child development homes, child care centers, state resource centers, mental health institutes, and state training schools.

- Who is contesting a risk assessment decision as provided in rule 441—103.34(692A) by alleging that the risk assessment factors have not been properly applied, the information relied upon to support the assessment findings is inaccurate, or the procedures were not correctly followed.

9. to 12. No change.

ITEM 2. Amend subrule 7.5(4) as follows:

**7.5(4) Time limit for granting hearing to an appeal.** Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

a. to c. No change.

d. *Abuse standard.*

(1) For appeals regarding dependent adult abuse, a hearing shall be held if the appeal is made within six months after official notification of the action as provided in Iowa Code section 235B.10.

(2) For appeals regarding child abuse, a hearing shall be held if the appeal is made by a person alleged responsible for the abuse within 90 days after official notification of the action as provided in Iowa Code section 235A.19 ~~as amended by 2011 Iowa Acts, House File 562.~~ A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the hearing within 10 calendar days after the appeal notification.

(3) The day after the official notice is mailed is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

e. and f. No change.

ITEM 3. Amend subrule 7.8(4) as follows:

**7.8(4) Prehearing conference.** When ~~desired~~ requested by the appellant or department, a prehearing conference with a representative of the local office or the office which took the action appealed shall be held as soon as possible after the appeal has been filed. An appellant’s representative shall be allowed to attend and participate in the conference, unless precluded by federal rule or state statute.

The purpose of the prehearing conference is to ~~provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action, to provide an opportunity for the appellant to explain the appellant’s action or position, and to provide an opportunity for the appellant to examine the contents of the case record plus all documents and records to be used by the department at the hearing in accordance with 441—Chapter 9.~~ A conference need not be requested for the appellant to have access to the records as provided in subrule 7.13(1) and 441—Chapter 9 discuss the appealed issue, to inquire as to voluntary settlement potential, to establish the hearing date, to establish

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the location of the hearing including whether the hearing will be by telephone or in person, and to discuss procedural matters relevant to the case.

ITEM 4. Amend subrule 7.8(6) as follows:

**7.8(6) *Right of the department to deny or dismiss an appeal.*** The department or the department of inspections and appeals has the right to deny or dismiss the appeal when:

- a. It has been withdrawn by the appellant in writing.
- b. The sole issue is one of state or federal law requiring automatic grant adjustments for classes of recipients.
- c. It has been abandoned.
- d. The agency, by written notice, withdraws the action appealed and restores the appellant's status which existed before the action appealed was taken.
- e. The agency implements action and issues a notice of decision to correct an error made by the agency which resulted in the appeal.

Abandonment may be deemed to have occurred when the appellant, or the appellant's authorized representative fails, without good cause, to appear at the prehearing or hearing.

ITEM 5. Amend rule 441—7.10(17A) as follows:

**441—7.10(17A) Procedural considerations.** ~~Upon receipt of the notice of appeal, the department shall:~~

**7.10(1) *Registration.*** ~~Register~~ Upon receipt of the notice of appeal, the department shall register the appeal.

**7.10(2) *Acknowledgment.***

a. ~~Send~~ Upon receipt of the notice of appeal, the department shall send an acknowledgment of receipt of the appeal to the appellant, representative, or both. A copy of the acknowledgment of receipt of appeal will be sent to the appropriate departmental office.

b. For an appeal regarding child abuse, all subjects other than the person alleged responsible (appellant) will be notified of the opportunity to file a motion to intervene as provided in Iowa Code section 235A.19.

**7.10(3) to 7.10(7)** No change.

ITEM 6. Amend subrule 7.13(2) as follows:

**7.13(2) *Conduct of hearing.***

a. The hearing shall be conducted by an administrative law judge designated by the department of inspections and appeals. It shall be an informal rather than a formal judicial procedure, and shall be designed to serve the best interest of the appellant. The appellant shall have the right to introduce any evidence on points at issue believed necessary, and to challenge and cross-examine any statement made by others, and to present evidence in rebuttal. A verbatim record shall be kept of the evidence presented.

b. For an appeal hearing regarding child abuse, the administrative law judge, upon request of any party to the hearing, may stay the hearing until the conclusion of the adjudicatory phase of a pending juvenile or district court case relating to the data or findings as provided in Iowa Code section 235A.19.

ITEM 7. Amend rule 441—7.14(17A) as follows:

**441—7.14(17A) Limitation of persons attending.**

**7.14(1)** The hearing shall be limited in attendance to the following persons, unless otherwise specified by statute or federal regulations: appellant, appellant's representative, agency employees, agency's legal representatives, other persons present for the purpose of offering testimony pertinent to the issues in controversy, and others upon mutual agreement of the parties. The administrative law judge may sequester witnesses during the hearing. Nothing in this rule shall be construed to allow members of the press, news media, or any other citizens' group to attend the hearing without the written consent of the appellant.

**7.14(2)** For an appeal hearing regarding child abuse:

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a. Subjects who file a motion to intervene, as provided in Iowa Code section 235A.19, will have the opportunity to appear at the prehearing conference. Any motion to intervene shall be considered by the administrative law judge at the prehearing conference.

b. The department shall not be considered to be a party who can adequately represent the interests of any other subject.

c. Subjects allowed to intervene as specified in subrule 7.5(4) will be considered parties to the hearing and will be allowed to attend the proceedings as provided in Iowa Code section 235A.19.

ITEM 8. Amend subrule 7.16(4) as follows:

**7.16(4) Appeal of the proposed decision.** After issuing a proposed decision, the administrative law judge shall submit it to the department with copies to the appeals advisory committee.

a. The appellant, appellant's representative, a subject allowed to intervene as specified in subrule 7.5(4), the representative of a subject allowed to intervene as specified in subrule 7.5(4), or the department may appeal for the director's review of the proposed decision.

b. When the appellant, a subject allowed to intervene as specified in subrule 7.5(4), or the department has not appealed the proposed decision or when an appeal for the director's review of the proposed decision is not granted, the proposed decision shall become the final decision.

c. The director's review on appeal of the proposed decision shall be on the basis of the record as defined in subrule 7.16(1), except that the director need not listen to the verbatim record of the hearing in a review or appeal. The review or appeal shall be limited to issues raised prior to that time and specified by the party requesting the appeal or review. The director may designate another to act on the director's behalf in making final decisions.

ITEM 9. Amend subrule 7.16(9) as follows:

**7.16(9) Time limits.** A final decision on the appeal shall be issued within 90 days from the date of the appeal on all decisions except food assistance and vendors. Food assistance-only decisions shall be rendered in 60 days. PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee. Failure to reach a decision within these time frames shall not affect the merits of the appellant's appeal.

a. Time frames may be extended based on continuances or additional time frames as approved by the presiding officer. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.

b. For an appeal regarding child abuse, if the proposed decision is not appealed within 10 days from the date of the proposed decision, the proposed decision shall be the final agency action. If a party files an appeal within 10 days from the date of the proposed decision, the director has 45 days from the date of the proposed decision to issue a ruling. If the director does not rule within that 45-day period, the proposed decision becomes the final decision as provided in Iowa Code section 235A.19.

~~b.~~ c. The department shall take prompt, definite and final administrative action to carry out the decision rendered within 7 calendar days of receipt of a copy of the final decision. When the final decision is favorable to the appellant, or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.

ITEM 10. Amend subrule 175.31(2) as follows:

**175.31(2) Notification of completion of assessment and right to request correction.** Written notice which indicates that the child abuse assessment is completed shall be provided to all subjects of a child abuse assessment and to the mandatory reporter who made the report of child abuse ~~which indicates that the child abuse assessment is completed.~~ Both custodial and noncustodial parents shall be notified if their whereabouts are known.

a. The notice shall contain the following information concerning the subject's rights to request correction and appeal rights. The subject may request correction of the information contained within

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~~the child protective assessment summary if the subject disagrees with the information.~~ pursuant to Iowa Code section 235A.19:

(1) A subject may request correction of the information contained within the child protection assessment summary if the subject disagrees with the information.

(2) A person alleged responsible for the abuse has the right to appeal if the department does not correct the data or findings as requested.

(3) A subject, other than the person alleged responsible for the abuse, has the opportunity to file a motion to intervene in an appeal hearing.

*b.* If the child protective assessment results in a determination that abuse is confirmed, the notice shall indicate the type of abuse, name of the child and name of the person responsible for the abuse and whether the report has been placed on the registry.

ITEM 11. Amend rule 441—175.39(232) as follows:

**441—175.39(232) Founded child abuse.** Reports of child abuse where abuse has been confirmed shall be placed on the central abuse registry as founded child abuse for ten years under any of the circumstances specified by Iowa Code section 232.71D ~~as amended by 2011 Iowa Acts, House File 562.~~ Reports When none of the placement criteria listed in Iowa Code section 232.71D(3) “b” are applicable, reports of denial of critical care by failure to provide adequate clothing or failure to provide adequate supervision and physical abuse where abuse has been confirmed and determined to be minor, isolated, and unlikely to reoccur shall not be placed in on the central abuse registry as a case of founded child abuse as specified by Iowa Code section 232.71D as amended by 2011 Iowa Acts, House File 562. The confirmed abuse shall be placed on the registry unless all three conditions are met.

**175.39(1) Confidentiality of founded child abuse report and data.** The confidentiality of report and disposition data pertaining to founded child abuse shall be maintained as provided in Iowa Code chapter 235A. Access to the report and disposition data on founded child abuse is authorized only as provided in Iowa Code section 235A.15.

**175.39(2) Sealing and expungement of founded child abuse report and data.** Report and disposition data pertaining to founded child abuse shall be sealed and expunged as provided in Iowa Code section 235A.18.

ITEM 12. Amend **441—Chapter 175**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 232.68<sub>2</sub> and 232.71D<sub>2</sub> ~~as amended by 2011 Iowa Acts, House File 562,~~ Iowa Code sections 232.67, 232.69, 232.70, 232.71B, 232.71C, and 232.72 to 232.77 and Iowa Code chapter 235A ~~as amended by 2011 Iowa Acts, House File 562.~~

[Filed 11/15/12, effective 2/1/13]

[Published 12/12/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0485C**

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

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments change Medicaid payments for drugs.

There are two components to pharmacy reimbursement for a drug: the ingredient cost and a dispensing fee. The current Iowa Medicaid reimbursement methodology for drug ingredient cost incorporates the average wholesale price (AWP) published by Medi-Span minus a percentage, upper payment limits established by the federal Medicaid agency, state-set maximums, and the provider’s usual and customary

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

charge. Unless payment is made based on the pharmacy's usual and customary charge, a dispensing fee is added to the ingredient cost to cover the pharmacist's professional services and costs associated with transferring the drug to a Medicaid member. The dispensing fee is currently set at \$6.20.

The amendments implement an average actual acquisition cost (AAC) reimbursement methodology for all drug ingredient costs, replacing the AWP and state-set maximums and using a survey of pharmacy invoices to determine the average AAC. Enrolled pharmacies are required to provide drug acquisition cost invoice information. In cases where AAC is not available, wholesale acquisition cost (WAC) published by Medi-Span will be used.

The dispensing fee will be set based on cost of dispensing surveys of Iowa Medicaid participating pharmacies. All participating pharmacies will be required to complete the survey. Based on a survey conducted in June through September, the initial dispensing fee will be \$10.02 for all pharmacies including specialty.

Any dispensing or acquisition cost information required to be submitted to the Department that specifically identifies a pharmacy's individual costs will be held confidential.

These amendments comply with 2012 Iowa Acts, Senate File 2336, section 33, which requires that the Department implement ingredient cost reimbursement based on "average acquisition cost," as determined by a survey of the pharmacy invoices, and that the dispensing fee be determined by a cost of dispensing survey. The amendments also comply with proposed federal regulations that define "Actual Acquisition Cost (AAC)" as a reference price for drug reimbursement, use the AAC as an upper payment limit for drugs not subject to upper limits as multiple source drugs, and provide that payments for drugs must be based on surveys of retail pharmacy providers or on other reliable data regarding a pharmacy's actual or average acquisition costs. See 77 Fed. Reg. 5318 at 5320-21, 5366-67 (Feb. 2, 2012).

Licensure requirements for out-of-state pharmacies delivering drugs in Iowa are also clarified, pursuant to Board of Pharmacy rules. See rule 657—19.2(155A).

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0259C** on August 8, 2012. The Department received comments from two constituents on these amendments.

The first comment was a concern that all information submitted into the Department be held confidential, not just information that might be considered "cost information." The Department responded that these amendments are based on legislative language. In addition, under Iowa's open records law (Iowa Code chapter 22), the Department does not have the authority to keep all survey information specific to a pharmacy confidential. No changes to the amendments were made in response to this comment.

The second comment suggested that the Department should give consideration to the additional costs for dispensing medications to the residents of long-term care facilities. The Department responded that these costs would be considered. The additional reimbursement provided by the current rule for drugs dispensed to a patient in a nursing home in unit dose packaging has been retained. Otherwise, the survey conducted in June through September did not show that the costs for dispensing medications to the residents of long-term care facilities were significantly different from the costs of dispensing to others. Therefore, no changes to the amendments were made in response to this comment.

The third comment was a request to change the amendments to reflect that pharmacies would provide product availability information, if known. The Department responded that this change provides clarity to the amendments and conforms more closely to the implementing law. Subrule 77.2(2), Survey participation, has been changed to state that pharmacies will make available product availability information only "if known."

The fourth comment asked that the amendments be changed to add a specific time frame for submission of information to the Department. The Department will indicate the time frame for each request, and extensions may also be considered. No changes were made to the amendments specific to the time frame for submission of information.

The Department did strike the word "ingredient" in the amendment to paragraph 79.1(8)"h" in Item 3 to improve clarity of the rule.

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Changes have also been made to subrule 79.1(8) to maintain the current drug reimbursement methodology, after February 1, 2013, until federal approval of the new methodology, and to make the new methodology contingent on federal approval. Federal approval had been anticipated before the February 1, 2013, effective date of these amendments. But it now appears that federal approval may not be received until after February 1. The changes made regarding the effective date of the new methodology allow the rule-making process to continue, avoiding any delay in implementing the new methodology upon federal approval.

These amendments do not provide for waiver in specified situations because the state legislation and proposed federal rule do not allow for exclusions and because all pharmacies should be subject to the same reimbursement methodology. The Department has an exception to policy process that may be pursued should a pharmacy determine that its circumstances would merit an exception. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code section 249A.4 and 2012 Iowa Acts, Senate File 2336, section 33.

These amendments will become effective February 1, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 441—77.2(249A) as follows:

**441—77.2(249A) Retail pharmacies.** ~~Pharmacies~~ Retail pharmacies are eligible to participate ~~providing they are licensed in the state of Iowa or duly licensed in other states~~ if they meet the requirements of this rule.

**77.2(1) Licensure.** Participating retail pharmacies must be licensed in the state of Iowa or duly licensed in another state. Out-of-state retail pharmacies delivering, dispensing, or distributing drugs by any method to an ultimate user physically located in Iowa must be duly licensed by Iowa as a nonresident pharmacy for that purpose.

**77.2(2) Survey participation.** As a condition of participation, retail pharmacies are required to make available drug acquisition cost invoice information, product availability information if known, dispensing cost information, and any other information deemed necessary by the department to assist in monitoring and revising reimbursement rates pursuant to 441—subrule 79.1(8) or for the efficient operation of the pharmacy benefit.

*a.* A pharmacy shall produce and submit all requested information in the manner and format requested by the department or its designee at no cost to the department or its designee.

*b.* A pharmacy shall submit information to the department or its designee within the time frame indicated following receipt of a request for information unless the department or its designee grants an extension upon written request of the pharmacy.

*c.* Any dispensing or acquisition cost information submitted to the department that specifically identifies a pharmacy's individual costs shall be held confidential.

ITEM 2. Amend subrule **79.1(2)**, provider category "Prescribed drugs," as follows:

Provider category	Basis of reimbursement	Upper limit
Prescribed drugs	See 79.1(8)	<del>\$6.20 dispensing fee effective 8/1/11.</del> (See 79.1(8) "a," "b," and "c.") Amount pursuant to 79.1(8).

ITEM 3. Amend subrule 79.1(8) as follows:

**79.1(8) Drugs.** The amount of payment shall be based on several factors, subject to the upper limits in 42 CFR 447.500 to 447.520 as amended to ~~October 7, 2008~~ May 16, 2012. The Medicaid program relies on information published by Medi-Span to classify drugs as brand-name or generic. Specialty

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

drugs include biological drugs, blood-derived products, complex molecules, and select oral, injectable, and infused medications identified by the department and published on the specialty drug list.

a. Reimbursement Until February 1, 2013, or federal approval of the reimbursement methodology provided in paragraph 79.1(8)“c,” whichever is later, reimbursement for covered generic prescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined:

1. For covered nonspecialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph ~~“g.”~~ 79.1(8)“i.”; or

2. For covered specialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph ~~“g.”~~ 79.1(8)“i.”

(2) The maximum allowable cost (MAC), defined as the upper limit for multiple source drugs established in accordance with the methodology of the Centers for Medicare and Medicaid Services as described in 42 CFR 447.514, plus the professional dispensing fee specified in paragraph ~~“g.”~~ 79.1(8)“i.”

(3) The state maximum allowable cost (SMAC), defined as the average wholesale acquisition cost for a generic drug (the average price pharmacies pay to obtain the generic drug as evidenced by purchase records) adjusted by a multiplier of 1.2, plus the professional dispensing fee specified in paragraph ~~“g.”~~ 79.1(8)“i.”

(4) The submitted charge, representing the provider’s usual and customary charge for the drug.

b. Reimbursement Until February 1, 2013, or federal approval of the reimbursement methodology provided in paragraph 79.1(8)“d,” whichever is later, reimbursement for covered brand-name prescription drugs shall be the lower of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined:

1. For covered nonspecialty brand-name prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph ~~“g.”~~ 79.1(8)“i.”; or

2. For covered specialty brand-name prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph ~~“g.”~~ 79.1(8)“i.”

(2) The submitted charge, representing the provider’s usual and customary charge for the drug.

c. Effective February 1, 2013, or upon federal approval, whichever is later, reimbursement for covered generic prescription drugs and for covered nonprescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The average actual acquisition cost (AAC), determined pursuant to paragraph 79.1(8)“k,” plus the professional dispensing fee determined pursuant to paragraph 79.1(8)“j.”

(2) The maximum allowable cost (MAC), defined as the specific upper limit for multiple source drugs established in accordance with the methodology of the Centers for Medicare and Medicaid Services as described in 42 CFR 447.514, plus the professional dispensing fee determined pursuant to paragraph 79.1(8)“j.”

(3) The submitted charge, representing the provider’s usual and customary charge for the drug.

d. Effective February 1, 2013, or upon federal approval, whichever is later, reimbursement for covered brand-name prescription drugs shall be the lower of the following, as of the date of dispensing:

(1) The average actual acquisition cost (AAC), determined pursuant to paragraph 79.1(8)“g,” plus the professional dispensing fee determined pursuant to paragraph 79.1(8)“j.”

(2) The submitted charge, representing the provider’s usual and customary charge for the drug.

e. e. No payment shall be made for sales tax.

d. f. All hospitals that wish to administer vaccines which are available through the vaccines for children program to Medicaid members shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid members. Hospitals receive reimbursement for the

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

administration of vaccines to Medicaid members through the DRG reimbursement for inpatients and APC reimbursement for outpatients.

~~e. g.~~ The Until February 1, 2013, or federal approval of the reimbursement methodology provided in paragraph 79.1(8)“c,” whichever is later, the basis of payment for nonprescription drugs shall be the same as specified in paragraph 79.1(8)“a” except that the department shall establish a maximum allowable reimbursable cost for these drugs using the average wholesale prices of the chemically equivalent products available. The department shall set the maximum allowable reimbursable cost at the median of those average wholesale prices. No exceptions for higher reimbursement will be approved.

~~f. h.~~ An additional reimbursement amount of one cent per dose shall be added to the allowable ingredient cost of a prescription for an oral solid if the drug is dispensed to a patient in a nursing home in unit dose packaging prepared by the pharmacist.

~~g. i.~~ For services rendered on or after August 1, 2011, and before February 1, 2013, or federal approval of the professional dispensing fee provided in paragraph 79.1(8)“j,” whichever is later, the professional dispensing fee is \$6.20 or the pharmacy’s usual and customary fee, whichever is lower.

j. Effective February 1, 2013, or upon federal approval, whichever is later, professional dispensing fees shall be amounts determined by the department based on a survey of Iowa Medicaid retail pharmacy providers’ costs of dispensing drugs to Medicaid beneficiaries. For services rendered on or after February 1, 2013, and after federal approval, the dispensing fee for all drugs shall be \$10.02.

k. For purposes of this rule, average actual acquisition cost (AAC) is defined as retail pharmacies’ average prices paid to acquire drug products. Average AAC shall be determined by the department based on a survey of invoice prices paid by Iowa Medicaid retail pharmacies. Surveys shall be conducted at least once every six months, or more often at the department’s discretion. The average AAC shall be calculated as a statistical mean based on one reported cost per drug per pharmacy. The average AAC determined by the department shall be published on the Iowa Medicaid enterprise Web site. If no current average AAC has been determined for a drug, the wholesale acquisition cost (WAC) published by Medi-Span shall be used as the average AAC.

~~h. l.~~ For purposes of this subrule, “equivalent products” shall be those that meet therapeutic equivalent standards as published in the federal Food and Drug Administration document, “Approved Prescription Drug Products With Therapeutic Equivalence Evaluations.”

~~i.~~ Pharmacies and providers that are enrolled in the Iowa Medicaid program shall make available drug acquisition cost information, product availability information, and other information deemed necessary by the department to assist the department in monitoring and revising reimbursement rates subject to 79.1(8)“a”(3) and 79.1(8)“e” and for the efficient operation of the pharmacy benefit.

~~(1)~~ Pharmacies and providers shall produce and submit the requested information in the manner and format requested by the department or its designee at no cost to the department or its designee.

~~(2)~~ Pharmacies and providers shall submit information to the department or its designee within 30 days following receipt of a request for information unless the department or its designee grants an extension upon written request of the pharmacy or provider.

~~j. m.~~ Savings in Medicaid reimbursements attributable to the SMAC shall be used to pay costs associated with determination of the SMAC, before reversion to Medicaid.

~~k. n.~~ Payment to physicians for physician-administered drugs billed with Healthcare Common Procedure Coding System (HCPCS) Level II “J” codes, as a physician service, shall be pursuant to physician payment policy under subrule 79.1(2).

[Filed 11/15/12, effective 2/1/13]

[Published 12/12/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0486C****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 119, "Record Check Evaluations for Health Care Programs," Iowa Administrative Code.

The amendments change the chapter title to more accurately reflect the requirements for record check evaluations by employers and training programs. The amendments also clarify when evaluation must be requested for current employees or students and persons who have been previously evaluated.

The amendments revise documents that are to be included with requests for child abuse checks. In addition, the amendments add a new subrule regarding possible restrictions as a result of an evaluation and revise procedures for notification of persons being evaluated.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0324C** on September 5, 2012. The Department received a number of comments on the Notice of Intended Action.

The first comment stated that subrule 119.2(2) should stay true to statutory language, specifically Iowa Code section 135C.33(7). The Department agreed with the commenter and struck "learns from any source" and inserted the following change to the amendment as proposed in the Notice of Intended Action: "receives credible information as determined by the entity."

Another comment concerned proposed paragraph 119.3(1)"e" and inquired why the Department required a copy of the documentation of the person's previous evaluation if exemption is requested. In response, the Department did not adopt the proposed amendment.

An additional comment stated that, under proposed paragraphs 119.4(3)"a" and "b," it appeared the prospective employee would need reevaluation and a Notice of Decision (NOD) issued whenever the employee changes to a similar position and is entitled to the exemption from evaluation. In response, the Department noted that a subsequent employer may choose to review a previous NOD, after the employer has determined the person's criminal and abuse background did not result in new information warranting a DHS evaluation, and may determine that an employee can or cannot commence employment with a different licensed facility covered by Iowa Code section 135C.33 without further action by the Department. The subsequent employer does not need a reevaluation; however, the employer may choose to request a reevaluation and may employ the person while the reevaluation is being performed.

Another commenter asked why the prospective employee's evaluation would be valid for only 30 days and stated that, if no further infractions are committed, the evaluation should be valid indefinitely. The Department's evaluation results and NOD are based on required documentation (see 119.3(1)) provided by the requesting entity. The Department would not be aware of any new infractions and would only be able to issue an NOD based on the required documentation received. Required documentation from the requesting entity includes criminal and child and dependent adult abuse information within 30 days of the time the request is made. Extending the NOD would result in an NOD which potentially could exclude any "new" criminal or child or dependent abuse information.

Another comment inquired whether these rules accounted for a process by which a requesting entity may voluntarily seek a background or criminal abuse evaluation from the Department when the subject of the evaluation is not employed at the facility or is a student of a nursing training program or certified nurse aide training program. In other words, the comment was a request to include prospective students and a therapy training program in the rules. In response, the Department has the authority to perform an evaluation on prospective students of certified nurse aide training programs as defined in Iowa Code section 135C.33(8) and nursing training programs as defined in Iowa Code section 152.2. No changes were made as the result of this comment.

These amendments do not provide for waivers in specified situations because there is no provision for implementation of waiver in the law. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

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

These amendments are intended to implement Iowa Code section 217.6 and 2012 Iowa Acts, Senate File 2164.

These amendments will become effective February 1, 2013.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 119**, title, as follows:

RECORD CHECK EVALUATIONS FOR HEALTH CARE PROGRAMS  
CERTAIN EMPLOYERS AND EDUCATIONAL TRAINING PROGRAMS

ITEM 2. Amend **441—Chapter 119**, preamble, as follows:

PREAMBLE

These rules establish procedures for the performance of record check evaluations by the department of human services for personnel employed by health care facilities and other ~~health care~~ programs ~~listed in Iowa Code section 135C.33~~ and for students in educational training programs for nurses and certified nurse aides. Record check evaluations are performed, at the request of a prospective employer or training program, on persons who have been found to have been convicted of a crime under a law of any state or have a record of founded child or dependent adult abuse, to determine whether the crimes or founded abuses warrant prohibition of employment or enrollment in a training program.

ITEM 3. Amend rule 441—119.1(135C) as follows:

**441—119.1(135C) Definitions.**

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

*“Health care program”* means any of the facilities and programs listed in Iowa Code chapter 135C that are subject to record check evaluations.

*“Requesting entity”* means an entity covered by these rules that is requesting an evaluation to determine if the person being evaluated can be employed by the entity or participate in an educational training program and includes the following:

1. Health care facilities as defined in Iowa Code section 135C.1.
2. Programs in which the provider is regulated by the state or receives any state or federal funding and the employee being evaluated provides direct services to consumers including but not limited to programs that employ homemakers or home health aides, programs that provide adult day services, hospices, federal home- and community-based services waiver providers, elder group homes, and assisted living programs.
3. Substance abuse programs for juveniles as described in Iowa Code section 125.14A.
4. Hospitals as defined in Iowa Code section 135B.1.
5. Psychiatric medical institutions for children as defined in Iowa Code section 135H.1.
6. The department as described in Iowa Code section 217.44.
7. Department institutions as defined in Iowa Code section 218.13.
8. Child foster care facilities as defined in Iowa Code section 237.1.
9. Medicaid home- and community-based services waiver providers as defined in Iowa Code section 249A.29.
10. Certified nurse aide training programs as defined in Iowa Code section 135C.33(8).
11. Nursing training programs as described in Iowa Code chapter 152.

ITEM 4. Amend rule 441—119.2(135C) as follows:

**441—119.2(135C) When record check evaluations are requested.**

**119.2(1)** *Record check evaluations on prospective employees and students.* ~~Health care programs A~~ requesting entity shall request a record check evaluation ~~when they decide to consider for employment prior to employment or enrollment of~~ a person whose background check indicates a criminal or dependent adult abuse or child abuse record. Criminal, child abuse and dependent adult abuse background checks are required on all prospective employees or students, including employees or

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students who have terminated employment or participation in a training program for any reason or any length of time and wish to return to the same health care program employment or training program, unless an exemption is provided in these rules.

119.2(2) Record check evaluations on current employees and students. Employers may A requesting entity shall request a record check evaluation on current employees and students when a current employee's employee or student background check indicates a criminal conviction (other than an Iowa Code chapter 321 simple misdemeanor or equivalent simple misdemeanor offense from another jurisdiction) or dependent adult or child abuse record and the requesting entity intends to continue to employ the employee or to continue the student's enrollment in a training program. An employer may The requesting entity shall request a current criminal or dependent adult or child abuse record check when the employer learns from any source entity receives credible information as determined by the entity that a current employee or student has a criminal or dependent adult or child abuse record that has not been previously evaluated at the health care program considered by the requesting entity.

119.2(3) Transfer of employment employee between facilities. If a person owns or operates more than one facility, and an employee of one of the facilities is transferred to another facility without a lapse in employment, the facility is not required to request additional criminal or abuse record checks of the employee or obtain a new record check evaluation.

119.2(4) Exceptions to record check evaluation requirements for employment or participation in a training program in facilities licensed under Iowa Code chapter 135C. If an evaluation was previously performed by the department and the department determined the person's criminal and abuse background did not warrant prohibition of employment, the person may commence employment with a different licensed facility covered by Iowa Code section 135C.33 without further action by the department subject to the following conditions:

a. The record check performed by the subsequent employer does not indicate that a crime was committed or that a founded abuse record was entered subsequent to the previous evaluation.

b. The position with the subsequent employer is substantially the same or has the same job responsibilities as the position for which the previous evaluation was performed.

c. Any restriction placed on the person's employment in the previous evaluation by the department shall remain applicable in the person's subsequent employment.

d. The person subject to the record checks has maintained a copy of the previous evaluation and provides the evaluation to the subsequent employer, or the previous employer provides the previous evaluation from the person's personnel file pursuant to the person's authorization. If a physical copy of the previous evaluation is not provided to the subsequent employer, a current record check evaluation shall be performed.

e. Although an authorized new evaluation is not required, the subsequent employer may choose to request a reevaluation of the person's criminal and abuse background and may employ the person while the reevaluation is being performed.

f. The subsequent employer must maintain the previous evaluation in the employee's or student's personnel file for verification of the exception to the requirement for a record check evaluation.

ITEM 5. Amend rule 441—119.3(135C) as follows:

**441—119.3(135C) Request for evaluation.**

119.3(1) Required documentation. The employer requesting entity and the prospective employee or student shall complete and the employer shall submit Form 470-2310, Record Check Evaluation, to the department to request an evaluation. The employer requesting entity shall submit the form and required documentation to the Department of Human Services, Central Abuse Registry, 1305 East Walnut P.O. Box 4826, Des Moines, Iowa 50319-0114 50305-4826. The department shall not process evaluations that are not signed by the prospective employee or student. The position sought or held must be clearly written on the first page of Form 470-2310, Record Check Evaluation. Form 470-2310 shall be accompanied by the following documents:

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

a. A copy of the documentation of the ~~applicant's~~ person's status on the DCI criminal history database generated within 30 days of the ~~time that~~ date on which the request for evaluation is submitted to the department.

b. A copy of the Iowa criminal history data, if there is a history, as provided to the ~~employer~~ requesting entity by the division of criminal ~~investigations~~ investigation.

c. A copy of the documentation of the ~~applicant's~~ person's status on the dependent adult abuse registry generated within 30 days of the ~~time that~~ date on which the request for evaluation is submitted to the department.

d. A copy of the documentation of the person's status on the child abuse registry generated within 30 days of the date on which the request for evaluation is submitted to the department.

**119.3(2) Additional documentation.**

a. The ~~employer~~ requesting entity may provide or the department may request from the prospective employee or ~~employer~~ student or from the requesting entity information to assist in performance of the evaluation that includes, but is not limited to, the following:

- (1) Documentation of criminal justice proceedings.
- (2) Documentation of rehabilitation.
- (3) Written employment references or applications.
- (4) Documentation of substance abuse education or treatment.
- (5) Criminal history records, child abuse information, and dependent adult abuse information from other states.
- (6) Documentation of the applicant's prior residences.

b. Any person or agency that might have pertinent information regarding the criminal or abuse history and rehabilitation of a prospective employee or student may be contacted.

~~e.—The department may check the child abuse registry during a record check evaluation. If there is a record of child abuse, the department shall consider the information in the child abuse record in reaching a decision regarding employability.~~

ITEM 6. Amend rule 441—119.4(135C) as follows:

**441—119.4(135C) Completion of evaluation.**

**119.4(1)** No change.

~~119.4(2) Notice of decision. The department shall issue a notice of decision in writing to the employer that requested the record check evaluation. The department shall send a copy of the notice of decision to the person who has applied for employment, if the person's address is available. If the address is not available, the department shall send the prospective employee's copy of the notice to the employer.~~

~~a.—The notice shall be valid only for employment with the employer that requested the record check evaluation.~~

~~b.—The notice shall not be valid for employment with any other prospective employer.~~

~~c.—Record check evaluations are valid for employment that commences within 30 days from the date of notice of decision.~~

~~d.—The notice of decision shall contain the notice of right to appeal.~~

**119.4(2) Evaluation conclusions.**

a. The department may determine the following:

- (1) The person may be employed by the entity or enroll in the training program with no restrictions.
- (2) The person may be employed by the entity or enroll in the training program with restrictions.
- (3) The person may be employed by the entity or enroll in the training program with restrictions specific to a position within the program.

(4) The person may not be employed by the entity or enroll in the training program.

b. Restrictions on a person's employment or enrollment status shall be based upon what is necessary for the protection of the person or persons receiving care.

c. Medicaid waiver consumer-directed attendant care evaluations shall determine that either the person may work or the person may not work pursuant to Medicaid law.

HUMAN SERVICES DEPARTMENT[441](cont'd)

119.4(3) Notice of decision. The department shall issue a notice of decision in writing to the requesting entity. The requesting entity is responsible for providing a copy of the notice to the prospective employee or student.

a. The notice shall be valid only for employment with the employer or enrollment in a training program that requested the record check evaluation.

b. The notice shall not be valid for employment with any other prospective employer or enrollment in another training program.

c. Record check evaluations are valid for 30 days from the date the notice of decision is issued. If the person does not start employment or attend the training program within the 30-day time period, the requesting entity shall request another evaluation. "Start employment or attend the training program" means to begin to receive a salary or take classes.

d. The notice of decision shall contain the notice of right to appeal.

[Filed 11/15/12, effective 2/1/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0484C**

## **INSPECTIONS AND APPEALS DEPARTMENT[481]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," and adopts new Chapter 59, "Tuberculosis (TB) Screening," Iowa Administrative Code.

The adopted Chapter 59 outlines requirements and procedures to conduct tuberculosis screenings for health care workers of Iowa licensed hospitals and health care workers and residents of Iowa licensed health care facilities, including the screening process to be used, the risk classification, and who may conduct TB screenings. Additionally, corresponding technical changes are adopted in subrule 51.24(3) to reference new Chapter 59.

The adopted language in Chapter 59 was substantially written by the Iowa Department of Public Health and provides uniformity in the requirements and procedures to conduct TB screening (see **ARC 0365C**, IAB 10/3/12, for rules regarding tuberculosis screening adopted by the Department of Public Health).

The Department does not believe that the adopted amendments impose any financial hardship on any regulated entity, body, or individual. Rather, the adopted amendments provide uniformity in the requirements and procedures to conduct TB screening for health care workers and residents.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 2012, as **ARC 0353C**. Comments were received from the Iowa Health Care Association and LeadingAge Iowa. After careful consideration of the comments and discussion with the Department of Public Health, it was decided that no changes should be made to the rules published under Notice of Intended Action. The parenthetical implementation statutes and implementation sentence were changed to add a reference to Iowa Code chapter 135C.

The Hospital Licensing Board reviewed and approved the amendments at its August 7, 2012, meeting. The Board of Health also reviewed the amendments at its September 12, 2012, meeting, and subsequently approved them at the Board's November 14, 2012, meeting.

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

These amendments are intended to implement Iowa Code sections 135B.7 and 135C.14.

These amendments shall become effective January 16, 2013.

The following amendments are adopted.

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

ITEM 1. Amend subrule 51.24(3) as follows:

**51.24(3) Health examinations.** Health examinations for all personnel shall be required at the commencement of employment and thereafter at least every four years. The examination shall include, at a minimum, the health ~~and tuberculosis~~ status of the employee. Consideration shall be given to requiring health examinations at shorter intervals for those employees working in high-risk areas. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59.

ITEM 2. Adopt the following new 481—Chapter 59:

CHAPTER 59  
TUBERCULOSIS (TB) SCREENING

**481—59.1(135B,135C) Purpose.** The intent of this chapter is to outline requirements and procedures to conduct tuberculosis screening for health care workers in health care facilities and hospitals and for residents of health care facilities regulated by the department.

**481—59.2(135B,135C) Definitions.** For purposes of this chapter, the following definitions apply:

“*Bacille Calmette-Guérin (BCG) vaccination*” means a vaccine for TB. BCG is used in many countries with a high prevalence of TB to prevent childhood tuberculosis meningitis and military disease. BCG is not generally recommended for use in the United States because of the low risk of infection with *Mycobacterium tuberculosis*, the variable effectiveness of the vaccine against adult pulmonary TB, and the vaccine’s potential interference with tuberculin skin test reactivity.

“*Baseline TB screening*” means the screening of health care workers (HCWs) of health care facilities or hospitals and residents of health care facilities for latent tuberculosis infection (LTBI) and TB disease at the beginning of employment in a facility or hospital, or upon admission to a facility. Baseline TB screening includes a symptom screen for all HCWs and residents, and tuberculin skin tests (TSTs) or interferon-gamma release assay (IGRA) for *Mycobacterium tuberculosis* for those persons with previous negative test results for *M. tuberculosis* infection.

“*Baseline TST*” or “*baseline IGRA*” means the TST or IGRA, respectively, that is administered at the beginning of employment to newly hired HCWs or upon admission to residents of health care facilities.

“*Boosting*” means a phenomenon in which a person has a negative TST (i.e., false-negative) result years after infection with *M. tuberculosis* and then a positive subsequent TST result. The positive TST result is caused by a boosted immune response of previous sensitivity rather than by a new infection (false-positive TST conversion). Two-step testing reduces the likelihood of mistaking a boosted reaction for a new infection.

“*Department*” means the department of inspections and appeals.

“*Employment*” or “*employed*” means hired or retained for paid or unpaid work in a facility or hospital.

“*Extrapulmonary TB*” means TB disease in any part of the body other than the lungs (e.g., kidney, spine, or lymph nodes).

“*Health care facility*” or “*facility*” means a health care facility as defined in Iowa Code section 135C.1 or a long-term care service of a hospital as defined in rule 481—51.38(135B).

“*Health care worker*” or “*HCW*” means any paid or unpaid person working in a health care facility or hospital, including any volunteer or person who is paid either by the health care facility or hospital, or paid by any other entity (i.e., temporary agency, private duty, Medicaid/Medicare or independent contractors).

“*Hospital*” means a hospital as defined in Iowa Code section 135B.1.

“*Interferon-gamma release assay*” or “*IGRA*” means whole-blood tests that can aid in diagnosing *Mycobacterium tuberculosis* infection.

“*Laryngeal TB*” means a form of TB disease that involves the larynx and may be highly infectious.

“*Latent TB infection*” or “*LTBI*” means infection with *M. tuberculosis* without symptoms or signs of disease having manifested.

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

“*Mantoux method*” means a skin test performed by intradermally injecting 0.1 mL of purified protein derivative (PPD) tuberculin solution into the volar or dorsal surface of the forearm.

“*Patient*” means a person admitted to a hospital.

“*Pulmonary TB*” means TB disease that occurs in the lung parenchyma, usually producing a cough that lasts greater than three weeks. Pulmonary TB is usually infectious.

“*Purified protein derivative (PPD) tuberculin*” means a material used in diagnostic tests for detecting infection with *M. tuberculosis*.

“*Resident*” means a person admitted to a health care facility or a long-term care service of a hospital as defined in rule 481—51.38(135B). For purposes of this chapter, “resident” does not include a patient admitted to a hospital.

“*Risk classification*” means the category the infection control team, or designated other staff, determines is appropriate for the facility or hospital as a result of the TB risk assessment.

“*Serial screening*” refers to TB screening performed at regular intervals following baseline TB screening. Serial TB screening, also called annual or ongoing TB testing, consists of two components: (1) assessing for current symptoms of active TB disease, and (2) testing for the presence of infection with *M. tuberculosis* by administering either a TST or single IGRA.

“*Symptom screen*” means a procedure used during a clinical evaluation in which persons are asked if they have experienced any departure from normal in function, appearance, or sensation related to TB disease (e.g., cough).

“*TB patient*” means a person who had undiagnosed infectious pulmonary or laryngeal TB while in a health care facility or hospital during the preceding year. “TB patient” does not include persons with LTBI (treated or untreated), extrapulmonary TB disease, pulmonary, or laryngeal TB that have met criteria for noninfectiousness.

“*TB risk assessment*” means an initial and ongoing evaluation of the risk for transmission of *M. tuberculosis* in a particular health care setting.

“*TB screening*” means an administrative control measure in which evaluation for LTBI and TB disease is performed through baseline and serial screening of HCWs in hospitals and health care facilities and residents of health care facilities.

“*TB screening plan*” means a plan that health care facilities and hospitals develop and implement that comprises four major components: (1) baseline testing for *M. tuberculosis* infection, (2) serial testing for *M. tuberculosis* infection, (3) serial screening for signs or symptoms of TB disease, and (4) TB training and education.

“*Treatment for LTBI*” means treatment that prevents the progression of *M. tuberculosis* infection into TB disease.

“*Tuberculin skin test*” or “*TST*” means a diagnostic aid for finding *M. tuberculosis* infection. The Mantoux method is the recommended method to be used for TST.

“*Tuberculosis*” or “*TB*” means the namesake member organism of *M. tuberculosis* complex and the most common causative infectious agent of TB disease in humans. In certain instances, the species name refers to the entire *M. tuberculosis* complex, which includes *M. bovis* and *M. african*, *M. microti*, *M. canetti*, *M. caprae*, and *M. pinnipedii*.

“*Tuberculosis disease*” or “*TB disease*” means a condition caused by infection with a member of the *M. tuberculosis* complex that has progressed to causing clinical (manifesting symptoms or signs) or subclinical (early stage of disease in which signs or symptoms are not present, but other indications of disease activity are present) illness.

“*Two-step tuberculin skin test*” or “*two-step TST*” means the procedure used for the baseline skin testing of persons who will receive serial TSTs to reduce the likelihood of mistaking a boosted reaction for a new infection.

#### **481—59.3(135B,135C) TB risk assessment.**

**59.3(1)** Annually, a health care facility or hospital shall conduct a TB risk assessment to evaluate the risk for transmission of *M. tuberculosis*, regardless of whether a person with suspected or confirmed TB disease is expected to be encountered in the facility or hospital. The TB risk assessment shall be utilized

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

to determine the types of administrative, environmental, and respiratory protection controls needed and serves as an ongoing evaluation tool of the quality of TB infection control and for the identification of needed improvements in infection control measures.

**59.3(2)** The TB risk assessment shall include:

- a. The community rate of TB,
- b. The number of persons with infectious TB encountered in the facility or hospital, and
- c. The speed with which persons with infectious TB disease are suspected, isolated, and evaluated to determine if persons with infectious TB exposed staff or others in the facility or hospital. TB cases include persons who had undiagnosed infectious pulmonary or laryngeal TB while in the facility or hospital during the preceding year. This does not include persons with LTBI (treated or untreated), persons with extrapulmonary TB disease, or persons with pulmonary and laryngeal TB that have met criteria for noninfectiousness.

**481—59.4(135B,135C) Health care facility or hospital risk classification.** The infection control team or designated staff in a health care facility or hospital is responsible for determining the type of risk classification. The facility or hospital risk classification is used to determine frequency of TB screening. The facility or hospital risk classification may change due to an increase or decrease in the number of TB cases during the preceding year. The following criteria are consistent with those of the Centers for Disease Control and Prevention (CDC), TB Elimination Division, as outlined in the MMWR December 30, 2005/Vol. 54/No. RR-17, “Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005.”

**59.4(1)** *Types of risk classifications.*

- a. “Low risk” means that a facility or hospital is one in which persons with active TB disease are not expected to be encountered and in which exposure to TB is unlikely.
- b. “Medium risk” means that a facility or hospital is one in which health care workers will or might be exposed to persons with active TB disease or to clinical specimens that might contain *M. tuberculosis*.
- c. “Potential ongoing transmission” means that a facility or hospital is one in which there is evidence of person-to-person transmission of *M. tuberculosis*. This classification is a temporary classification. If it is determined that this classification applies to a facility or hospital, the facility or hospital shall consult with the department of public health’s TB control program.

**59.4(2)** *Classification criteria—low risk.*

- a. Inpatient settings with 200 beds or more: If a facility or hospital has fewer than six TB patients for the preceding year, the facility or hospital shall be classified as low risk.
- b. Inpatient settings with fewer than 200 beds: If a facility or hospital has fewer than three TB patients for the preceding year, the facility or hospital shall be classified as low risk.

**59.4(3)** *Classification criteria—medium risk.*

- a. Inpatient settings with 200 beds or more: If a facility or hospital has six or more TB patients for the preceding year, the facility or hospital shall be classified as medium risk.
- b. Inpatient settings with fewer than 200 beds: If a facility or hospital has three or more TB patients for the preceding year, the facility or hospital shall be classified as medium risk.

**59.4(4)** *Classification criteria—potential ongoing transmission.* If evidence of ongoing *M. tuberculosis* transmission exists at a facility or hospital, the facility or hospital shall be classified as potential ongoing transmission, regardless of the facility’s or hospital’s previous classification.

**481—59.5(135B,135C) Baseline TB screening procedures for health care facilities and hospitals.**

**59.5(1)** All HCWs shall receive baseline TB screening upon hire. Baseline TB screening consists of two components: (1) assessing for current symptoms of active TB disease and (2) using a two-step TST or a single IGRA to test for infection with *M. tuberculosis*.

**59.5(2)** An HCW may begin working with patients or residents after a negative TB symptom screen (i.e., no symptoms of active TB disease) and a negative TST (i.e., first step) or negative IGRA. The second TST may be performed after the HCW starts working with patients or residents.

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

**59.5(3)** An HCW with a new positive test result for *M. tuberculosis* infection (i.e., TST or IGRA) shall receive one chest radiograph result to exclude TB disease. Repeat radiographs are not needed unless symptoms or signs of TB disease develop or unless recommended by a clinician. Treatment for LTBI should be considered in accordance with CDC guidelines.

**59.5(4)** An HCW with documentation of past positive test results (i.e., TST or IGRA) and documentation of the results of a chest radiograph indicating no active disease, dated after the date of the positive TST or IGRA test result, does not need another chest radiograph at the time of hire.

**59.5(5)** TB, TST or IGRA tests for *M. tuberculosis* infection do not need to be performed for HCWs with a documented history of TB disease, documented previously positive test result for *M. tuberculosis* infection, or documented completion of treatment for LTBI or TB disease. Documentation of a previously positive test result for *M. tuberculosis* infection can be substituted for a baseline test result if the documentation includes a recorded TST result in millimeters or IGRA result, including the concentration of cytokine measured (e.g., interferon-gamma (IFN-g)). All other HCWs should undergo baseline testing for *M. tuberculosis* infection to ensure that the test result on record in the setting has been performed and measured using the recommended diagnostic procedures.

**59.5(6)** A second TST is not needed if the HCW has a documented TST result from any time during the previous 12 months. If a newly employed HCW has had a documented negative TST result within the previous 12 months, a single TST can be administered in the new setting. This additional TST represents the second stage of two-step testing. The second test decreases the possibility that boosting on later testing will lead to incorrect suspicion of transmission of *M. tuberculosis* in the setting.

**59.5(7)** Previous BCG vaccination is not a contraindication to having an IGRA, a TST or two-step skin testing administered. HCWs with previous BCG vaccination should receive baseline and serial testing in the same manner as those without BCG vaccination. Evaluation of TST reactions in persons vaccinated with BCG should be interpreted using the same criteria for those not BCG-vaccinated. An HCW's history of BCG vaccination should be disregarded when administering and interpreting TST results. Prior BCG vaccination does not cause a false-positive IGRA test result.

**481—59.6(135B,135C) Serial TB screening procedures for health care facilities and hospitals.**

**59.6(1)** *Health care facilities or hospitals classified as low risk.* After baseline testing of HCWs for infection with *M. tuberculosis*, additional TB screening of HCWs is not necessary unless an exposure to *M. tuberculosis* occurs.

**59.6(2)** *Health care facilities or hospitals classified as medium risk.*

a. After undergoing baseline testing for infection with *M. tuberculosis*, HCWs should receive TB screening annually (i.e., symptom screen for all HCWs and testing for infection with *M. tuberculosis* for HCWs with baseline negative test results).

b. HCWs with a baseline positive or new positive test result for *M. tuberculosis* infection or documentation of previous treatment for LTBI or TB disease shall receive one chest radiograph result to exclude TB disease. Instead of participating in serial testing, HCWs should receive a symptom screen annually. This screen should be accomplished by educating HCWs about symptoms of TB disease and instructing HCWs to report any such symptoms immediately to the occupational health unit. Treatment for LTBI should be considered in accordance with CDC guidelines.

**59.6(3)** *Health care facilities or hospitals classified as potential ongoing transmission.* Testing for infection with *M. tuberculosis* may need to be performed every eight to ten weeks until lapses in infection control have been corrected and no additional evidence of ongoing transmission is apparent. The potential ongoing transmission classification should be used only as a temporary classification. This classification warrants immediate investigation and corrective steps. After a determination that ongoing transmission has ceased, the setting shall be reclassified as medium risk for a minimum of one year.

**481—59.7(135B,135C) Screening of HCWs who transfer to other health care facilities or hospitals.**

**59.7(1)** *HCWs transferring from a low-risk health care facility or hospital to another low-risk health care facility or hospital.* After a baseline result for infection with *M. tuberculosis* is established and

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

documented, serial testing for *M. tuberculosis* infection is not necessary for HCWs transferring from a low-risk health care facility or hospital to another low-risk health care facility or hospital.

**59.7(2)** *HCWs transferring from a low-risk health care facility or hospital to a medium-risk health care facility or hospital.* After a baseline result for infection with *M. tuberculosis* is established and documented, annual TB screening, including a symptom screen and TST or IGRA for persons with previously negative test results, should be performed for HCWs transferring from a low-risk health care facility or hospital to a medium-risk health care facility or hospital.

**481—59.8(135B,135C) Baseline TB screening procedures for residents of health care facilities.**

**59.8(1)** TB screening is a formal procedure to evaluate residents for LTBI and TB disease. Baseline TB screening consists of two components: (1) assessing for current symptoms of active TB disease and (2) using two-step TST or a single IGRA to test for infection with *M. tuberculosis*.

**59.8(2)** All residents shall be assessed for current symptoms of active TB disease upon admission. Within 72 hours of a resident's admission, baseline TB testing for infection shall be initiated unless baseline TB testing occurred within three months prior to the resident's admission.

**59.8(3)** Residents with a new positive test result for *M. tuberculosis* infection (i.e., TST or IGRA) shall receive one chest radiograph result to exclude TB disease. Repeat radiographs are not needed unless symptoms or signs of TB disease develop or unless recommended by a clinician.

**59.8(4)** Residents with documentation of past positive test results (i.e., TST or IGRA) and documentation of the results of a chest radiograph indicating no active disease, dated after the date of the positive TST or IGRA test result, do not need another chest radiograph at the time of admission.

**59.8(5)** TB, TST or IGRA tests for *M. tuberculosis* infection do not need to be performed for residents with a documented history of TB disease, documented previously positive test result for *M. tuberculosis* infection, or documented completion of treatment for LTBI or TB disease. Documentation of a previously positive test result for *M. tuberculosis* infection can be substituted for a baseline test result if the documentation includes a recorded TST result in millimeters or IGRA result, including the concentration of cytokine measured (e.g., IFN-g). All other residents should undergo baseline testing for *M. tuberculosis* infection to ensure that the test result on record in the setting has been performed and measured using the recommended diagnostic procedures.

**59.8(6)** A second TST is not needed if the resident has a documented TST result from any time during the previous 12 months. If a new resident has had a documented negative TST result within the previous 12 months, a single TST can be administered in the new setting. This additional TST represents the second stage of two-step testing. The second test decreases the possibility that boosting on later testing will lead to incorrect suspicion of transmission of *M. tuberculosis* in the health care facility.

**481—59.9(135B,135C) Serial TB screening procedures for residents of health care facilities.** After baseline TB screening is accomplished, serial TB screening of residents is not recommended.

**481—59.10(135B,135C) Performance of screening and testing.** Any nurse licensed in Iowa and properly trained to screen for TB and perform TB testing may screen for TB and perform TB testing.

These rules are intended to implement Iowa Code sections 135B.7 and 135C.14.

[Filed 11/14/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0504C****PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 2, "Pharmacist Licenses," Chapter 3, "Pharmacy Technicians," Chapter 5, "Pharmacy Support Persons," Chapter 8, "Universal Practice Standards," Chapter 10, "Controlled Substances," Chapter 12, "Precursor Substances," Chapter 17, "Wholesale Drug Licenses," Chapter 24, "Pharmacy Internet Sites," and Chapter 30, "Impaired Pharmacy Professional and Technician Recovery Program," Iowa Administrative Code.

The amendments reduce by at least 10 percent most initial and renewal license and registration fees and most penalty fees for late applications that are currently assessed by the Board. After the 10 percent reduction is calculated, some of the fees are rounded down to the next lowest \$10 increment to simplify accounting. Additional amendments clarify the forms of payment currently accepted by the Board and provide that a late payment penalty fee is not to be imposed on an application for renewal of a delinquent pharmacy technician registration if the applicant has not been practicing as a pharmacy technician since the registration expired. The amendments also eliminate the surcharge that has been imposed on pharmacist, pharmacist-intern, and pharmacy technician license and registration fees. The surcharge funds the Impaired Pharmacy Professional and Technician Recovery Program (IPRN). The Board has determined that at this time the surcharge is an unnecessary cost and burden to these individuals and that the Board will support the IPRN from retained fees.

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 October 3, 2012, Iowa Administrative Bulletin as **ARC 0351C**. The Board received no written comments regarding the proposed amendments. The Board did, however, question the need to continue the IPRN surcharge currently imposed on license and registration fees for pharmacists, pharmacist-interns, and pharmacy technicians. The Board determined that there are currently sufficient funds in the Board's retained fee account to support the IPRN without burdening pharmacists, pharmacist-interns, and pharmacy technicians with the additional cost.

The adopted amendments differ from those published under Notice. New Item 14 amending rule 657—30.8(155A) has been added to eliminate the current license and registration fee surcharge, and new Item 15 has been added to amend the implementation clause at the end of Chapter 30 to reference the current Iowa Code.

The amendments were approved during the November 9, 2012, meeting of the Board of Pharmacy.

After analysis and review of this rule making, no adverse impact on jobs has been found. The reduced license and registration fees may positively impact job and economic growth for businesses in the state of Iowa. The reduction in fees may allow a person to keep a job, get a raise, and spend more disposable income.

These amendments are intended to implement Iowa Code sections 124.301, 124.302, 124.303, 124B.11, 147.10, 147.11, 147.34, 147.36, 147.76, 147.80, 147.82, 155A.6, 155A.6A, 155A.6B, 155A.9, 155A.11, 155A.13, 155A.13A, 155A.13B, 155A.14, 155A.17, 155A.39, and 272C.3.

These amendments will become effective on January 16, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 2.3(1) as follows:

**2.3(1) Fees to the board.** The biennial license fee shall be the fee established by rule 657—2.11(147,155A), including surcharge. The processing fee shall be ~~\$80~~ \$72. No refunds of the processing fee shall be made for cancellation or withdrawal of applications. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy and may be remitted in the form of personal check, money order, cashier's check, or certified check. No refund of fees shall be made for failure to complete all licensure requirements within the period specified in subrule 2.1(2).

## PHARMACY BOARD[657](cont'd)

ITEM 2. Amend rule 657—2.6(147) as follows:

**657—2.6(147) Reexamination applications and fees.** A candidate who fails to pass the NAPLEX once shall be allowed to schedule a time to retake the examination no less than 91 days following administration of the failed examination. 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. 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.

Each applicant for reexamination shall file an application on forms provided by the board. Processing fees of ~~\$40~~ \$36 each will be charged to take NAPLEX or MPJE, Iowa Edition, 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).

ITEM 3. Amend subrule 2.9(4) as follows:

**2.9(4) Fees.** The fee for license transfer shall consist of the biennial license fee established by rule 657—2.11(147,155A) including surcharge and a processing fee of ~~\$100~~ \$90. No refunds of the processing fee shall be made for cancellation or withdrawal of an application. The license fee and processing fee shall be payable to the Iowa Board of Pharmacy and may be remitted in the form of personal check, money order, cashier's check, or certified check.

ITEM 4. Amend rule 657—2.11(147,155A) as follows:

**657—2.11(147,155A) License expiration and renewal.** A license to practice pharmacy shall expire on the second thirtieth day of June following the date of issuance of the license, with the exception that a new pharmacist license issued between April 1 and June 29 shall expire on the third thirtieth day of June following the date of issuance. The license renewal certificate shall be issued upon completion of the renewal application and timely payment of a ~~\$200~~ \$180 fee plus applicable surcharge pursuant to 657—30.8(155A).

**2.11(1) Late payment penalty.** Failure to renew the license before July 1 following expiration shall require payment of the renewal fee, a penalty fee of ~~\$200~~ \$180, and applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before August 1 following expiration shall require payment of the renewal fee, a penalty fee of ~~\$300~~ \$270, and applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before September 1 following expiration shall require payment of the renewal fee, a penalty fee of ~~\$400~~ \$360, and applicable surcharge pursuant to 657—30.8(155A). Failure to renew the license before October 1 following expiration may require an appearance before the board and shall require payment of the renewal fee, a penalty fee of ~~\$500~~ \$450, and applicable surcharge pursuant to 657—30.8(155A). In no event shall the combined fee and penalty fee for late renewal of the license exceed ~~\$700~~ \$630 plus applicable surcharge pursuant to 657—30.8(155A). The provisions of Iowa Code section 147.11 shall apply to a license that is not renewed within five months of the expiration date.

**2.11(2)** No change.

ITEM 5. Amend subrule 3.10(1) as follows:

**3.10(1) Certified or uncertified pharmacy technician registration.** The fee for obtaining an initial certified pharmacy technician registration or for biennial renewal of a certified pharmacy technician registration or an uncertified pharmacy technician registration shall be ~~\$50~~ \$40 plus applicable surcharge pursuant to rule 657—30.8(155A).

ITEM 6. Adopt the following **new** paragraph **3.11(2)“c”**:

c. A late payment fee shall not be assessed on an expired registration if the person was not employed as a pharmacy technician during the period following expiration of the registration.

## PHARMACY BOARD[657](cont'd)

ITEM 7. Amend rule 657—5.9(155A) as follows:

**657—5.9(155A) Registration fee.**

**5.9(1) Initial fee.** The fee for obtaining an initial registration shall be ~~\$30~~ \$25.

**5.9(2) Renewal fee.** The renewal fee for obtaining a biennial registration shall be ~~\$30~~ \$25.

**5.9(3) and 5.9(4)** No change.

ITEM 8. Amend subrule 5.11(1) as follows:

**5.11(1) Fee.** A person required to register or to renew the person's registration who files a late application shall pay an additional ~~\$30~~ \$25 late payment fee.

ITEM 9. Amend subrule 8.35(4) as follows:

**8.35(4) License expiration and renewal.** General pharmacy licenses, hospital pharmacy licenses, special or limited use pharmacy licenses, and nonresident pharmacy licenses shall be renewed before January 1 of each year. The fee for a new or renewal license shall be ~~\$150~~ \$135.

*a. Late payment penalty.* Failure to renew the pharmacy license before January 1 following expiration shall require payment of the renewal fee and a penalty fee of ~~\$150~~ \$135. Failure to renew the license before February 1 following expiration shall require payment of the renewal fee and a penalty fee of ~~\$250~~ \$225. Failure to renew the license before March 1 following expiration shall require payment of the renewal fee and a penalty fee of ~~\$350~~ \$315. Failure to renew the license before April 1 following expiration shall require payment of the renewal fee and a penalty fee of ~~\$450~~ \$405 and may require an appearance before the board. In no event shall the combined renewal fee and penalty fee for late renewal of a pharmacy license exceed ~~\$600~~ \$540.

*b.* No change.

ITEM 10. Amend rule 657—10.3(124) as follows:

**657—10.3(124) Registration and renewal.** For each registration or timely renewal of a registration to manufacture, distribute, dispense, prescribe, import or export, conduct research or instructional activities, or conduct chemical analysis with controlled substances listed in Schedules I through V of Iowa Code chapter 124, registrants shall pay a biennial fee of ~~\$100~~ \$90.

**10.3(1)** No change.

**10.3(2) Late renewal.** Any registered person or business may apply, on forms provided by the board office, for registration renewal not more than 60 days prior to the expiration of the registration. Failure to renew a registration prior to the first day of the month following expiration shall require payment of the renewal fee and a penalty fee of ~~\$100~~ \$90. Payment shall be made as specified in subrule 10.3(1).

ITEM 11. Amend subrule 12.7(2) as follows:

**12.7(2) Initial permit, renewal, and fees.** The fee for an initial permit or permit renewal shall be paid at the time that the application for the permit or permit renewal is submitted for filing. Payment shall be made in the form of a personal, business, certified, or cashier's check or money order made payable to the Iowa Board of Pharmacy. Payments made in the form of foreign currency or third-party endorsed checks will not be accepted.

*a. Initial and renewal fees.* For each initial permit or timely renewed permit, an applicant shall pay a fee of ~~\$200~~ \$180.

*b. Late application.* Failure to renew a permit prior to January 1 following the permit's expiration shall require payment of the renewal fee plus a ~~\$200~~ \$180 late payment fee.

*c.* No change.

ITEM 12. Amend subrule 17.3(2) as follows:

**17.3(2) License expiration and renewal.** A wholesale drug license shall be renewed before January 1 of each year. The fee for a new or renewal license shall be ~~\$300~~ \$270.

*a. Late payment penalty.* Failure to renew the license before January 1 shall require payment of the renewal fee and a penalty fee of ~~\$300~~ \$270. Failure to renew the license before February 1 following expiration shall require payment of the renewal fee and a penalty fee of ~~\$400~~ \$360. Failure to renew the

## PHARMACY BOARD[657](cont'd)

license before March 1 following expiration shall require payment of the renewal fee and a penalty fee of ~~\$500~~ \$450. Failure to renew the license before April 1 following expiration shall require payment of the renewal fee and a penalty fee of ~~\$600~~ \$540 and may require an appearance before the board. In no event shall the combined renewal fee and penalty fee for late renewal of a wholesale drug license exceed ~~\$900~~ \$810.

b. No change.

ITEM 13. Amend subrule 24.7(4) as follows:

**24.7(4) Fees and term of registration.** The following fees, as applicable, shall accompany an application for pharmacy Internet site registration or registration renewal:

a. *Initial registration.* The fee for initial registration of a pharmacy Internet site shall be ~~\$150~~ \$135. All registrations shall expire annually on December 31.

b. *Registration renewal.* The fee for renewal of a pharmacy Internet site registration shall be ~~\$150~~ \$135. Failure to renew a registration prior to expiration shall require payment of a late payment fee in the amount of ~~\$150~~ \$135 in addition to the renewal fee. Failure to renew a registration within 30 days following expiration shall require payment of a late payment fee in the amount of ~~\$250~~ \$225 in addition to the renewal fee. Failure to renew a registration within 60 days following expiration shall require payment of a late payment fee in the amount of ~~\$350~~ \$315 in addition to the renewal fee. Failure to renew a registration within 90 days following expiration shall require payment of a late payment fee in the amount of ~~\$450~~ \$405 in addition to the renewal fee. The total renewal and late payment fee shall not exceed ~~\$600~~ \$540. Failure to timely renew a registration may subject the registrant to disciplinary action.

ITEM 14. Amend rule 657—30.8(155A) as follows:

**657—30.8(155A) Program funds.** The board ~~shall~~ may assess a surcharge of no more than 10 percent to a pharmacist license fee, a pharmacist license renewal fee, a pharmacist-intern registration fee, a pharmacy technician registration fee, and a pharmacy technician registration renewal fee to fund programs under this chapter. Effective January 16, 2013, no surcharge is assessed on any of these licenses or registrations. The board may ~~also~~ accept funds made available by the federal or state government, including fees retained by the board pursuant to Iowa Code section 147.82, or by another public or private source to be used for such programs. Surcharges and funds collected pursuant to this rule shall be delivered to the state treasurer, shall be deposited in a fund separate from the state general fund, and shall be used exclusively to administer programs under this chapter. Expenses that may be paid from this fund include costs associated with the provision of education, intervention, posttreatment monitoring for program participants, and administrative costs incurred by the board, but shall not include costs incurred for a participant's evaluation, referral services, treatment, or rehabilitation.

ITEM 15. Amend **657—Chapter 30**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ section 155A.39.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0501C**

**PHARMACY BOARD[657]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendment clarifies that the pharmacist in charge of a general pharmacy is responsible for establishing, implementing, and periodically reviewing and revising written policies and procedures

## PHARMACY BOARD[657](cont'd)

for the operations of the pharmacy and is also responsible for ensuring that all pharmacy personnel are familiar with the pharmacy's established policies and procedures.

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

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Bulletin as **ARC 0375C**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the November 9, 2012, meeting of the Board of Pharmacy.

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

This amendment is intended to implement Iowa Code section 155A.13.

This amendment will become effective on January 16, 2013.

The following amendment is adopted.

Amend rule 657—6.2(155A) as follows:

**657—6.2(155A) Pharmacist in charge.** One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, the following:

1. to 13. No change.

14. Establishing, and implementing, and periodically reviewing and revising written policies and procedures to reflect changes in processes, organization, and other functions for all operations of the pharmacy and ensuring that all pharmacy personnel are familiar with those policies and procedures.

15. and 16. No change.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0502C**

**PHARMACY BOARD[657]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 17.76, the Board of Pharmacy hereby amends Chapter 7, "Hospital Pharmacy Practice," Iowa Administrative Code.

The amendments authorize a hospital pharmacy to contract for remote order entry and medication order preview and verification with another licensed pharmacy to supplement hospital pharmacy services and to increase the availability of the pharmacist for involvement in cognitive and patient care activities.

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 October 3, 2012, Iowa Administrative Bulletin as **ARC 0372C**. The Board received written comments regarding the proposed amendments from two hospital pharmacists. One pharmacist voiced support for the proposed amendments, suggesting a unique circumstance when the remote preview and verification authorized by rule 657—7.7(155A) would be of value to the pharmacists and patients. The second pharmacist suggested amending the rule to ensure that a pharmacy using the services of another pharmacy for remote preview and verification services demonstrate the redirection of pharmacist services.

The adopted amendments differ from those published under Notice. Item 2 is changed by adding the following sentence at the end of the subrule: "The hospital pharmacy shall maintain records that demonstrate the directing of pharmacist activities to additional cognitive and patient care activities, and those records shall be available for inspection by the board or an agent of the board."

The amendments were approved during the November 9, 2012, meeting of the Board of Pharmacy.

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

These amendments are intended to implement Iowa Code section 155A.13.

## PHARMACY BOARD[657](cont'd)

These amendments will become effective on January 16, 2013.

The following amendments are adopted.

ITEM 1. Amend rule 657—7.7(155A), introductory paragraph, as follows:

**657—7.7(155A) Verification by remote pharmacist when ~~pharmacy is closed~~.** A hospital pharmacy may contract with another pharmacy for remote pharmacist preview and verification of patient-specific drugs or devices ordered for a patient ~~when the hospital pharmacy is closed~~. Contracted services may include pharmacist order entry pursuant to subrule 7.8(3). Pharmacies entering into a contract or agreement pursuant to this rule shall comply with the following requirements:

ITEM 2. Amend subrule 7.7(1) as follows:

**7.7(1) Nonsupplanting service.** A contract or agreement for remote pharmacist services shall not relieve the hospital pharmacy from employing or contracting with a pharmacist to provide routine pharmacy services within the facility. The activities authorized by this rule are intended to supplement on-site hospital pharmacy services ~~when the pharmacy is closed~~ and are not intended to eliminate the need for an on-site hospital pharmacy or pharmacist. The activities authorized by this rule are intended to increase the availability of the pharmacist for involvement in cognitive and patient care activities when the pharmacy is open. The hospital pharmacy shall maintain records that demonstrate the directing of pharmacist activities to additional cognitive and patient care activities, and those records shall be available for inspection by the board or an agent of the board.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0503C**

**PHARMACY BOARD[657]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment clarifies the requirement for prior notification to the Board when a pharmacy plans to remodel or relocate a pharmacy department, establishing that the notification be submitted to the Board at least 30 days prior to commencement of the project. The amendment also clarifies that the Board may require inspection of the proposed remodel or relocation site, including inspection of a temporary pharmacy location, inspection of a barrier constructed or intended to be constructed to provide security when the pharmacy department is closed, and inspection of a proposed installation of sterile compounding facilities and equipment. The amendment combines two subrules that address requirements for light, ventilation, temperature, and humidity into a single subrule and renumbers two subrules as a result of the rearrangement and the addition of a new subrule.

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 October 3, 2012, Iowa Administrative Bulletin as **ARC 0371C**. The Board received no written comments regarding the proposed amendment. The Board did receive a suggestion from Board staff to specifically require in subrule 8.5(4) prior notification and inspection of new or remodeled sterile compounding facilities and equipment. The adopted amendment differs from that published under Notice by requiring prior notification to the Board and possible inspection of a proposed sterile compounding facility and equipment.

The amendment was approved during the November 9, 2012, meeting of the Board of Pharmacy.

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

This amendment is intended to implement Iowa Code section 155A.13.

## PHARMACY BOARD[657](cont'd)

This amendment will become effective on January 16, 2013.

The following amendment is adopted.

Amend rule 657—8.5(155A) as follows:

**657—8.5(155A) Environment and equipment requirements.** There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy. Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available.

**8.5(1)** and **8.5(2)** No change.

**8.5(3) *Secure barrier.*** A pharmacy department shall be closed and secured in the absence of the pharmacist except as provided in rule 657—6.7(124,155A) or 657—7.6(124,155A). ~~The~~ To ensure that secure closure, the pharmacy department shall be surrounded by a physical barrier capable of being securely locked to prevent entry when the department is closed. A secure barrier may be constructed of other than a solid material with a continuous surface if the openings in the material are not large enough to permit removal of items from the pharmacy department by any means. Any material used in the construction of the barrier shall be of sufficient strength and thickness that it cannot be readily or easily removed, penetrated, or bent. The plans and specifications of the barrier shall be submitted to the board for approval at least 30 days prior to the start of construction. The board may also require on-site pharmacy may be subject to inspection of the facility or pharmacy department prior to the pharmacy's opening or relocation as provided in subrule 8.5(4). The pharmacy department shall be closed and secured in the absence of the pharmacist except as provided in rule 657—6.7(124,155A) or 657—7.6(124,155A).

**8.5(4) *Remodel or relocation—inspection.*** A pharmacy planning to remodel or relocate a licensed pharmacy department on or within the premises currently occupied by the pharmacy department, or a pharmacy intending to remodel or install a sterile compounding facility or equipment, shall provide written notification to the board at least 30 days prior to commencement of the remodel, pharmacy relocation, or sterile compounding installation. The board may require on-site inspection of the facility, equipment, or pharmacy department prior to or during the pharmacy's remodel, relocation, or opening. The board may also require on-site inspection of a temporary pharmacy location intended to be utilized during the remodel, construction, or relocation of the pharmacy department.

**8.5(4) 8.5(5) *Orderly and clean.*** The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner. Animals shall not be allowed within a licensed pharmacy unless that pharmacy is exclusively providing services for the treatment of animals or unless the animal is a service dog or assistive animal as defined in Iowa Code subsection 216C.11(1).

**8.5(5) 8.5(6) *Light, and ventilation, temperature, and humidity.*** The pharmacy shall be properly lighted and ventilated. The temperature and humidity of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.

**8.5(6) *Temperature and humidity.*** ~~The temperature and humidity of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.~~

**8.5(7)** and **8.5(8)** No change.

[Filed 11/20/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0490C**

**PROFESSIONAL LICENSING AND REGULATION BUREAU[193]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 546.3 and 546.10, the Professional Licensing and Regulation Bureau hereby amends Chapter 4, "Proof of Legal Presence," Iowa Administrative Code.

These amendments address a license applicant's requirement to provide a social security number under 42 U.S.C. Section 666(a)(13) and Iowa Code sections 252J.8(1), 261.126(1), and 272D.8(1).

Prior to publication of the Notice, all of the seven boards of the Professional Licensing and Regulation Bureau reviewed the amendments without objection. The amendments are intended to clarify that applicants with social security numbers must disclose the numbers in order to be licensed. The amendments further provide a process to follow when applicants have applied for a social security number under a lawful visa but have not yet received the number at the time of application.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0345C** on October 3, 2012. No comments were received from the public. These amendments are identical to those published under Notice.

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

These amendments are intended to implement Iowa Code sections 252J.8(1), 261.126(1), 272D.8(1), and 546.10.

These amendments will become effective on January 16, 2013.

The following amendments are adopted.

ITEM 1. Amend **193—Chapter 4**, title, as follows:

SOCIAL SECURITY NUMBERS AND PROOF OF LEGAL PRESENCE

ITEM 2. Amend rule 193—4.1(546) as follows:

**193—4.1(546) Purpose.** This chapter outlines a uniform process for applicants and licensees of all boards in the bureau to establish proof of legal presence pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C.1621). This chapter also addresses the requirement that a license applicant provide a social security number under 42 U.S.C. 666(a)(13) and Iowa Code sections 252J.8(1), 261.126(1), and 272D.8(1) for purposes including the collection of child support obligations, college student loan obligations, and debts owed to the state of Iowa.

ITEM 3. Adopt the following new rule 193—4.4(252J,261,272D,546):

**193—4.4(252J,261,272D,546) Social security number disclosure.**

**4.4(1)** An individual applying for a license from a board within the bureau shall disclose the individual's social security number on the application form unless:

*a.* The applicant demonstrates to the satisfaction of the board that the applicant does not possess and is not eligible for a social security number, or

*b.* The applicant demonstrates or attests that the applicant is in the process of applying for a social security number and will provide such number within 60 days of the date on which the applicant submits the application to the board. The license of an applicant who is licensed pursuant to this subrule may be revoked for failure to provide a valid social security number within 60 days of the date on which the application was filed.

**4.4(2)** An applicant who does not possess a social security number and is not eligible for a social security number will be required to demonstrate lawful presence in the United States, if applicable, and provide government-issued photo identification as needed to verify identity. If circumstances change and the applicant or licensee later attains a social security number, the applicant or licensee shall disclose

## PROFESSIONAL LICENSING AND REGULATION BUREAU[193](cont'd)

the social security number to the board within 30 days of the date on which the social security number is issued.

[Filed 11/15/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0481C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 22.7(2) and 139A.8(8), 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 rules in Chapter 7 describe the immunization requirements of persons attending elementary or secondary school and licensed child care centers in Iowa. These amendments add language pertaining to vaccination for tetanus, diphtheria and pertussis (Tdap vaccine) for students in secondary school, as well as language pertaining to transition of the immunization registry to a web-based system.

Following is a summary of the changes from the existing rules:

In Item 1, references to Iowa Code chapters which no longer exist are stricken from the definition of "physician."

In Item 2, the Immunization Requirements Table is replaced with a new Table which adds a vaccination for tetanus, diphtheria and pertussis (Tdap vaccine) for students in secondary school and adds a new footnote number 2, which necessitated the renumbering of the subsequent footnotes.

Item 3 amends subrule 7.7(1) to be consistent with language in subrule 7.6(1).

Item 4 amends the list of information which may be provided to the registry by enrolled users by removing "Contraindications, precautions" and replacing it with "Patient comments."

Item 5 updates terminology by replacing "an identification code and password" with "an organization code and user name."

Item 6 adds the admitting official of a postsecondary school to the list of persons to whom the Department may release information from the registry.

Item 7 adds postsecondary schools to the list of schools to which a physician, a physician assistant, a nurse, or a certified medical assistant shall disclose a student's immunization information upon request.

Item 8 adds postsecondary schools to the list of schools and child care centers that shall disclose immunization information among the list upon request.

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Bulletin as **ARC 0370C**. No comments were received. Upon further internal review, two changes were made to the amendments as they appeared in the Notice of Intended Action. In Item 8, subrule 7.12(3), the word "and" was retained in three places in lieu of a proposed to change to "or." Item 9 has been added to adopt new subrule 7.12(4).

The State Board of Health adopted these amendments on November 14, 2012.

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

These amendments are intended to implement Iowa Code sections 139A.8 and 22.7(2).

These amendments will become effective January 16, 2013.

The following amendments are adopted.

ITEM 1. Amend rule **641—7.1(139A)**, definition of "Physician," as follows:

"*Physician*" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to Iowa Code chapter 148, ~~150, or 150A.~~

ITEM 2. Rescind the Immunization Requirements Table in subrule 7.4(1) and adopt the following **new** table in lieu thereof:

## 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
		<i>haemophilus influenzae</i> type B	1 dose
		Pneumococcal	1 dose
	6 months through 11 months of age	Diphtheria/Tetanus/Pertussis	2 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses
		Pneumococcal	2 doses
	12 months through 18 months of age	Diphtheria/Tetanus/Pertussis	3 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses; or 1 dose 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
		<i>haemophilus influenzae</i> type B	3 doses, with the final dose in the series received on or after 12 months of age, or 1 dose received when the applicant is 15 months of age or older.
		Pneumococcal	4 doses; 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 <sup>1</sup>	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 if the applicant was born on or after September 15, 1997, unless the applicant has had a reliable history of natural disease.
	24 months and older	Diphtheria/Tetanus/Pertussis	4 doses
		Polio	3 doses
		<i>haemophilus influenzae</i> type B	3 doses, with the final dose in the series received on or after 12 months of age; or 1 dose received when the applicant is 15 months of age or older. Hib vaccine is not indicated 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 12 months of age; or 2 doses if the applicant received 1 dose before 12 months of age or received 1 dose between 12 and 23 months of age; or 1 dose if no doses had been received prior to 24 months of age. Pneumococcal vaccine is not indicated for persons 60 months of age or older.
		Measles/Rubella <sup>1</sup>	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 if the applicant was born on or after September 15, 1997, unless the applicant has had a reliable history of natural disease.	

PUBLIC HEALTH DEPARTMENT[641](cont'd)

<b>Elementary or Secondary School (K-12)</b>	4 years of age and older	Diphtheria/Tetanus/ Pertussis <sup>4,5</sup>	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 <sup>2</sup> ; 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 before September 15, 2003 <sup>2</sup> ; 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 on or after September 15, 2003 <sup>3</sup> ; and 1 time dose of tetanus/diphtheria/acellular pertussis-containing vaccine (Tdap) for applicants in grades 7 and above, if born on or after September 15, 2000, regardless of the interval since the last tetanus/diphtheria-containing vaccine.
		Polio <sup>7</sup>	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; 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. <sup>6</sup>
		Measles/Rubella <sup>1</sup>	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 if the applicant was born on or after July 1, 1994.
		Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, but born 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 on or after September 15, 2003, unless the applicant has a reliable history of natural disease. <sup>8</sup>

<sup>1</sup> Mumps vaccine may be included in measles/rubella-containing vaccine.  
<sup>2</sup> DTaP is not indicated for persons 7 years of age or older, therefore, a tetanus-and diphtheria-containing vaccine should be used.  
<sup>3</sup> The 5<sup>th</sup> dose of DTaP is not necessary if the 4<sup>th</sup> dose was administered on or after 4 years of age.  
<sup>4</sup> Applicants 7 through 18 years of age who received their 1<sup>st</sup> 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.  
<sup>5</sup> Applicants 7 through 18 years of age who received their 1<sup>st</sup> 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.  
<sup>6</sup> If an applicant received an all-inactivated poliovirus (IPV) or all-oral poliovirus (OPV) series, a 4<sup>th</sup> dose is not necessary if the 3<sup>rd</sup> dose was administered on or after 4 years of age.  
<sup>7</sup> If both OPV and IPV were administered as part of the series, a total of 4 doses are required, regardless of the applicant's current age.  
<sup>8</sup> Administer 2 doses of varicella vaccine, at least 3 months apart, to applicants less than 13 years of age. Do not repeat the 2<sup>nd</sup> dose if administered 28 days or greater from the 1<sup>st</sup> 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 1<sup>st</sup> and 2<sup>nd</sup> dose of varicella for an applicant 13 years of age or older is 28 days. Rev: 2-12

ITEM 3. Amend subrule 7.7(1) as follows:

**7.7(1)** A valid Iowa department of public health provisional enrollment certificate shall be submitted by the applicant or, if the applicant is a minor, by the applicant's parent or guardian to the admitting official of the school or licensed child care center in which the applicant wishes to enroll. Applicants who have begun but not completed the required immunizations may be granted provisional enrollment. To qualify for provisional enrollment, applicants shall have received at least one dose of each of the required vaccines or be a transfer student from another school system. A transfer student is an applicant seeking enrollment from one United States elementary or secondary school into another. To be valid, the certificate shall be the certificate of immunization issued by the department, a computer-generated copy from the immunization registry, or a certificate of immunization which has been approved in writing by the department. The certificate shall contain, at a minimum, the applicant's last name, first name, and date of birth, the vaccine(s) administered, the date(s) given, the remaining vaccine(s) required, the reason that the applicant qualifies for provisional enrollment, and the signature of a physician, a physician assistant, a nurse, or a certified medical assistant. Persons validating the provisional certificate of immunization are not held responsible for the accuracy of the information used to validate the provisional certificate of immunization if the information is from sources other than their own records or personal knowledge. Persons signing the provisional certificate of immunization shall certify that they have informed the applicant or, if the applicant is a minor, the applicant's parent or guardian of the provisional enrollment requirements.

a. and b. No change.

ITEM 4. Amend paragraph 7.11(3)"n" as follows:

n. ~~Contraindications, precautions~~ Patient comments;

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

ITEM 5. Amend subparagraph 7.11(4)“a”(2) as follows:

(2) Enrolled users of the registry who have completed an enrollment form that specifies the conditions under which the registry can be accessed and who have been issued an ~~identification code and password~~ organization code and user name by the department;

ITEM 6. Amend subparagraph 7.11(4)“a”(6) as follows:

(6) The admitting official of a licensed child care center, elementary school, ~~or~~ secondary school, or postsecondary school; or medical or health care providers providing continuity of care.

ITEM 7. Amend subrule 7.12(1) as follows:

**7.12(1)** *Between a physician, physician assistant, nurse, or certified medical assistant and the elementary, ~~or~~ secondary, or postsecondary school or licensed child care center that the student attends.* A physician, a physician assistant, a nurse, or a certified medical assistant shall disclose a student’s immunization information, including the student’s name, date of birth, and demographic information, the month, day, year and vaccine(s) administered, and clinic source and location, to an elementary, ~~or~~ secondary, or postsecondary school or a licensed child care center upon written or verbal request from the elementary, ~~or~~ 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, ~~or~~ secondary, or postsecondary school or licensed child care center that the student attends.

ITEM 8. Amend subrule 7.12(3) as follows:

**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 information, including the student’s last name, first name, date of birth, and demographic information, the month, day, and year of vaccine(s) administered, 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.

ITEM 9. Adopt the following **new** subrule 7.12(4):

**7.12(4)** *Between the department and a physician, physician assistant, nurse, certified medical assistant, elementary school, secondary school, postsecondary school, and licensed child care center.* A physician, physician assistant, nurse, certified medical assistant, elementary school, secondary school, postsecondary school, and licensed child care center shall disclose a student’s immunization information in the format specified by the department, including the student’s name, date of birth, grade, and demographic information, the month, day, year and vaccine(s) administered, and clinic source and location upon written or verbal request from the department. Written or verbal permission from a student or parent is not required to release this information to the department.

[Filed 11/14/12, effective 1/16/13]

[Published 12/12/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0482C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.102, the Department of Public Health hereby amends Chapter 70, “Lead-Based Paint Activities,” Iowa Administrative Code.

The amendment amends the definition of “minor repair and maintenance activities.” The change in the definition will, in limited instances, increase the minimum area of disturbed painted surface that triggers regulation.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

This amendment was requested by the remodeling industry. The Department worked with the industry to expand the minimum area but still maintain the intent of the regulation. The overall intent of the regulation is to prevent children from being lead-poisoned due to unsafe renovations.

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Bulletin as **ARC 0369C**. One comment was received. The comment received was from an inspector/training provider in Iowa and read:

I do not think the exterior surface area should be changed. I do lead inspections on a regular basis and I am almost always finding homes built before 1960 with deteriorated lead-based paint on the exterior siding/fascia/porch overhangs [and] columns. In most cases there are some amounts of visible paint chips and bare soil present and when children are present they tend to stay next to the house and play in these areas in close proximity to the house walls.

The Department agrees that it is typical for exterior hazards to be present on the exterior of homes built before 1960. Paint chips and bare soil are typical hazards found in these homes. However, the change to the definition in question does not change this fact. These exterior hazards are expected to be present whether this definition changes or not. The Department is not proposing to change the definition that determines when exterior lead-based paint becomes hazardous. Any deteriorated lead-based paint or chips are currently considered hazards, and this definition will not change that. Prohibited work practices, window replacement, and demolition of painted surfaces are never exempted even if the area is less than 20 square feet.

The adopted amendment is identical to the one published under Notice.

The State Board of Health adopted this amendment on November 14, 2012.

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

This amendment is intended to implement Iowa Code section 135.105A.

This amendment will become effective January 16, 2013.

The following amendment is adopted.

Amend rule **641—70.2(135)**, definition of “Minor repair and maintenance activities,” as follows:

“*Minor repair and maintenance activities*” means activities, including minor heating, ventilation or air-conditioning work, electrical work, and plumbing, that disrupt less than ~~1.0 square feet~~ the minimum areas of a painted surface established in this definition where none of the work practices prohibited or restricted by this chapter are used and where the work does not involve window replacement or demolition of painted surface areas. When painted components or portions of painted components are removed, the entire surface area removed is the amount of painted surface disturbed. Projects, other than emergency renovation, performed in the same room within the same 30 days must be considered the same project for the purpose of determining whether the project is a minor repair and maintenance activity. Renovations performed in response to an elevated blood lead (EBL) inspection are not considered minor repair and maintenance activities. The minimum area for minor repair and maintenance activities is:

1. Less than 1.0 square foot of an interior painted or finished wood surface per renovation;
2. Less than 6.0 square feet of a painted or finished drywall or plaster surface per room; or
3. Less than 20.0 square feet of an exterior painted or finished surface per renovation.

Projects performed pursuant to 24 CFR Part 35 shall comply with the de minimis levels in 24 CFR 35.1350 if these de minimis levels are more restrictive than the minimum areas of a painted surface established in this definition.

[Filed 11/14/12, effective 1/16/13]

[Published 12/12/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0483C****PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 144.3, the Department of Public Health hereby rescinds Chapter 95, "Certificate of Birth—Registration Fee," Chapter 96, "Vital Records," Chapter 98, "Forms Uniform," Chapter 99, "Delayed Birth, Death and Marriage Registration," Chapter 100, "Establishment of New Certificates of Birth," Chapter 101, "Death Certification, Autopsy and Disinterment," Chapter 102, "Correction and Amendment of Vital Records," Chapter 103, "Confidentiality of Records," Chapter 104, "Copies of Vital Records," Chapter 105, "Declaration of Paternity Registry," Chapter 106, "Reporting of Termination of Pregnancy," and Chapter 107, "Mutual Consent Voluntary Adoption Registry," and adopts new Chapter 95, "Vital Records: General Administration," Chapter 96, "Birth Registration," Chapter 97, "Death Registration and Disposition of Dead Human Bodies," Chapter 98, "Marriage Registration," Chapter 99, "Vital Records: Modifications," and Chapter 100, "Vital Records: Registries and Reports," Iowa Administrative Code.

New Chapters 95 to 100 are the result of reorganizing the information contained in rescinded Chapters 95, 96, and 98 to 107 in an effort to make it easier to locate the information. The new chapters also include new and updated information. The following is a summary of the information in each new chapter. For purposes of comparison, a reference to the rescinded chapter or rule in which the information had been found is also included.

Chapter 95, Vital Records: General Administration, includes definitions and establishes fees. Chapter 95 sets forth requirements relating to entitlement, confidentiality, and access to data. In addition, this chapter addresses certified copies, cancellation of fraudulent records and unlawful acts. The subject matter addressed in new Chapter 95 was addressed in rescinded Chapters 96, 98, 103, and 104.

Chapter 96, Birth Registration, defines time frames for registering births and specifies parties responsible for registration in various circumstances. The chapter also specifies registration fees and requirements for supporting evidence when needed. The subject matter addressed in new Chapter 96 was addressed in rescinded Chapters 95, 99, and 100.

Chapter 97, Death Registration and Disposition of Dead Human Bodies, defines time frames for registering deaths and specifies parties responsible for registration in various circumstances. The chapter also specifies requirements for medical certification for cause of death and includes burial-transit permits and disinterment permits. The subject matter addressed in new Chapter 97 was addressed in rescinded Chapters 98, 99, and 101.

Chapter 98, Marriage Registration, includes the process for marriage applications and obtaining the license to marry and the certificate of marriage. The chapter also defines time frames for registering marriages and specifies parties responsible for registration. The process for reporting dissolution of marriages or annulment is also included in this chapter. The subject matter addressed in new Chapter 98 was addressed in rescinded Chapter 99.

Chapter 99, Vital Records: Modifications, includes the processes for corrections, amendments, and court-ordered changes to records. The chapter also includes processes for adoptions, gestational surrogates, paternity establishment, and other legal actions. Requirements for supporting documentation are also specified. The subject matter addressed in new Chapter 99 was addressed in rescinded Chapters 100 and 102.

Chapter 100, Vital Records: Registries and Reports, includes requirements for the declaration of paternity registry, the mutual consent voluntary adoption registry, and the statistical report of termination of pregnancy. The subject matter addressed in new Chapter 100 was addressed in rescinded Chapters 105, 106, and 107.

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Bulletin as **ARC 0376C**. The Department distributed a draft of the proposed rules to stakeholder groups in August of 2011 as a pre-notice to solicit comments. The same stakeholder groups were notified on October 4, 2012, that the rules had been published in the October 3, 2012, Iowa Administrative Bulletin for public

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

comment. The Department held a comment period through October 23, 2012, and also conducted a public hearing on October 23, 2012, at the Lucas State Office Building, Des Moines, Iowa. During the time of the comment period and at the public hearing, comments suggesting changes were received from the Iowa County Recorders Association, the Iowa Funeral Directors Association, and the Mortuary Science Program at DMAACC; and comments supporting the proposed rules were received from several private-practice attorneys.

As a result of the comments received on the rules and additional internal review, the Department made the following changes to the Noticed rules:

In rule 641—95.1(144), added a definition of “Certificate,” which reads as follows:

“‘*Certificate*’ means the written or electronic legal document containing the facts of an event; also used interchangeably with the term ‘record.’”

In subrule 95.6(4), changed “shall charge a fee of \$4” to “may charge a fee of no more than \$5.” Subrule 95.6(4) now reads as follows:

“**95.6(4)** *Search of county registrar’s records—fee for uncertified copy.* A person who is requesting an uncertified copy of a record in the custody of the county registrar shall conduct the search of the county files to locate the record. If a copy is requested, the county registrar may charge a fee of no more than \$5 for an uncertified copy of the county record. The fee shall be retained by the county.”

In subrule 95.7(9), changed “All copies” to “Certified and uncertified copies.” Subrule 95.7(9) now reads as follows:

“**95.7(9)** For a record of death registered on or after April 5, 2012, for a decedent who died outside of the county of the decedent’s residence, the state registrar shall send a clearly marked copy of the decedent’s death certificate and any amendments to the county registrar of the county of the decedent’s residence. The county registrar shall incorporate the clearly marked copy of the county resident death certificate in the vital records system maintained by the county. Certified or uncertified copies of county resident death certificates shall be clearly marked as ‘county resident copy.’”

In subparagraph 95.8(1)“c”(4), changed “six months” to “up to one year.” The subparagraph now reads as follows:

“(4) A funeral director, for up to one year following the decedent’s date of death; or”

In paragraph 97.5(1)“b,” changed “physician or medical examiner” to “medical certifier.” Paragraph 97.5(1)“b” now reads as follows:

“b. Obtain the medical certification of cause of death from the medical certifier; and”

In subrule 97.6(6), changed “authorized person” to “medical certifier.” Subrule 97.6(6) now reads as follows:

“**97.6(6)** The medical certifier completing the medical certification of cause of death shall attest to the accuracy of the medical certification either by signature or by an electronic process approved by the state registrar.”

In subrule 97.10(2), removed “but in all cases within 15 days,” and changed “file a supplemental report with the state registrar” to “report the missing information to the state registrar.” Subrule 97.10(2) now reads as follows:

“**97.10(2)** As soon as possible, the person responsible for completing the information missing from the original certificate shall report the missing information to the state registrar.”

In rule 641—97.12(144), added two new sentences after the catchwords of the rule. The introductory paragraph of rule 641—97.12(144) now reads as follows:

“**641—97.12(144) Burial-transit permit.** If a person other than a funeral director, medical examiner, or emergency medical service assumes custody of a dead human body or fetus, the person shall secure a burial-transit permit pursuant to Iowa Code section 144.32. Pursuant to rule 645—100.4(144), an unlicensed employee of the funeral establishment shall be considered an agent of the funeral director.”

In the introductory paragraph of subrule 97.12(1), removed the words “required pursuant to Iowa Code section 144.32” after the word “permit” because that requirement was added to the aforementioned introductory sentence in rule 641—97.12(144). The introductory paragraph of subrule 97.12(1) now reads as follows:

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

“**97.12(1)** The burial-transit permit shall be issued upon a form prescribed by the state registrar and shall state:”

In subrule 97.15(1), added new paragraphs “a” and “h” and relettered Noticed paragraphs “a” to “f” as “b” to “g.” Subrule 97.15(1) now reads as follows:

“**97.15(1) Application.** Registration of a delayed certificate of death may be requested by the surviving next of kin of the deceased, or the surviving next of kin’s legal representative, in the following descending order:

- “a. Executor of the decedent’s estate;
- “b. Spouse, if not legally separated from the decedent;
- “c. Child or legal guardian of the child if the child is under the age of majority;
- “d. Parent;
- “e. Grandchild or legal guardian of the grandchild if the grandchild is under the age of majority;
- “f. Sibling;
- “g. Grandparent; or
- “h. Funeral director responsible for the disposition of the decedent.”

In subrule 97.15(7), changed the word “shall” in the second sentence to “may.” Subrule 97.15(7) now reads as follows:

“**97.15(7) Duties of county registrar.** The county registrar may assist the applicant in the completion and notarization of the delayed form, excluding the portion restricted for state use only. The county registrar may forward the partially completed delayed form, documents and fees to the state registrar for final review and possible acceptance.”

In rule 641—97.16(144), added subrules 97.16(6) and 97.16(7) and renumbered Noticed subrule 97.16(6) as 97.16(8). The two new subrules read as follows:

“**97.16(6)** The certificate of presumptive death shall be registered and maintained solely at the state registrar’s office.

“**97.16(7)** The certificate of presumptive death shall be recorded based on the date of the court order and shall not be registered as a delayed certificate.”

In subrule 97.18(2), added “at the funeral establishment responsible for disposition.” Subrule 97.18(2) now reads as follows:

“**97.18(2)** Records maintained under this rule shall be retained for a period of not less than ten years at the funeral establishment responsible for disposition and shall be made available for inspection by the state registrar upon demand.”

In subrule 98.4(3), removed the text “applicant’s age, name, and parents’ names by providing a certified copy of the applicant’s birth certificate at the time that the application is submitted to the county registrar. A foreign birth certificate must be translated into English. All documents shall be returned to the applicants” and added the words “personal information by notarized signature.” Subrule 98.4(3) now reads as follows:

“**98.4(3)** Each applicant shall verify the personal information by notarized signature.”

In subrule 98.7(7), changed the word “shall” in the second sentence to “may.” Subrule 98.7(7) now reads as follows:

“**98.7(7) Duties of county registrar.** The county registrar may assist the applicant in the completion and notarization of the delayed form, excluding the portion restricted for state use only. The county registrar may forward the partially completed delayed form, documents and fees to the state registrar for final review and possible acceptance.”

The State Board of Health adopted these amendments on November 14, 2012.

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

These amendments are intended to implement Iowa Code chapter 144 and Iowa Code sections 135.11(7), 144C.5, 233.2(2)“c,” 252A.3A, 331.605(1)“f” and “g,” 331.802(3), 595.2(4), 595.4, 595.5, 595.10, 595.16, 600.15, 600.16A, 633.517 to 633.520, 674.2, 674.7 and 674.9.

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

These amendments will become effective on January 16, 2013.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind Chs 95, 96, 98 to 107; adopt Chs 95 to 100] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0376C**, IAB 10/3/12.

[Filed 11/14/12, effective 1/16/13]

[Published 12/12/12]

[For replacement pages for IAC, see IAC Supplement 12/12/12.]

**ARC 0480C**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 131, "Emergency Medical Services—Provider Education/Training/Certification," and Chapter 132, "Emergency Medical Services—Service Program Authorization," Iowa Administrative Code.

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical services providers and establish a standard of conduct for training programs, students, and providers. The rules in Chapter 132 describe the standards for the authorization of EMS services. These amendments update the reference to the Iowa EMS Scope of Practice document to the most recent edition, April 2012.

Notice of Intended Action was published in the October 3, 2012, Iowa Administrative Bulletin as **ARC 0377C**. No comments were received. The adopted amendments are identical to those published under Notice.

The State Board of Health adopted these amendments on November 14, 2012.

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

These amendments are intended to implement Iowa Code section 147A.8.

These amendments will become effective on January 16, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **131.3(3)"b"** as follows:

*b.* Scope of Practice for Iowa EMS Providers (~~July 2011~~ April 2012) is hereby incorporated and adopted by reference for emergency medical care providers. For any differences that may occur between the Scope of Practice adopted by reference and these administrative rules, the administrative rules shall prevail.

ITEM 2. Amend paragraph **132.2(4)"b"** as follows:

*b.* Scope of Practice for Iowa EMS Providers (~~July 2011~~ April 2012) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

[Filed 11/14/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.

**ARC 0527C****REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 421.17, the Department of Revenue hereby amends Chapter 224, "Telecommunications Services," Iowa Administrative Code.

Item 1 amends paragraph 224.6(2)"b" to clarify the rule and ensure compliance with the Streamlined Sales and Use Tax Agreement. The subject matter of paragraph 224.6(2)"b" is sourcing of prepaid wireless services.

Item 2 adopts new rule 701—224.8(34A). The new rule explains the administration of the prepaid wireless service enhanced 911 surcharge and is necessary to implement 2012 Iowa Acts, Senate File 2332.

Item 3 adopts new rule 701—224.9(423). The new rule provides guidance on the sales tax exemption for central office and transmission equipment used by certain telecommunications providers. The new rule is necessary to implement Iowa Code section 423.3(47A), a phased-in exemption that began to take effect in 2006 and took full effect on July 1, 2012.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0407C** on October 17, 2012. No comments were received from the public. No changes have been made to the amendments published under Notice of Intended Action, except that citations to 2012 Iowa Acts have been converted, where appropriate, to citations to the 2013 Code of Iowa.

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

These amendments are intended to implement Iowa Code sections 423.3(47A), 423.20 and 423.15 and 2012 Iowa Acts, Senate File 2332, section 10.

These amendments will become effective January 16, 2013.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [224.6(2), 224.8, 224.9] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0407C**, IAB 10/17/12.

[Filed 11/21/12, effective 1/16/13]

[Published 12/12/12]

[For replacement pages for IAC, see IAC Supplement 12/12/12.]

**ARC 0478C****TRANSPORTATION DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Iowa Department of Transportation, on November 13, 2012, adopted an amendment to Chapter 150, "Improvements and Maintenance on Primary Road Extensions," Iowa Administrative Code.

This amendment provides for additional Departmental participation in the cost of constructing curb ramps on existing sidewalks within the right-of-way of primary road extensions to meet the requirements of the Americans with Disabilities Act (ADA). This change allows the Department to move forward with the ADA transition plan.

Notice of Intended Action for this amendment was published in the September 19, 2012, Iowa Administrative Bulletin as **ARC 0333C**. No public comment was received.

As a result of comments received from the Administrative Rules Review Committee regarding the proposed removal of specific funding criteria, the Department made changes from the Notice of Intended Action. The Department:

- Added rule language to state that the Department will fund 100 percent of curb ramps on Department-initiated projects to eliminate the dependence on local jurisdictions for funding.

## TRANSPORTATION DEPARTMENT[761](cont'd)

- Has retained rule language that allows the Department to continue funding 55 percent of the curb ramps up to \$250,000 per year per local jurisdiction on local jurisdiction-initiated projects.
- Has retained rule language that allows the Department to participate up to a total amount per year. However, the Department increased the total annual program amount to \$5 million to help expedite compliance with the ADA.

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.

This amendment is intended to implement Iowa Code section 306.4.

This amendment will become effective January 16, 2013.

Rule-making action:

Amend paragraph **150.4(3)“c”** as follows:

c. ~~The~~ If a project is initiated by the department, the department shall fund 100 percent of all curb ramps within the right-of-way of primary road extensions to meet the requirements of the Americans with Disabilities Act. If a project is initiated by a local jurisdiction, the department may participate in the cost by funding 55 percent of the cost of constructing curb ramps on existing sidewalks within the right-of-way of primary road extensions to meet the requirements of the Americans with Disabilities Act. If the department participates, the department's share of the construction cost shall be 55 percent; the city shall prepare plans, award the contract, supervise construction, and be responsible for the remaining construction cost. However, departmental participation shall not exceed \$250,000 per year for any one city local jurisdiction and ~~\$1.5~~ \$5 million per year in total.

[Filed 11/14/12, effective 1/16/13]

[Published 12/12/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/12/12.